
(1991) 08 AHC CK 0027

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 9110 of 1991

Ramesh Chandra Sharma

APPELLANT

Vs

State of U.P.& Anr.

RESPONDENT

Date of Decision : 02-08-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Penal Code, 1860 (IPC) — Section 409

Prevention of Corruption Act, 1947 — Section 5(2)

Citation : (1991) 08 AHC CK 0027

Hon'ble Judges : N.L.Ganguly, J

Final Decision : Dismissed

Judgement

N. L. Ganguly, J.—This application has been filed under Section 482, Cr.P.C. for quashing the protest petition dated 1921990 and the order passed therein dated 2441991 passed by the C. J. M., Gaziabad in case Crime No. 534 of 1989. One, Shri J. P. Gupta Proprietor of J. S. Industries, Industrial Area, Kavi Nagar, Gaziabad lodged on F.I.R. against the applicant on 201089 at Police Station Kotwali, Gaziabad. A copy of the F.I.R. is annexed to the affidavit before me. The F.I.R. was made for the offence under Section 409, I.P.C. read with Section 5 (2) of the Prevention of Corruption Act. After the investigation, the Investigating Officer submitted final report on 1811990 before the C.J.M., Gaziabad. A copy of the final report is annexed to the affidavit. The complainant, opposite party, J. P. Gupta filed a protest petition on 19290. Learned C.J.M., Gaziabad rejected the final report and directed for reinvestigation in the matter and asked for the report within one month. After reinvestigation, the Investigating Officer submitted the report dated 5990 that no offence under Section 409, I.P.C. was made out against the applicant. Thus again the final report dated 5990 was submitted before the court. The learned C.J.M., Gaziabad declined to accept by order dated 24491 and summoned the accused for the offences under Section 409, I.P.C. by his order dated 24491. Copy of the order has been annexed as annexure6 to the affidavit. Learned court after submission of the final report,

heard learned counsel for the applicant and perused the record and evidence collected by the Investigating Officer. He examined the material evidence collected by the investigation officer and was satisfied that a prima facie case under Section 409, I.P.C. was made out and the complainant who had invested the amount was duped and his money which was entrusted was embazzled. The amount of the margin money which was deposited was not liable to be adjusted towards any amount. The accused person has acted illegally in adjusting the said amount. It is worth nothing that while passing order refusing to accept the final report submitted by the Investigating Officer, learned Magistrate had neither recorded any further evidence nor directed the informantcomplainant to lead evidence. He proceeded to consider the protest petition on the basis of evidence already collected by the Investigating Officer. Learned Magistrate was of the view that from the material evidence collected by the Investigating Officer a prima facie case under Section 409, I.P.C. was made out. Thus, he was pleased to refuse to accept the final report and summoned the accused person to face trial. Learned court had acted in accordance with provisions of 190(i) (b), Cr.P.C. The view taken by the learned Magistrate is just and in confirmity with the law laid down in the 1969 (26) Alld Crl Cases page 208, India Carpet (P) Ltd. v. State of Karnatka and others, therein the Hon"ble Supreme Court held that the learned Magistrate after perusing investigation record came to the view that a prima facie case was made out against the second respondent and consequently passed an order for calender case being registered against him for offences punishable under Sections 408 and 420, I.P.C. Thus, the law on the point is well settled and there is no doubt in the legal position that the learned Magistrate while considering a protest petition, if is satisfied from the existing evidence collected by the Investigating Officer and arrives at a conclusion that a prima facie case is made out against the accused person, he is not bound to accept the final report. It is also settled law that in case the Magistrate before whom a final report is submitted is of the opinion that further investigation was necessary, he might make an order to that effect under Section 150 (3) of the Cr.P.C. This question was considered by the Supreme Court in 1981 Alld Crl Cases page 146, H.S. Bains v. State (Union Teritorry of Chandigarh). In the said judgment, the Supreme Court was pleased to observe that mere fact he had earlier "ordered an investigation under Section 156 (3) and received a report under Section 173 will not have the elleei of total affacement of the complaint and, therefore, the Magistrate will not be barred from proceeding under Sections 200, 203 and 204." The court further observed that the Magistrate, on receiving a complaint, orders for investigation under Section 156 (2) and receives the police report under Section 173 (1) may thereafter do one of the three things :

(1) He may decide that there is no sufficient ground for proceeding further and drop action.

(2) He may take coenieance of the offence under Section 101 (1) (b) on the basis of the police report and issue process; thus he may do without being bound in any manner by the conclusion arrived at by the police in their report;

(3) He may take cognizance of the offence under Section 190 (1) (a) on the basis of original complaint and proceed to examine upon oath the complainant and his witnesses. The court below adopted the recourse to proceed with the case on the basis of the evidence already collected by the Investigating Officer. Thus, it cannot be said that the learned Magistrate committed an error of law or procedure in refusing to accept the final report.

2. The learned counsel for the applicant submitted before this court that the applicants were legally justified in adjusting the amount of Rs. 35, 000 which was sanctioned as margin money for the working capital sanctioned by the U. P. Financial Corporation. The other submission that was advanced was that in fact the amount of Rs. 35, 000 was neither paid to the complainant nor was it to be adjusted in any other amount. It was pleaded that the signatures of the complainant were obtained by the applicants on blank papers on 21121983 and they did not disburse the amount in question. It was suggested that no case under Section 409, I.P.C. read with Section 5 (2) of the Prevention of Corruption Act is made out from the F.I.R. of the case and the proceedings initiated was nothing but an abuse of the process of the court liable to be quashed.

3. I have heard the learned counsel for the applicant at length. I am not impressed by the submission advanced by the learned counsel. The only question which has to be considered in this petition is whether the order of the learned Magistrate refusing to accept the final report submitted by the Investigating Officer is correct and is in accordance of law which I have already held in view of the judgments of the Supreme Court and the procedure adopted by the Court below in the present case is just in conformity with the law laid down in the said judgment. The other submission advanced by the learned counsel for the applicant cannot be enquired into at this stage in a proceeding under Section 482, Cr.P.C. which would require evidence in the matter to judge the defence of the applicant. It is not a proper stage to judge defence of the applicant. In my view, there is no error of law, procedure or jurisdiction involved in the present case. The application under Section 482, Cr.P.C. is misconceived and calls for no interference.

5. In the result, the petition is rejected.