

(2010) 08 AHC CK 0079

In the Allahabad High Court

Case No : Criminal M. Application No. 26049 of 2010

Ram Pal Sharma

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 12-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209, 227, 228, 482
Penal Code, 1860 (IPC) — Section 120B, 307

Citation : (2011) 1 ACR 929

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vinod Prasad, J.—Heard learned Counsel for the Applicant and learned A.G.A.

2. Applicant is an accused in Case Crime No. 84 of 2000, under Sections 307 and 120B, I.P.C., P.S. Baraut, district Baghpat in which he has been charge-sheeted on the basis of which Criminal Case No. 2296 of 2002 is pending against him in the Court of Chief Judicial Magistrate, Baghpat. Earlier Applicant had approached this Court u/s 482, Code of Criminal Procedure challenging the charge-sheet of the aforesaid crime, however, his prayer was not accepted for quashing but this Court in the aforesaid Crl. Misc. Application No. 4423 of 2004 directed to claim discharge before Court concerned at appropriate stage vide its order dated 31.5.2004. Accused, therefore, moved a discharge application before Chief Judicial Magistrate, Baghpat, which prayer was rejected by passing the impugned order dated 28.8.2009, hence this application challenging the aforesaid order alongwith prayer to quash entire proceeding of aforesaid criminal case.

3. After hearing learned Counsel for the Applicant and learned A.G.A., I do not find any merit in this Crl. Misc. Application. Applicant is an accused for an offence u/s 307, I.P.C. which is triable by Court of Sessions. Discharge prayer of an accused in respect of such offence can be considered only by a Sessions Court and not by the Magistrate, who is not competent to try the Applicant for that

offence. It is only under Sections 227 and 228 of the Code that the discharge prayer of an accused in a Sessions triable offence can be considered. So far as Magistrate is concerned, since it has no power to try the accused, question of discharge cannot be considered by him as it will amount to passing an order beyond his competence. The contention of learned Counsel for the Applicant that C.J.M. was bound to consider the discharge prayer of the Applicant once the same was moved under the orders passed by this Court is not acceptable for two reasons, firstly that this Court never directed C.J.M. to consider the discharge prayer of the accused in a Sessions triable case and secondly that discharge of the Applicant in a session Court triable case can be considered only by a Court who is competent to try him. This Court has to dispense justice in accordance with the procedure prescribed under the Code of Criminal Procedure No new procedure can be invented by this Court in exercise of its inherent power u/s 482, Code of Criminal Procedure If the accused is charge-sheeted with a offence triable by Court of Sessions, Magistrate has to commit his case to the Court of Sessions for trial u/s 209, Code of Criminal Procedure after observing the formalities provided u/s 207/208 of the Code. It is for the Sessions Court to consider the prayer for discharge or framing of charge against such an accused.

4. In view of above, I do not find any merit in. this Crl. Misc. Application. Neither the prosecution of the Applicant in the aforesaid case can be quashed because the material placed on the record indicates commission of offence for which Applicant has been summoned nor the order dated 28.8.2009, passed by Chief Judicial Magistrate, Baghpat can be set aside as it does not suffer from any error of law.

5. For the aforesaid two reasons this Crl. Misc. Application is dismissed.

Applicant is directed to surrender forthwith. In case he moves his bail prayer before the court below, the same is directed to be considered as expeditiously as possible, if possible, on the same day after hearing the public prosecutor.