
(2007) 09 AHC CK 0088

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 12733 of 2007

Rajeshwar and others

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 05-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 307

Citation : (2007) 09 AHC CK 0088

Hon'ble Judges : S.K.Jain, J and Amar Saran, J

Final Decision : Dismissed

Judgement

Amar Saran and S.K. Jain, JJ.—Heard learned Counsel for the petitioners and learned A.G.A.

2. It is contended by the learned Counsel for the petitioners that the FIR has been lodged after three and a half years. The incident took place on 21.12.2003 and the FIR was lodged only on 9.8.2007 on political considerations and that failure to file an application under section 156(3) Cr.P.C. earlier was fatal for the prosecution. The FIR should also be quashed and the arrest of the petitioner stayed because for the same cause of action two FIRs could not be lodged in view of T.T. Anthony's case as earlier another FIR relating to the incident dated 21.12.2003 had been lodged under section 307 IPC, wherein the petitioner and others had got themselves bailed out.

3. No doubt, in certain cases, FIRs have been lodged in a malafide manner after the change of guard. But from that it can not be postulated that all FIRs relating to earlier incidents are malicious and false. It is possible to conceive of a situation where the FIR was earlier not lodged because of the influence of the accused with the earlier regime, even though a crime had been committed and the new Government by permitting the registration of such an FIR may have righted a wrong. In the present case the allegations were that on 21.12.2003, the petitioners had fired and caused injuries to the complainant party because of

which they applied for bail and were released on bail. The petitioners were then pressurising the complainant side to withdraw the case under section 307 IPC. In this they were assisted by the Chandra Pal Yadav, the SHO Alapur. The SHO had even arrested the complainant and threatened to eliminate him in a fake encounter unless he withdrew the complaint against the petitioners. There is no substance in the argument that the SHO had acted on his own. What benefit could the SHO have for intervening on behalf of the petitioners on his own.

4. It is further mentioned that the complainant was forced to leave the village in consequence of the threat for a period of two and half years. In the said period the petitioners and others had demolished the house of the complainant, and taken away 75,000/ bricks and other building items of the house and had even taken possession of the land measuring 35 Bighas belonging to the complainant and had not permitted any member of the complainant's side to even enter the village.

5. Significantly, in para No. 14 of the writ petition it is mentioned that respondent No.4 and his family members had left 2 and 1/2 years ago, during which period they never visited the village, hence there was no possibility for them to know as to who had destroyed their property or committed the said loot. There is no denial here that no such incident of the complainant being forced to flee his village or his property being damaged and usurped by the petitioner had occurred. But what is stated is that is only that the complainant had no means of knowing as to who had damaged or expropriated his property as he had left the village. Apart from the fact that the complainant would have little reason to implicate the petitioners if they were not involved in the demolition and loot, whether the petitioner committed the crime or not is a matter for investigation or trial and cannot be adjudged in this writ petition. Also as the subsequent incident of forcing the complainant side to flee the village and the destruction and loot of his property is an aftermath to the earlier incident of causing fire arm injuries to the complainant in order to coerce them to withdraw their earlier FIR against the petitioners, hence there is no question of the applicability of T.T. Anthony's case to these facts. For all these reasons it cannot be said that prima facie no cognizable offence has been disclosed, and no ground for quashing of the FIR or for staying the arrest of the petitioners is made out. There is thus no force in this writ petition which is accordingly dismissed.