
(2007) 07 AHC CK 0160
In the Allahabad High Court

Ram Lochan Yadav

APPELLANT

Vs

State of U.P. and Ganesh Yadav

RESPONDENT

Date of Decision : 31-07-2007

Acts Referred:

Criminal Law (Amendment) Act, 1932 — Section 7
Criminal Procedure Code, 1973 (CrPC) — Section 482, 82
Evidence Act, 1872 — Section 78
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2007) 07 AHC CK 0160

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ravindra Singh, J.—This application has been filed by the applicant Ram Lochan Yadav with a prayer to quash the order dated 16.7.2007 passed by the learned Chief Judicial Magistrate, Allahabad in Case Crime No. 129 of 2005 under Sections 148, 149, 302, 307 I.P.C. and 7 Criminal Law Amendment Act P.S. Jhansi district Allahabad whereby Non Bailable warrant has been issued. The second prayer is that a direction for investigation by the C.B.C.I.D. or by any other independent agency of the State of UP. may be issued.

2. The fact of the case in brief are that the F.I.R. of this case has been lodged by O.P. No. 2 Ganesh Yadav on 10.7.2005 at 10.05 a.m. against the applicant, co-accused Vijma Yadav, co-accused Gyan Yadav, co accused Mool Chand and two unknown miscreants alleging therein that on 10.7.2005 at about 9.35 a.m. the applicant and other co-accused persons armed with their respective weapons came at the place of occurrence on two vehicles, one of them was Bolero and second was Qualys, at the exhortation of the co-accused Vijma Yadav, the applicant who was armed with automatic fire arm, and co-accused Gyan Yadav and Mool Chand who were also armed with the fire arms, discharged shots indiscriminately consequently the deceased Lalla Gupta lost his life instantaneously and the deceased Sunil Yadav succumbed to his injuries on the

way to the hospital and two persons namely Hikmat and Bablu also sustained injuries in the said incident. The applicant has not surrendered in the present case neither he could be arrested by the police concerned. The officer in charge of the police station Jhunsi district Allahabad moved an application dated 14.7.2007 in the court of learned C.J.M. Allahabad mentioning therein that attempts have been made to arrest the applicant, co-accused Gyan Chand Yadav and co-accused Mool Chand Yadav who are absconding, but they could not be arrested, they are avoiding their arrest. Therefore, non bailable warrants and process u/s 482 Cr.P.C. may be issued, that application has been allowed in part and the learned C.J.M. Allahabad issued non bailable warrants vide order dated 16.7.2007, being aggrieved from the order dated 16.7.2007, the present application has been filed.

3. Heard Sri Prem Prakash and Km. Akanksha Yadav, learned Counsel for the applicant and the learned A.G.A. for the State of UP.

4. It is contended by the learned Counsel for the applicant that the applicant is the brother of co-accused Vijma Yadav, who was an elected M.L.A. twice from Jhunsi constituency, due to political rivalry the applicant and others co-accused persons have been named in the present F.I.R. at the instance of Sri Udai Bhan Karwaria, M.L.A. who is an arch enemy of the applicant's family and at the time of the lodging of the F.I.R. Sri Udai Bhan Karwaria was present at the police station Jhunsi on 10.7.2005. He was pressurizing the Station Officer and extending threat to senior officers of the police for registering the case, it was published in the news papers Dainik Jagran and Amar Ujala dated 11.7.2005 and 12.7.2005. Sri Udai Bhan Karwaria M.L.A. of U.P. raised a motion on 25.7.2005 in the house of U.P. Legislative Assembly, its reply was given by the Minister of Parliamentary Affairs that the involvement of Smt. Vijma Yadav and her brother i.e. the applicant was found false, they were impleaded due to oblique motive. It was published in the news papers Dainik Jagran and Amar Ujala etc. which is the part of the proceedings of the Legislative Assembly of U.P. it is admissible evidence as is envisaged in Section 78(2) of the Indian Evidence Act.

