

(2013) 12 AHC CK 0176

In the Allahabad High Court

Case No : Criminal Application No. 43049 of 2013 and Criminal Miscellaneous
Correction Application No. 357987 of 2013

Rambabu Kuswah and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2014) 84 ALLCC 198

Hon'ble Judges : Bala Krishna Narayana, J

Bench : Single Bench

Advocate : Alkesh Singh Chauhan, for the Appellant;

Final Decision : Disposed Of

Judgement

Bala Krishna Narayana, J.—This is an application for correction of the order dated 27.11.2013. It is admitted amongst learned Counsel for the parties that some wrong order has been transcribed, therefore, the order dated 27.11.2013 is recalled and is substituted by the following order:

Heard learned Counsel for the applicants and learned A.G.A. and perused the record.

This application u/s 482 Cr.P.C. has been filed by the applicants with a prayer for quashing the charge-sheet dated 17.12.2009 submitted in Case Crime No. 3419 of 2009 and the order dated 21.9.2010, passed by C.J.M., Mainpuri by which he has taken cognizance against the applicants under the aforementioned offences.

It is contended by learned Counsel for the applicants that charged sections are bailable sections and the learned Magistrate may pass an order taking cognizance if he so desires by proceeding under Chapter XV of the Code of Criminal Procedure. It is further contended that the order impugned has been challenged and reliance has been placed to explanation to section 2(d) of the Code of Criminal Procedure.

It is next contended that no permission was taken u/s 155(2) Cr.P.C. and charge-sheet has been submitted in non-cognizable offence. Learned Counsel for the applicants has relied upon a judgment of Hon"ble Apex Court reported in M/s. Etcher Tractor Ltd. and others v. State of U.P. and others 2009 (64) ACC 296, in support of his contention.

Learned AGA has stated that no useful purpose would be served in issuing notice to the opposite party No. 2 as it will only delay the proceedings of the present case.

The order taking cognizance has been passed and it is argued that charge sheet has been submitted under the charged sections which are non-cognizable offence. Reliance has been placed on Explanation to section 2(d) of Code of Criminal Procedure, which reads as follows:

Explanation:--A report made by a police officer in a case which discloses, after investigation, the commission of non-cognizable offence shall be deemed to be a complaint, and the police officer by whom such report is made shall be deemed to be the complaint.

Therefore on the basis of the aforesaid Explanation which has been interpreted in a Single Judge decision of this Court reported in Dr. Rakesh Kumar Sharma v. State of U.P. and another 2007 (59) ACC 998, it has been held that that when the charge-sheet is only of non-cognizable offence, in view of the aforesaid provision the charge-sheet should be treated as a complaint.

The argument is well founded and the order taking cognizance is set aside. Now the Magistrate may pass an order taking cognizance if he so chooses, by proceeding in this matter as a complaint case under Chapter XV of the Code of Criminal Procedure. He can also keep this fact in mind that in view of the proviso (a) to section 200 Cr.P.C., which reads as follows:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses--

(a) If a public servant acting or purporting to act in discharge of his official duties or a Court has made the complaint.

With these observations, this application is finally disposed of.

2. Let a fresh copy be applied and issued.