
(2007) 08 AHC CK 0119
In the Allahabad High Court
Case No : Writ Petition No.4697 (M/S) of 2007

Ram Nath Yadav and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 24-08-2007

Acts Referred:

Uttar Pradesh Commission for the Scheduled Castes and Scheduled Tribes Act, 1995 —
Section 11, 12

Citation : (2007) 08 AHC CK 0119

Hon'ble Judges : K.K.Misra, J and D.V.Sharma, J

Final Decision : Dismissed

Judgement

D.V. Sharma, J.

1. By means of this writ petition the petitioners are challenging the F.I.R. dated 9.7.2007 lodged by the father of the deceased with Police Station Gilauta, Shrawasti as case crime No.471 of 2007 under Sections 147, 302, 504, 506 I.P.C. and Section 3(2) V of SC/ST Act and praying for a writ of mandamus commanding the opposite parties not to investigate the matter and not to arrest the petitioners on the basis of said F.I.R.

2. The factual matrix is as under.

3. It is alleged that one Satya Narain s/o Nanhu, the informant of the impugned F.I.R. was travelling by Motorcycle driven by petitioner No.1 on 25.7.2006 and fell down from the Motorcycle, received fatal injuries on his head and consequently, succumbed to his injuries. In respect to this incident an F.I.R. was lodged on 31.8.2006 by one Sattu Chaukidar as case crime No.529 of 2006 under Sections 279, 304A of I.P.C. Later on on the basis of some complaint, SC/ST Commission recommended for a Magisterial Inquiry, which was conducted by the SDM Ikauna, Shrawasti. On being satisfied the SC/ST Commission vide its letter dated 4.7.2007 recommended to the District Magistrate and Superintendent of Police, Bahraich to lodge an F.I.R. against the petitioners and in pursuance thereof the impugned F.I.R. dated 9.7.2007 was lodged as case

crime No.471 of 2007 under Sections 147, 302, 504, 506 I.P.C. and Section 3(2) V of SC/ST Act.

4. We have heard the learned counsel for the petitioners and the learned A.G.A. quite at length and perused the material on record.

5. It has been urged on behalf of the petitioners that in view of the decision of the Apex Court in T.T. Antony v. State of Kerala and Others, (2001) 6 SCC 181, there can be no second F.I.R. dated 9.7.2007. It has further been urged on behalf of the petitioners that SC/ST Commisison was not in a position to initiate any action in this case nor can order for registration of the case.

6. Learned counsel for the petitioners has pointed out that Annexure No.2 is the F.I.R. lodged with Police Station Gilauta as case crime No.529 of 2006 under Sections 279, 304A I.P.C. by Sattu, Village Chaukidar and the same was investigated by the police, in which it was found that an accident took place out of rash and negligent driving of the vehicle by petitioner No.1, in which Satya Narain sustained injuries and died, which is the correct version and subsequent F.I.R. by the father of the deceased giving a coloured version of murder is required to be quashed.

7. We have given our anxious thought to the facts of this case and also gone through the judgment of the Hon''ble Apex Court relied upon by the learned counsel for the petitioners.

8. The Hon''ble Apex Court took a view in the case of T.T. Antony v. State of Kerala and Others (supra), that there cannot be second F.I.R. thereafter in the year 2004 in Upkar Singh v. Ved Prakash and Others, (2004) 13 SCC 292, three Judges Bench of Hon''ble Apex Court considered various aspects of the decision and held at paras 23, 24 and 25 as under:

23. Be that as it may, if the law laid down by this Court in T.T. Antony case is to be accepted as holding that a second complaint in regard to the same incident filed as a countercomplaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given herein below i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of this legitimated right to bring the real accused to book. This cannot be the purport of the Code.

24. We have already noticed that in T.T. Antony case this Court did not consider the legal right of an aggrieved person to file counter claim, on the contrary from the observations found in the said judgment it clearly indicates that filing a countercomplaint is permissible.

