

(2004) 12 AHC CK 0196

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 10222 of 2004

Rajendra Prasad Garg

APPELLANT

Vs

State of U.P., Sunil Bansal and Mohan Lal

RESPONDENT

Date of Decision : 15-12-2004

Acts Referred:

Citation : (2004) 12 AHC CK 0196

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : Raghuraj Kishore, for the Appellant; A.G.A., for the Respondent

Final Decision : Disposed Of

Judgement

Ravindra Singh, J.—Heard Sri Raghuraj Kishore, learned counsel for the petitioner and the learned A.G.A.

2. This Writ Petition has been filed against the order dated 5.2.2003, passed by the learned C.J.M. Ghaziabad, and the judgment and order dated 15.10.2004 passed by the learned Sessions Judge, Court No. 12, Ghaziabad in Criminal Revision No. 67 of 2003, by which the revision filed by the petitioner was dismissed and the order dated 5.2.2003 passed by the learned C.J.M., Ghaziabad was upheld.

3. It is contended by the learned counsel for the petitioner that the F.I.R. was lodged by one Nitin Garg, the son of the petitioner. The investigation was done by the Investigating Officer. Thereafter, he submitted a final report, which was filed in the court of learned C.J.M., Ghaziabad. Notice was issued to the first informant from the Court of learned C.J.M., though the first informant had died on 16.7.2002, so there was no question of his appearance in the court then the petitioner filed a protest petition, clearly mentioning therein that his son, who has lodged the F.I.R. has died but his protest petition was not considered by the learned C.J.M., Ghaziabad and final report dated 31.10.2002 was accepted only on the ground that the first informant has died and the order accepting the final

report is highly improper. In support of his contention, the learned counsel for the petitioner referred the case of J.K. International v. State of U.P., reported in 42 (2001) A.C.C.719, decided by the Hon"ble Supreme Court..

4. It is further contended that the learned Magistrate has not applied his mind in accordance with the provisions of law and he has not passed a reasoned order, it was passed in routine and mechanical manner without considering the material collected by Investigating Officer during investigation and the same mistake was committed by the learned revisional court, as such, both the orders are illegal and are liable to be set aside.

5. The legal proposition is that a private person who is permitted to conduct the prosecution in the Magistrate's court, can engage a counsel to do the needful in the court on his behalf. It amplifies the position that if a private person is aggrieved by the offences committed against him or against any one in whom he is interested, he could approach the Magistrate and seek permission to conduct the prosecution by himself. It is open to the court to consider his request. If the court thinks that the cause of justice would be served better by granting such permission, the court would generally grant such permission but such powers are limited to the Magistrate's court only. In the case of Bhagwant Singh v. Commissioner of Police, 22 (1985) A.C.C. 246, the three judges Bench of the Hon"ble Supreme Court has held that there is no obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased in order to provide him an opportunity to be heard at the time of consideration of the final report of the case except when the final report is to the effect that no offence has been made out in that case. The informant who lodged the first information report is entitled to a notice from the Magistrate. In other instances, the injured or any relative of the first informant can appear before the Magistrate at the time of consideration of police report if such person otherwise comes to know that the Magistrate is going to consider the report. If such person appears before the Magistrate, it is the duty of the Magistrate to hear him. It is profitable to extract the relevant portion of that judgment which is being quoted below:-

" The injured person or any relative of the deceased, though not entitled to notice from the Magistrate, has locus to appear before the Magistrate at the time of consideration of the report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report, the Magistrate is bound to hear him. We may also observe that even though the Magistrate is not bound to give notice of the hearing fixed for consideration of the report to the injured person or to any relative of the deceased, he may, in the exercise of his discretion, if he so thinks fit, give such notice to the injured person or to any particular relative or relatives of the deceased, but not giving of such notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report."

6. From the perusal of the record, it appears that the learned C.J.M. had not

considered the protest petition filed by the petitioner, who is father of the first informant and accepted final report because the first informant had died. The purpose of issuing the notice to the first informant is that he may say something against the investigation done by the police. The learned Magistrate is under obligation to consider the evidence/material collected by the Investigating Officer, if on the basis of the material collected by the investigating Officer, the offence is made out or the material is sufficient to proceed further, the learned Magistrate takes the cognizance and summons the accused persons. If the protest petition filed by the father of the first informant is considered, it will not affect the legal proposition as mentioned above.

7. The learned Magistrate by not considering the protest petition filed by the petitioner and accepting the final report on the ground that the first informant has died has committed a manifest error, as such, the impugned order dated 5.2.2003 passed by the learned C.J.M. Ghaziabad is illegal, hence the same is liable to be interfered with by this Hon"ble Court. Accordingly, the impugned order dated 5.2.2003 is set aside.

8. In view of the facts and circumstances of the case and the submissions made by the learned counsel for the petitioner, the learned C.J.M. Ghaziabad is directed to pass a fresh order on the police report after considering the protest petition filed by the petitioner and the material collected by the Investigating Officer during the investigation of the case in accordance with the provisions of law.

9. With this observation, the writ petition is disposed of finally.