

(2006) 02 AHC CK 0072

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No's. 12679 and 14839 of 2004

Ravi Shankar Misra

APPELLANT

Vs

State of U.P. and Ved Prakash Misra

RESPONDENT

Date of Decision : 08-02-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 323

Citation : (2006) CriLJ 2245

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

Bench : Single Bench

Advocate : Santosh Kr. Srivastava and Brij Raj Singh, for the Appellant; S.P. Singh and Sanjay Kumar Singh and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

R.K. Rastogi, J.—Both these applications have been moved u/s 482 Cr.P.C. and since they have been filed against the same proceedings, I have heard them together and now I am deciding them by a common order.

2. The facts relevant for disposal of both these applications are that on 16.2.2001 at about 3.30 A.M. a report was lodged by Ravi Shanker, applicant in Criminal Misc. Application No. 12679 of 2004 against Mukteshwar and 14 other persons, applicants in Criminal Misc. Application No. 14839 of 2004, with these allegations that he himself and 15 accused persons named therein are residents of village Pipra Bhulli police station Barhaj district Deoria. There are chaks of Ravi Shanker towards east of the village and thereafter there are chaks of Umapati and Ram Nagina and towards south of these chaks, there is a chak road, there was a dispute between the parties in respect of that chak road. Umapati etc. had filed a civil suit in respect of chak road and for correction of map. On 15.2.2001 at about 2 P.M. Naib Tahsildar, Kanoongo and Lekhpal visited the Primary School in the village and called Ravi Shanker and his uncle and brother Ram Nagina etc. for measurement of the chak road. Ravi Shanker, Chandra Prakash, Ram Nagina,

Vyas, Vimal and Dhananjay etc. also went to the school. Vyas handed over a copy of the stay order passed in civil the suit to the Naib Tahsildar and then the Naib Tahsildar and other authorities returned back without getting the measurement done. Accused Mukteshwar, Hans Nath etc. and their family members wanted to get the chak road covered by clay & sand, and so they felt very much aggrieved as the measurement could not be done on that date. When Ravi Shanker etc. were returning back to their house, Mukteshwar, Ved Prakas, Hans Nath etc., who were present in the field of Adya Prasad, started to abuse them. Ravi Shanker and Chandra Prakash asked them not to abuse and stated that they would abide by the verdict of the court. Then Ved Prakash stated that the matter shall be decided then and there. Then Hans Nath, Ved Prakash and Mukteshwar exhorted the other accused to kill them and then all the accused persons having lathis, Dandas and Pharsa in their hands attacked Ravi Shanker and Chandra Prakash. Upon noise the witnesses reached there and Ravi Shanker and those witnesses used force in self defence. However, the accused caused fatal injuries to Chandra Prakash, who fell down as a result of injuries received by him. Accused Dinesh and Durgesh had Pharsa in their hands, Since the condition of Chandra Prakash was serious, he was taken to the the Primary Health Centre, but the doctor after examining him advised that he should be taken to the district hospital Deoria. The doctor in the district Hospital Deoria advised that he should immediately be taken to the Medical College, Gorakhpur. Then he took Chandra Prakash to Medical College, Gorakhpur, but he (Chandra Prakash) died there. Then Ravi Shanker left the dead body in the medical college and went to the police station Barhaj and lodged the report. On the basis of this report a case crime No. 62/2001 under Sections 147, 148, 504, 506 and 302/149 I.P.C. was registered against the accused persons and after completion of investigation the police submitted a charge sheet in this case.

3. On 15.2.2001, Ved Prakash (accused in the above case) also moved an application before the Superintendent of Police Deoria in which it was stated that he resides in village Pipra Bhulki and accused Chandra Prakash, Ravi Shanker Dhananjay, Dinesh, Chandra Deo and Vyas also reside in the same village. They had forcibly occupied the chak road and the land of Gram Sabha, and so he had moved an application for measurement of the chak road and removal of encroachment, before the District Magistrate, Deoria. The Naib Tahsildar Satraon, the Kanoongo and the Lekhpal had visited the village for measurement on 15.2.2001 and at 1 P.M. they had called the villagers for measurement. Ved Prakash and other villagers were present in the ground of primary school. At that time accused Chandra Prakash, Ravi Shanker and Vyas reached there and abused them and stated that if measurement is done several persons will be killed. Then Ved Prakash said to them as to why they were quarrelling. Then they felt aggrieved and Chandra Prakash, Ravi Shanker, Dhananjay etc. having lathis and spear in their hands attacked them. Chandra Deo had a spear in his hand and the remaining accused had lathis in their hands. Shiv Nath, Onkar Nath, Satish and Chandra Bhushan etc. received injuries in this incident The incident