25. In the instant case, it is seen in regard to the incident which took place on 20.5.1995, the appellant and the first respondent herein have lodged separate

complaints giving different versions but while the complaint of the respondent was registered by the police concerned, the complaint of the appellant was not so registered, hence on his prayer the learned Magistrate was justified in directing the police concerned to register a case and investigate the same and report back. In our opinion, both the learned Additional Sessions Judge and the High Court erred in coming to the conclusion that the same is hit by Section 161 or 162 of the Code which, in our considered opinion, has absolutely no bearing on the question involved. Section 161 or 162 of the Code does not refer to registration of a case, it only speaks of a statement to be recorded by the police in the course of the investigation and its evidentiary value.?

9. Thus, it appears that subsequently, the Hon'ble Apex Court considered that in T.T. Antony's case it was not considered as to what was the legal right of an aggrieved person. Consequently a countercomplaint was found permissible like the second F.I.R. dated 9.7.2007.

10. It transpires that in this case also the aggrieved person approached the Commission to seek redress of his grievance and the Commission after taking into consideration the totality of the circumstances forwarded the complaint of Nanhu to the Superintendent of Police for taking into consideration the version of the aggrieved person and accordingly the second F.I.R. was lodged.

11. It appears that this case is fully covered by the decision of Upkar Singh's case (supra), wherein the aggrieved person was permitted to file the countercomplaint and accordingly the F.I.R., which was lodged revealing the falsity of the earlier F.I.R. to our mind, is permissible. We cannot shut the doors of justice to the aggrieved father by precluding him from lodging a complaint giving his version of the incident in question, which is of very serious nature, i.e. culpable homicide amounting to murder. We further find no reason to deprive the complainant of the second F.I.R. of his legitimate right to bring the accused to books, who have allegedly caused the murder of his son. Thus, there is no bar in lodging the second F.I.R. A plain reading of Section 154 of Cr.P.C. does not contemplate that the aggrieved person has no locus to file the same to bring the real accused to books.

12. The facts of T.T. Antony's case are not applicable to the facts of the present petition. The version that has come up for our consideration appears to be fully covered by the decision of the Hon'ble Apex Court in Upkar Singh v. Ved Prakash and Others, (2004) 13 SCC 292, of which relevant paras 23, 24 and 25 have been quoted above. Consequently, there appears to be no reason to accept the contention of the learned counsel for the petitioners that Annexure No.1, the second version, revealing the circumstances under which complainant Nanhu's son was killed ought not to have taken into consideration by the police authorities and it should be treated as a waste paper and on this count petition has no merit.

13. The learned counsel for the petitioner has further argued that the

Commission was not competent to make recommendation for lodging the F.I.R. It is not disputed that Commission functions under the authority of the Uttar Pradesh Commission for the Scheduled Castes and Scheduled Tribes Act, 1995, wherein under Section 11 certain power has been vested with the commission. For convenience Sections 11 and 12 are reproduced as under:

1. Duties and functions of the Commission: (1) It shall be the duty of the Commission

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution or under any other law for the time being in force or under any order of the State Government and to evaluate the working of such safeguards;

(b) to enquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Caste and Scheduled Tribes;

(c) to participate and advice on the planning process of socioeconomic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development;

(d) to present to the State Government annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the State Government for the effective implementation of those safeguards and other measures for protection, welfare and socioeconomic development of the Scheduled Castes and Scheduled Tribes; and

(f) to discharge such other functions in relation to the protection, welfare, development and advancement of the Scheduled Castes and Scheduled Tribes as may be referred to it by the State Government.

2. The State Government shall cause the reports of the Commission to be laid before each House of the State Legislature along with a memorandum explaining the action taken or proposed to be taken on the recommendations and the reasons for the nonacceptance, if any, of any of such recommendations.

12. Powers of the Commission The Commission shall, while investigating any matter referred to in Clause (a) or inquiring into any complaint referred to in Clause (b) of subSection (1) of Section 11, have all the powers of a Civil Court trying a suit and in particular in respect of the following matters, namely:

(a) summoning and enforcing attendance of any persons and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any Court or office;

- (e) issuing commissions for the examination of witnesses and documents; and
- (f) any other matter that may be prescribed.