5. It is further contended that O.P. No. 2 Ganesh Yadav who lodged the F.I.R. is a hardened criminal, the order of externment under the U.P. Control of Goondas Act has been passed against him, his son Ashok Yadav is also a history sheeter and Gangster. He is involved in nine criminal cases. The applicant's brother in law late Jawahar Yadav was elected M.L.A. in the year 1993 from Jhunsi Constituency Allahabad but he was murdered on 13.8.1996 in the area of Civil Lines, Allahabad, in that case Sri Udai Bhan Karwaria, his brother Kapil Muni Karwaria, Surya Bhan Karwaria and his uncle Maula(now dead) were nominated as accused in which charge sheet has been submitted by C.B.C.I.D. Allahabad on 20.1.2004, the same is pending in the court of Special C.J.M. Allahabad, its proceedings have been stayed in Criminal Revision No. 821 of 2004 by Hon'ble High Court filed by Sri Udai Bhan Karwaria M.L.A., but this revision was dismissed. Thereafter a petition u/s 482 Cr.P.C. as Criminal Misc. Application No.

4950 of 2004 has been filed before this Court, the eye witness of this case namely Kalia Yadav has also been done to death on 13.8.1996. Now due to change of the Government in U.P. the proceedings have been initiated against the applicant and other co-accused persons and his family and the officer in-charge of the P.S. Jhansi has filed the application to issue non bailable warrant and process u/s 82 Cr.P.C. in the court of C.J.M. Allahabad, the same has been partly allowed on 16.7.2007. The impugned order dated 16.7.2007 passed by the learned C.J.M. Allahabad is illegal because it is not a reasoned order and no reason to believe has been mentioned by the learned C.J.M, Even no substance of accusation made in the case diary to show that the police party has made any effort to make the arrest of the applicant and the applicant is not traceable or absconding has been mentioned in the impugned order. The impugned order is judicial order, which does not contain the reason, it is an illegal order which deserves to be quashed, it support if this contention the learned Counsel for the applicant cited the following cases.

1. State of Orissa Vs. Dhaniram Luhar,
2. State of Punjab Vs. Bhag Singh,
3. JT 2005(2) SC 34 (Panchanan Mishra v. Digamber Mishra)
4. State of Haryana Vs. Ram Pal and Others,
5. JT 2005(2) SC 443 (Manglore Ganesh Bidi Works v. Comr.)

6. It is further contended that in the present case investigation is still pending which is tainted, it is not fair, it is being made to please the political persons who are in power, now two years have been passed, for fair investigation, the investigation may be entrusted to C.B.C.I.D. or any other independent agency of the State of U.P. because the court has power to control the investigation also in respect of this contention the following cases have been cited;

1. 1996 A.C. R 771 (Netra Pal v. State)
2. 1997 A.C.C. 371 (Bhopal v. State)
3. Kashmeri Devi Vs. Delhi Administration and Another,
4. Zahira Habibulla H. Sheikh and Another Vs. State of Gujarat and Others,

7. In reply to the above contention, it is stated by the learned A.G.A. that it is a broad day light case in which two persons have been done to death and two persons sustained injuries, F.I.R. has been promptly lodged, the applicant is named in the F.I.R. Specific role of discharging shots indiscriminately has been assigned to the applicant. On the day of the alleged occurrence. Smt. Vijma Yadav, sister of the applicant was M.L.A. from Samajwadi Party, which was in power of the State of U.P., due to her political influence no action could be taken against the applicant and other co-accused persons and due to some political reasons, Minister of Parliamentary Affairs gave the statement in the Legislative

Assembly showing the innocence of the applicant and co-accused Smt. Vijma Yadav, it was having no relevance because the investigation of this case was pending. The offence committed by the applicant is non bailable. The applicant is still absconding. He is not traceable. The local police has made an effort to make his arrest but he could not be traceable, in such circumstance there was no option to the police officer except to obtain the order of non bailable warrant and process u/s 82 Cr.P.C. Ultimately the officer in-charge of the police station Jhansi applied for the same and after perusing the police papers, the learned C.J.M. Allahabad was satisfied to issue N.B.W. Vide order dated 16.7.2007. There is no illegality in the impugned order-dated 16.7.2007.