was seen by the witnesses. The Naib Tahsildar, the Kanoongo and the Lekhpal left the village as soon as the Marpit had started. Thereafter Ved Prakash took the injured persons to the Primary Health Centre Barhaj where they were medically examined. Thereafter they went to the police station for lodging the report but the Head Moharrir told them that the Station Officer was not at the police station and the report will be lodged only after arrival of the Station officer. Then they went to the office of the Superintendent of Police and moved this application.

4. On the above application the Superintendent of Police passed an order on 24.3.2001 for registration of the case and then a case was registered under Sections 147, 148, 323, 324, 504 and 506 I.P.C. against Chandra Prakash and five other persons named in the application. It may be mentioned that case crime No. 62 of 2001 was registered against Mukteshwar and 14 others on the report of Ravi Shanker and on the basis of the above application of Ved Prakash cross case crime No. 62A of 2001 was registered. The police submitted a charge sheet in this cross case also.

5. The case crime No. 62 of 2001 is pending for trial in the Fast Track Court No. 3, Deoria as Session Trial No. 299 of 2001 and case crime No. 62A/2001 which was triable by Magistrate was pending for trial in the court of Chief Judicial Magistrate, Deoria.

6. An application was moved by Ved Prakash for commitment of a case crime No. 62A of 2001 to the court of session on the ground that it was a cross case and so both the cases should be heard and decided by the same court. This application was opposed by Ravi Shanker etc. and they took a plea that these cases are not cross cases and so there was no justification for their trial by the same court. The Chief Judicial Magistrate, however, after hearing both the parties allowed the application for committal of the case to the court of session. Aggrieved with that order, Ravi Shanker etc, filed a criminal revision in the court of the Session Judge, Deoria. That revision was also dismissed by the Session Judge. Aggrieved with that order Ravi Shanker etc. filed Criminal Misc. Application No. 12679 of 2004 in this Court for quashing of the order of committal of the case to the court of sessions.

7. Since interim order was passed in this case staying operation of the committal order, Mukteshwar and others filed Criminal Misc. Application No. 14839 of 2004 praying that the proceedings of both the cases should be stayed

8. I have heard learned counsel for the parties and perused the record.

9. It was submitted by the learned counsel for Ravi Shanker that the case cannot be treated to be a cross case simply on the basis that cross case number has been allotted at the police station. He submitted that actually the place, date and time of the incident are different in both the cases and so they were not cross cases and so there was no justification of committal of case crime No. 62A of 2001 to the court of sessions.

10. After perusal of the record of the case, I do not find any force in this contention and that is why I have narrated above, the version given in both the reports and a perusal of those reports goes to show that the date, time and place of the incident as described in both the reports are virtually the same. The point to be determined in the case is as to who was the aggressor and who committed the offence, In such a case the proper procedure is that both the cases should be heard and decided by the same court. In this view of the matter the learned Magistrate committed no legal error by passing an order for commitment of the case crime No. 62A of 2001 to the court of session and the Session Judge rightly confirmed the same order

11. A ruling of Hon"ble Supreme Court in Akhlaq alias Islaq and Ors. v. The State of Uttar Pradesh reported in 1962 A.W.R. 109 was cited before me in which it has been held that wherever the parties are prosecuted for attack on each other in the same occurrence and there are counter cases with counter versions, both the trials should be held separately, but, one after the other, by the same Judge who should not pronounce judgments till after both cases are heard and finished, and the same would apply to appeals also.

12. In view of the above ruling no illegality was committed either by the Chief Judicial Magistrate by passing the order for commitment of the case crime No. 62A of 2001 to the court of sessions or by the Session Judge while confirming the committal order passed by the Magistrate.

13. Thus Criminal Misc. Application No. 12679 of 2004 filed by Ravi Shanker challenging the orders passed by the Chief Judicial Magistrate and the Session Judge has got no force and is liable to be dismissed.

14. The learned counsel for the applicants in Criminal Misc. Application No. 14839 of 2004 submitted before me that in case Criminal Misc. Application 12679 of 2004 is dismissed, he shall not be pressing Criminal Misc. Application No. 14839 of 2004.

15. The result is that both these applications u/s 482 Cr.P.C. are liable to be dismissed and they are accordingly dismissed.