14. Accordingly at this stage, it appears that the contention of the learned counsel for the petitioners that the Commission has no role to play in the matter, is not at all convincing. If any complaint was made to the Commission, the Commission could investigate the same and the same was done in this case, which is evident from Annexure No.5. The Commission took the assistance of the SDM and a very thorough inquiry was conducted and ultimately it was found that the F.I.R. lodged by Sattu Village Chaukidar was erroneous. Consequently on the basis of the allegations of the father of the deceased which were prima facie found correct during investigation, the Commission recommended to the Superintendent of Police to proceed in the matter. However, it would be relevant to mention that in case the State Government had any objection against the recommendation of the Commission, the same could have been ignored or any action under the law should have been taken to quash the proceedings, but nothing was done and the report of the Commission was accepted. The version of the father of the deceased was taken into consideration and ultimately the case was registered as case crime No.471 of 2007. Five persons were named in the F.I.R. investigation started and the law started taking its own course in the manner provided under the Code of Criminal Procedure against them.

15. On behalf of the petitioners, it is further contended that the Commission has no authority to consider the allegations, which appears to be not genuine. It further transpires that if any version was recommended by the Commission to the State Government and the same was acted upon, in that case the accused have no locus to challenge the F.I.R. or the investigation of the case. They can take the plea that they have been falsely implicated in this case before the trial Court.

16. In view of the decision of Hon'ble Apex Court, the petitioners who are accused have no right to challenge the process of investigation, which has commenced at the behest of the Commission.

17. We find that this is a peculiar case in which certain allegations have been made against the village Chaukidar of giving false version and consequently the complainant, father of the deceased lodged the F.I.R. through the Commission, appears to be not undesirable. Both the matters can be consolidated by the police and can be investigated and thereafter the trial Court will look into the matter and consider the veracity of the version of Sattu. Village Chaukidar who lodged the earlier F.I.R. it does not appeal to reason as to how Nanhu who made a complaint to SC/ST Commission, could be debarred to move the law in motion by placing correct facts before a authority to make a probe in the matter. The petitioners who are accused in this case, can plead their case before the investigating Officer and in case chargesheet is submitted. Petitioners can place entire material before the trial Court. But at this stage it is not possible for this

Court to consider all or any factual aspect of the case while no illegality has been demonstrated.

18. Prima facie it appears that the petitioners have not come with clean hands. The F.I.R. discloses commission of cognizable offences and the matter has to be investigated by the police and the petitioners have complete say in the matter. Only after the investigation is concluded, it can be inferred whether the version of Nanhu is correct or not. In case the version of Sattu, Village Chaukidar is disbelieved, then definitely the petitioners have to face the trial. We find that in the present case, the circumstances are such before the Court, which require no interference at this stage.

19. Simply because the F.I.R. has been lodged, does not mean that chargesheet has been submitted. The investigating Officer shall weigh the evidence and thereafter, if the chargesheet is submitted, the matter can be objected. The petitioners have alternative remedy. They cannot be permitted to invoke the extraordinary jurisdiction of this Court by leaving other statutory remedy. It may further be clarified that the facts of this case are a little different. It is not the case of the petitioners that Nanhu lodged the F.I.R. without any rhyme or reason. The only point to be looked into is whether the deceased lost his life in an accident or was killed by the petitioners. There are two versions. It is not the case of exaggeration or embellishment of the version, but it is the case that Sattu, Village Chaukidar was not fair in informing the police.

20. Thus the proceeding before the Commission, which was proceeded in a systematic manner, can not be questioned before this Court. Consequently, it can not be presumed that the Commisison was not competent to make any recommendation for moving the law in motion in accordance with law. The State Government was not aggrieved by the recommendation. Consequently, the petitioners have no locus to file the present petition.

21. For the foregoing reasons we uphold the action for registration of the second report by opposite party No.4 wherein it is alleged that a false complaint was lodged by village Chaukidar with a view to help the accused who committed the crime. However, this a matter of investigation as to which version has to be accepted and the petitioners will have a right firstly to adduce evidence before the Investigation Officer and thereafter before the trial Court. The matter of appreciation of evidence and consideration of weightage of two versions cannot be looked into by invoking the jurisdiction of this Court under Article 226 of the Constitution of India. On the hypothetical questions, the Court is not expected to answer especially when the petitioners have no case in the light of the decision of the Hon''ble Apex Court in Upkar Singh v. Ved Prakash and Others, (2004) 13 SCC 292.

22. Thus, having regard to the facts and circumstances of the case and looking from all or any angle, the petition is devoid of any marit and is accordingly dismissed.

(Petition dismissed)