
(1994) 04 AHC CK 0042

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 233 of 1994;

Ram Lakhan Tiwari and Ors.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 13-04-1994

Acts Referred:

Citation : (1994) 04 AHC CK 0042

Hon'ble Judges : K.L.Sharma, J

Final Decision : Allowed

Judgement

K. L. Sharma, J.—Heard Sri Jai Shanker Audichya, the learned Counsel for the applicants as well as Sri A Mateen, the learned Additional Public Prosecutor for the State.

2. This an application under Section 482 Cr.P.C. for quashing the additional chargesheet under Section 307 I.P.C. in Crime Case No. 115/1993, P.S. Fatehpur, District Pratapgarh submitted to the Court of Chief Judicial Magistrate, Pratapgarh.

3. An F.I.R. was lodged on 461993 at 2115 in respect of an incident which occurred on 461994 at 5.00 p.m. within the jurisdiction of P.S. Fatehpur, District Pratapgarh. After investigation, the Investigating Officer submitted the chargesheet in Crime Case No. 115/93 for offence under Section 324/325/323/504/506 I.P.C. on 21.6.1993. But again on 1481993, the Investigating Officer submitted additional chargesheet in the same crime case No. 115/93 for additional offence under Section 307I.P.C. on the basis of an objection raised by the S.P.O. that the medical report justified chargesheet for offence under Section 307 I.P.C. also and, accordingly, the Investigating Officer on the objection of the S.P.O., submitted the additional chargesheet under Section 307 I.P.C.

4. The grievance of the applicants is that the S.P.O. had not authority in law to ask the Investigating Officer to submit the additional chargesheet when the

Investigating Officer had himself mentioned in the chargesheet that no offence had been made and under Section 307 I.P.C. Now, the applicants are likely to be arrested and they may be required to seek bail for offence under Section 307 I.P.C.

5. After hearing the submissions by the learned Counsel for the applicants as well as by the learned Additional Public Prosecutor, I come to the conclusion that the additional chargesheet for offence under Section 307 I.P.C. was actually not submitted by the Investigating Officer in exercise of his power's under Section 173(8) of Cr. P.C. In fact the Investigating Officer had himself given his opinion in the first chargesheet that no offence under Section 307 I.P.C. had been made out and, therefore, no chargesheet had been submitted for offence under Section 307 I.P.C. The additional chargesheet contained in Annexure 11 to the application itself reads that S.P.O. had raised this objection and directed the Investigating Officer to submit additional chargesheet for offence under Section 307 I.P.C. Accordingly, the Investigating Officer submitted the additional chargesheet for offence under Section 307 I.P.C. on the asking and direction of the S.P.O. It is thus, evident that the additional chargesheet had been submitted on the direction and interference of a third party namely, the S.P.O. (Senior Prosecuting Officer).

6. I do not come across any provision under which the Investigating Officer can be directed by any third party to submit an additional chargesheet or to submit a chargesheet in a particular manner for a particular offence against a particular person. The learned Additional Public Prosecutor also is unable to show any provision under which the S.P.O. can raise objection to the chargesheet and direct the Investigating Officer to submit an additional chargesheet for offence under Section 307 I.P.C. or for any other offence under any section. Apparently, this additional chargesheet had been submitted on the direction of the S.P.O. and for that reason alone, this additional chargesheet becomes illegal and is liable to be quashed. The Magistrate/Sessions Judge is of course, free under the Code of Criminal Procedure to frame charge on the basis of the material submitted by the prosecution at the appropriate stage. Even if the chargesheet does not contain a particular offence, the Magistrate can frame charge of that offence if it is in his opinion, disclosed by the material brought before the Court. But in no case any third person can direct the Investigating Officer to submit a chargesheet or additional chargesheet for a particular offence and/or against a particular person. The S.P.O. had illegally interfered and directed the Investigating Officer to submit the additional chargesheet.

7. No other point is involved. The application is, therefore, allowed and the additional chargesheet dated 14/8/1993 for additional offence under Section 307 I.P.C. in Crime Case No. 115/93 of P.S. Fatehpur, District Pratapgarh, is hereby quashed. Let a certified copy of this order be sent to the Court concerned. Application allowed.