

(2006) 03 AHC CK 0213

In the Allahabad High Court

Case No : Criminal M. Application No. 2980 of 2006

Pappu

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-03-2006

Acts Referred:

Arms Act, 1959 — Section 25, 3
Criminal Procedure Code, 1973 (CrPC) — Section 154(1), 156(3)
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 8
Penal Code, 1860 (IPC) — Section 308, 323, 504, 506

Citation : (2006) 2 ACR 1857

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Advocate : Rajendra Singh, for the Appellant; A.G.A., for the Respondent

Judgement

Vinod Prasad, J.—Heard learned Counsel for the applicant and learned A.G.A.

2. This application is being disposed of at the admission stage itself.

An application u/s 156(3), Code of Criminal Procedure was filed by the applicant Pappu son of Shullur R/o Village Kanwar, P.S. Balua, district Chandauli against 16 accused persons in the Court of Judicial Magistrate, Chandauli, on 21.9.2005. The allegation in the application was that on 28.11.2005 Hira Lal, the brother of Pappu, was a candidate for the election of Village Pradhan but he lost the election by 81 votes. Because of the aforesaid enmity of election, the accused persons, namely--Rajendra, Ishwar Dayal, Shyamjeet Pandey alias Kallu, Onkar Pandey, Brijesh Singh, Pradeep Singh, Sita Ram Singh, Madhu Mangal Singh, Bharat Singh, Raghunath Singh, Parahoo, Panaroo, Sanjeev, Neeraj Singh, Umashanker, Sudhir, on 29.8.2005 at 8.00 a.m., armed with lathi and illegal arms raided the house of the applicant and no sooner their arrival there, they started abusing and attacked the family members of the Pappu aforesaid. Accused Rajendra Ram and Sudhir Yadav fired with their country made pistols on the brother of the applicant Mahendra. As a result of shooting, Mahendra, Pappu

and Dasharath received injuries. On hue and cry being raised many people of the village collected on the spot. Moti, Lallan and Shanker intervened in the incident. After the aforesaid assault, the accused persons trespassed into the house of the applicant Pappu and damaged the household goods. The accused also threatened the applicant Pappu with dire consequences. The applicant Pappu along with his brother went to the police station to get the F.I.R. registered, but the same was not registered under the pressure of local M.L.A., as the accused persons were relatives of the said M.L.A. The applicant Pappu was wrongly challaned in Crime No. 65 of 2005, State of U. P. v. Heera Lal and Ors., under Sections 323, 504, 506 and 308, I.P.C. and Crime No. 67 of 2005, u/s 8/21, N.D.P.S. Act and also Case Crime No. 66 of 2005, u/s 3/25, Arms Act. He had given an application to the S. P. Chandauli, D.I.G., Varanasi but, when, nothing was done, then he filed an application, on 1.9.2005, u/s 156(3), Code of Criminal Procedure in the court of Judicial Magistrate, Chandauli. The applicant also filed the medical examination report of the injured persons along with his said application. The Judicial Magistrate, Chandauli, vide his order dated 28.11.2005, had rejected the aforesaid application of the applicant holding that there was no need of investigation in the said incident. The learned Magistrate held that the role of each individual accused was not mentioned in application u/s 156(3), Code of Criminal Procedure and there was some contradiction in the medical report vis-a-vis application u/s 156(3), Code of Criminal Procedure Learned Magistrate relied upon a judgment of this Court, did not care to mention it in his said order dated 28.11.2005.

3. Aggrieved by that order dated 28.11.2005, the applicant preferred a revision before the Sessions Judge, Chandauli which was registered as Criminal Revision No. 153 of 2005, Pappu v. State of U. P. The lower revisional court also dismissed the revision on the ground that the learned Magistrate was justified in rejecting the application of the revisionist.

4. I have heard Sri Rajendra Singh, learned Counsel for the applicant and learned A.G.A. at great length.

5. In my opinion both the orders are wholly illegal. Application u/s 156(3), Cr. P.C., clearly disclosed cognizable offences of assault, loots and attempt to murder. u/s 154(1), Code of Criminal Procedure it was the duty of the police to register the case of the applicant if the applicant wanted to get it registered at the police station but the same was denied to him illegally by the police. The learned Magistrate, u/s 156(3), Code of Criminal Procedure also denied the relief to him on wholly illegal reasons. The learned Magistrate is not supposed to pass an order u/s 156(3) as if he is holding a trial. It was for the police to register and investigate the crime and it is not the duty of the Court to investigate the same. In the case of Emperor v. Khwaja Nazir Ahmad 1945 PC 18, it has been laid down the law very clearly that the duty of Courts starts when investigation is over. The Court is only to conduct the trial and to give a finding whether charge-sheeted accused were/was guilty or not? Investigation does not fall within the province of

the Court. In view of this, the order passed by the learned Judicial Magistrate dated 28.11.2005 was wholly illegal. The learned Sessions Judge also acted illegally and had passed a very cryptic order which also cannot be allowed to stand.

6. Consequently, both the orders dated 28.11.2005, passed by Judicial Magistrate, Chandauli, on the application filed by the present applicant Pappu against Rajendra Ram and Ors., u/s 156(3), Code of Criminal Procedure as well as, order dated 2.3.2006, passed by Sessions Judge, Chandauli in Criminal Revision No. 153 of 2005 preferred by applicant Pappu are quashed.

7. The Judicial Magistrate, Chandauli, is directed to proceed in accordance with law. Needless to say that in this matter the recovery of weapons, arrest of accused, site plan etc. were all required to be done.

8. With the aforesaid observation this application is allowed. Judicial Magistrate, Chandauli, is directed to consider afresh, the application u/s 156(3), Code of Criminal Procedure filed by the applicant and pass an order in accordance with law.