

(2006) 08 AHC CK 0101

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 6516 of 2006

Raj Bahadur

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 23-08-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2006) 08 AHC CK 0101

Hon'ble Judges : Imtiyaz Murtaza, J; Amar Saran, J

Bench : Division Bench

Advocate : V.S. Choudhary, for the Appellant; Sanjiv Ratna and Ainakshi Sharma and A.G.A., for the Respondent

Judgement

Amar Saran, J.—We have heard learned Counsel for the petitioner, learned Additional Government Advocate and Ms. Ainakshi Sharma for respondent No. 5, Respondent No. 5 has filed an application for vacation of our order dated 24.5.2006 whereby after hearing the learned Counsel for the petitioner and learned Additional Government Advocate, we had had stayed the order of the State government transferring the investigation to the CBCID and had directed the local police who were initially investigating the case to conclude the investigation by 13.7.2006, the next date of listing. The State government's order dated 19.4.06 transferring the investigation to the CBCID in case crime No. 71 of 2006, under Sections 302/34 IPC, police station Modi Nagar, district Ghaziabad had been made on an application of respondent No, 5, who was the wife of the absconding accused Babendra alias Babboo.

2. It appears that respondent No. 5 has preferred a SLP No. 2941 of 2006 before the Apex Court, which has dismissed the appeal and directed that the investigation as directed by the High Court shall be proceeded with, but it was not to be concluded before the matter was to be taken up by the High Court on 13th July, 2006. The order of the Apex Court reads as follows:

Since the impugned order is an interim one, we are not inclined to interfere in

the matter. The SLP is dismissed. However, we direct that the investigation which is being directed by the High Court shall be continued but it shall not be concluded as directed by the High Court before the matter is taken up by the High Court on 13th July, 2006.

3. Learned Counsel for the petitioner contends that the State Government was not at all justified in transferring the investigation to the CBCID by the order dated 19.4.2006 at the instance of the accused person as this was a case of broad day light murder of the petitioner's brother Amarjit Singh under the jurisdiction of police station Modi Nagar, district Ghaziabad in respect of which the petitioner had lodged a report the same day. Learned Counsel has placed reliance on the observations of the Apex Court in Central Bureau of Investigation and another Vs. Rajesh Gandhi and another, for the proposition that normally the accused has no locus standi for choosing a particular agency for investigating the case against the accused. In paragraph 8 of the above law report it has been mentioned : "The decision to investigate or the decision on the agency which should investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with."

4. Learned Counsel for the petitioner further contended that no reasons were mentioned in the order dated 19.4.2006 for transferring the investigation to the CBCID and the guidelines and the criterion for transferring the investigation have been set out in the Division Bench decisions of this Court in the cases of Smt. Ramwati and Ors. v. State of U.P. and Ors. 2001(42) ACC 751, Bhopal and Ors. v. State of U.P. and Ors. 1997 (34) ACC 371.

5. The aforesaid decisions have placed reliance on a Government Order dated 15.9.1995, which mentions that the case may be transferred to the CBCID only on four grounds namely, (1) the nature of the crime is so complicated and involved that it is not possible for the local police to properly investigate the same, (2) the crime has international, inter-State or inter-division ramifications (3) the local conditions are such due to which it has become difficult for the civil police to investigate the case fairly, and (4) such conditions have arisen due to which a doubt is created in the mind of general public that the local police is not investigating the case fairly.

6. None of these conditions exist in the present case.

7. Learned Counsel appearing for respondent No. 5 could not refute these allegations. However, she submitted that even though the Apex Court passed its order on 16.6.2006, the investigating officer of the local police, who has commenced the investigation of the case, submitted the charge sheet on 20.6.2006 before the Chief Judicial Magistrate, Ghaziabad and the C.J.M has called for the report from the police station concerned vide order dated 23.6.2006.

8. However, we find that there is no satisfactory proof that the order of the Apex Court, which has restrained the investigating officer of the local police from

concluding the investigation of the case was served on the investigating officer as nowhere it is mentioned in the counter affidavit that the order of the Apex Court was served on the investigating officer and even in the application to the C.J.M., Ghaziabad, which has been annexed as Annexure CA-3, it has been mentioned that information was given by respondent No. 5 to the concerned police station on 19.6.2006, but as there was no proof of the service in writing hence they had sent a letter by registered post to the Principal Secretary (Home), Lucknow on the said date communicating the order of the Apex Court.

9. We, therefore, find no fault in the submission of the charge sheet by the local police before the C.J.M., Ghaziabad.

10. Learned Additional Government Advocate has pointed out that after the order of the High Court dated 24.5.2006, the State Government has even withdrawn the investigating from the CBCID on 16.6.2006 and has re-transferred the same to the local police.

11. In this view of the matter, both on merits and also on account of the fact that the case has again been re-transferred to the local police, no further orders are needed. The Chief Judicial Magistrate, Ghaziabad is now free to proceed with the case in pursuance of the charge sheet, which has been submitted.

12. With these observations, this writ petition is disposed of.