8. It is further contended that Sri Udai Bhan Karwaria M.L.A. is not a witness of this case, the applicant has tried to give a political colour to the heinous offence committed by him and his associates. The prayer for quashing the impugned order dated 16.7.2007 is having no substance. The investigation of this case is pending the power for transferring the investigation to another agency u/s 482 Cr.P.C. may not be exercised, such power may be exercised only in the writ jurisdiction, the second prayer made by the applicant for transferring the investigation to other agency is not maintainable. The same may be refused. The present application is having no substance, it may be dismissed.

9. Considering the facts and circumstance of the case, submissions made by the learned Counsel for the applicant and the learned A.G.A. and from the perusal of the record, it appears that in the present case the applicant is named in the F.I.R. There is specific allegation against the applicant that he has discharged the shots indiscriminately by fire arm, alongwith other co-accused persons consequently two persons lost their life and two persons sustained injuries, it is a broad day light incident, F.I.R. has been promptly lodged, the alleged offence itself is non-bailable the alleged occurrence has taken place on 10.7.2005, thereafter two years have been passed but surprisingly investigation has not been completed and applicant has not surrendered before the court concerned even he could not be arrested by the police. For the purpose of the arrest of the applicant officer in-charge of the police station Jhansi moved an application on 14.7.2007 in the court of learned C.J.M., Allahabad mentioning therein that the applicant and two other co-accused are absconding they are not traceable, they are avoiding their arrest therefore, non bailable warrant and process u/s 82 Cr.P.C. may be issued, on that application the learned C.J.M. has passed the impugned order dated 16.7.2007 by which only non-bailable warrant has been issued. The learned C.J.M. has passed the order after perusing the police papers, it has not been issued in a routine manner, which shows that the learned C.J.M. was satisfied for issuing N.B.W. against the applicant. The cases cited by the learned Counsel for the applicant are not applicable in the present case because the impugned order has been passed during investigation without touching the merits of the case it has been passed to ensure the appearance of the applicant who was avoiding his arrest as per police report. The applicant is named in the F.I.R. of non bailable offence he is absconding from the date of occurrence i.e.

10.7.2005. The impugned order is perfect, it is not suffering from any illegality of irregularity, it requires no inter fence by this Court.

10. So far as the second prayer, in respect of the transfer of investigation to C.B.C.I.D. to other independent investigation agency, is concerned, such order cannot be passed invoking the inherent power conferred u/s 482 Cr.P.C, inherent powers to the High Court have been given to give effect to any order under the Code of Criminal Procedure, 1973. preventing the abuse of the process of any court or otherwise to secure the ends of justice. The powers are very wide but same are used sparingly with proper caution, in respect of any order passed by the subordinate court or the proceedings pending therein. In the present case the investigation is pending, the proceedings are not pending in any court therefore, no order in exercising the powers conferred u/s 482 Cr.P.C. for transferring of the investigation to other agency can be passed, such order can be passed in a writ jurisdiction. Therefore, the prayer for transferring the investigation to C.B.C.I.D. or any other independent agency of the State of U.P. Is refused.

11. In view of the above discussion, the prayer for quashing the order dated 14.7.2007 passed by the learned C.J.M. Allahabad in Case crime No. 129 of 2005 under Sections 147, 148, 149, 307, 302 I.P.C. P.S. Jhansi district Allahabad by which the nonailable warrant has been issued against the applicant, is refused and the prayer for transferring the investigation to C.B.C.I.D. or any other independent agency of the State of U.P. is also refused.

12. Accordingly this application is dismissed.