
(2007) 11 AHC CK 0052
In the Allahabad High Court

Ramesh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 16-11-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2007) 11 AHC CK 0052

Hon'ble Judges : R.K. Rastogi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.K. Rastogi, J.—This is an application u/s 482 Cr.P.C. to quash the order dated 30.4.2004 passed by the Judicial Magistrate, Mathura in complaint case No. 105 of 2003, Ramesh v. Dibban and Ors., and the order dated 28.10.2004 passed by the Addl. District & Sessions Judge, Court No. 1, Mathura in Criminal Revision No. 360/04, Ramesh v. State.

2. The facts relevant for disposal of this application are that the applicant had moved an application before the S.S.P. Mathura on 11.2.2001 with these allegations that he was resident of village Semra police station Shergarh district Mathura and on the above date at about 9 A.M. complainant's real brother Mukesh and cousin brothers Pramod and Mahesh had gone to Shyam Kund to take bath. The accused Dibban, Prem Chandra, Hukam, Sunil, Raju, Dalchand and Chetram, who had pistols, guns and lathies with them assaulted Pramod, Mukesh and Mahesh. The accused abused them and stated that they would not spare Pramod, Mukesh and Mahesh and on exhortation of Hukam, Sunil, Chetram, Dibban & Raju fired at them with an intent to kill them. The fire done by Sunil hit Mukesh, that done by Chetram hit Pramod but fires done by Raju and Prem Chand did not hit any one. Dal Chand gave a lathi blow to Mahesh. Upon noise Shiv Ji, Durga, Bhajan Lal, Vinod etc. of the same village reached there, who witnessed the incident and protected Pramod, Mukesh and Mahesh. The

accused persons went away towards jungle threatening to kill them. Ramesh was taking the injured to the police station but the accused had obstructed the way. Then he took them to Methodist Hospital at Mathura where their treatment was going on. It was, therefore, prayed that action should be taken and the Station Officer of the police station should be directed to register a case against the accused persons.

3. On the basis of the order passed by the S.S.P. Mathura on this application a case was registered against the accused persons at police station Shergarh as case crime No. 14A/2001 under Sections 147, 148, 149, 307, 323, 504 & 506, I.P.C. and it was investigated.

4. According to the injury report of Pramod Kumar he had a fire arm injury on his chest and left shoulder. Mahesh had head injury. Mukesh had gun shot injury on his chest. The police, however, after investigation submitted a final report in the case and against that final report, complainant filed protest petition. On that protest petition Sri S.N. Saroj, Judicial Magistrate, Mathura passed an order on 28.10.2003 for treating it as complaint and he fixed a date for recording statements of the complainant and his witnesses under Sections 200 and 202 Cr.P.C. Accordingly the statements of the complainant and his witnesses were recorded. Thereafter the case was fixed for order. On 30.4.2004 Sri Amarnath Kushwaha, who was at that time posted as Judicial Magistrate, Mathura passed an order for accepting final report and rejecting the protest petition. He further observed in his order that his predecessor had passed an erroneous order for registering the protest petition as a complaint because the protest petition did not contain full particulars of the incident and it did not come within the definition of the word "complaint". Aggrieved with that order Ramesh filed criminal revision No. 360 of 2004 before the Sessions Judge, Mathura, which was dismissed by Sri A.K. Mathur, Addl. Sessions Judge, Court No. 1, Mathura vide his order dated 28.10.2004. Aggrieved with both these orders the complainant has filed this application u/s 482 Cr.P.C.

5. I have heard learned Counsel for the applicant as well as the learned A.G.A. for the State.

6. The learned Counsel for the applicant cited before me a Division Bench ruling of this Court in "Pakhando and Ors. v. State of U.P. and Anr. (XLIII) 2001 ACC 1096 in which it has been held that after filing of the final report by the police, the Magistrate has got jurisdiction to treat the protest petition as a complaint. He further submitted that, in this way, the view taken by the Magistrate and the Addl. Sessions Judge that protest petition could not be treated as a complaint is erroneous. As regards the contention of the learned Magistrate that the protest petition did not contain particulars of the incident, the learned Counsel for the applicant referred to para 1 of the protest petition, (Annexure No. 5 to the affidavit filed in support of the application u/s 482 Cr.P.C.) in which complete description of the entire incident has been given in brief and so the observation of the Magistrate is erroneous that the protest petition did not contain description

of the incident. It gives complete description of the incident as well as the names of witnesses.

7. There is also one more aspect of the case. In the Cr.P.C. there is no provision for review of an earlier order passed by the court, and Section 362 Cr.P.C. clearly bars review of earlier order. In the present case Sri S.N. Saroj had passed an order on 28.10.2003 for treating the protest petition as a complaint and so in view of the clear bar of Section 362 Cr.P.C. Sri Amar Nath Kushwaha had no jurisdiction to review that order holding it to be illegal vide order dated 30.4.2004.

8. The Hon'ble Apex Court in "State of Kerala v. M.M. Manikantan Nair" 2002 (2) A.C.R. 1693 S.C. and in "R. Annapurna v. Ramadugu Anantha Krishna Sastry and Ors. 2004 SCC 1135 has held that a criminal court has no power to review its judgment and it can rectify clerical error u/s 362 Cr.P.C. The same view was reiterated by the Hon'ble Apex Court in "Surendra Singh v. State of Bihar 2006 (1) SCC 575.

9. In view of the aforesaid rulings of the Hon'ble Apex Court the order passed by the Magistrate Sri Amar Nath Kushwaha on 30.4.2004 recalling the order of Sri S.N. Saroj dated 28.10.2003 is totally without jurisdiction and the order of the Addl. Sessions Judge passed in criminal revision confirming the order passed by Sri Amar Nath Kushwaha is also without jurisdiction and both these orders deserve to be set aside and that of Sri S.N. Saroj dated 28.10.2003 deserves to be restored.

10. The application u/s 482 Cr.P.C. is, therefore, allowed and the order dated 30.4.2004 passed by Sri Amarnath Kushwaha, Judicial Magistrate, Mathura in Crl. Case No. 105 of 2003, Ramesh v. Dibban and Ors., and the order dated 28.10.2004 passed by Sri A.K. Mathur in Crl. Revision No. 360 of 2004, Ramesh v. State, are hereby set aside and the order dated 28.10.2003 passed by Sri S.N.Saroj, Judicial Magistrate, Mathura in criminal case No. 105 of 2003, Ramesh v. Dibban and Ors., is hereby restored and the matter as remanded back to the Judicial Magistrate, Mathura for passing suitable orders u/s 203/204, Cr.P.C. after hearing the complainant.

11. The learned Magistrate shall, be at liberty to pass suitable order as to whether any case for summoning the accused is made out or not on the basis of the evidence of the complainant and his witnesses under Sections 200 and 202 Cr.P.C. as well as other evidence and circumstances.