
(2007) 05 AHC CK 0214

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 9142 of 2007

Satya Narain Tiwari and Others

APPELLANT

Vs

State of U.P.and Another

RESPONDENT

Date of Decision : 11-05-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 239
Penal Code, 1860 (IPC) — Section 323, 325, 326, 504, 506

Citation : (2007) 05 AHC CK 0214

Hon'ble Judges : Ravindra Singh, J

Final Decision : Disposed Of

Judgement

Ravindra Singh, J.—Heard learned Counsel for the applicants and learned A.G.A.

2. This application has been filed by the applicants Satya Narain Tiwari, Neta, Vipin Tiwari and Bharat Tiwari with a prayer to quash the order dated 1042007 passed by learned Sessions Judge, Bhadohi in Criminal Revision No. 129 of 2006 whereby the revision has been allowed and the order dated 7122006 passed by Judicial MagistrateIst, Bhadohi in case No. 90 of 2006 has been set aside. It is contended by the learned Counsel for the applicants that an F.I.R. was lodged against the applicants in which the chargesheet has been submitted and the applicants are facing the proceedings for the offences punishable under Sections 323, 504, 506, 325, 336 I.P.C. pending in the Court of learned Judicial MagistrateIst, Bhadohi Gyanpur in Criminal Case No. 90 of 2006. It is alleged that first informant Kalloo Tiwari and his cousin Bansi Dhar Tiwari were medically examined at Government Hospital, Gopiganj. The injured Bansi Dhar Tiwari had received serious injuries, therefore, his case was referred to Swaroop Rani Hospital, Allahabad where his treatment was done and some other important tests including CTScan were done in the hospital. In the report of CTScan a fracture on frontal bone was found. The injury was grievous in nature and considering the same the chargesheet was submitted by the I.O. under Sections 323, 504, 506, 325, 336 I.P.C. Thereafter an application was moved by the prosecution side that on the basis of the material collected by the I.O. prima

facie offence is made out, therefore, the case may be committed to the Court of Session. That application was objected to the Counsel for the applicants. After hearing both the parties the learned Magistrate concerned came to the conclusion that no supplementary medical report of the injured Banshi Dhar Tiwari was prepared, the injury No. 8 of the injured Banshi Dhar Tiwari was advised for Xray but the same was not X rayed, the injury No. 1 was not grievous in nature or dangerous to life even if it was kept under observation and the CTScan was not done by the same Doctor who had prepared the medical examination report. On the basis of the medical examination reports prima facie offence under Section 307 I.P.C. is made out and the case was committed to the Court of Session. Considering the same the learned Magistrate concerned came to the conclusion that it was difficult that without considering the deposition of the Doctor in the Court the offence under Section 307 I.P.C. is made out.

3. Ultimately, the application filed by the prosecution was rejected on 7122006. Learned Magistrate concerned did not commit any error in passing the order dated 7122006. The order is well reasoned and it has been passed after considering the facts and circumstances of the present case and after examination of medical report but surprisingly the revisional Court set aside the order dated 7122006 by allowing the criminal revision No. 129 of 2006 filed by O.P. No. 2 on 1042007 by directing that the present case may be committed to the Court of Session in accordance with the provisions of law because the alleged offence is triable by the Court of Session.

4. It was contended by the learned Counsel for the applicants that the impugned order dated 1042007 passed by learned Magistrate is neither illegal nor liable to be set aside because the revisional Court was not having any power to record the finding that an offence under Section 307 I.P.C. is made out and the revisional Court was having no power to direct the Court of learned Magistrate concerned to commit the case to the Court of Session. The revisional Court was empowered only to remand back the case to the Court of learned Magistrate directing him to pass a fresh order in respect of the commission of a particular offence but by not passing such order, the revisional Court has committed a manifest error, therefore, the impugned order dated 1042007 may be set aside.

5. In reply of the above contention it is submitted by learned A.G.A. that the order dated 7122006 passed by learned Magistrate concerned was illegal because on the basis of allegations made against the applicant and the report of CTScan, prima facie offence under Section 307 I.P.C. was made out because the injury received by the injured Banshi Dhar Tiwari was grievous in nature and it was dangerous to life in ordinary course of nature but the learned Magistrate has tried to record the finding as if he was considering the case for final disposal. After considering the evidence adduced therein, the learned Magistrate concerned was under obligation to see whether the purpose of taking the cognizance prima facie offence under Section 307 I.P.C. is made out or not. If it was made out the case would have been committed to the Court of Session. The

learned revisional Court has passed a perfect order by coming to the conclusion that prima facie offence triable by the Court of Session is made out and the Magistrate concerned was directed to commit the case to the Court of Session. There is no illegality in the impugned order dated 1042007, it is a reasoned order which require no interference by this Court. The present application filed by the applicants is having no substance and is liable to be dismissed.

6. Considering the facts and circumstances and submissions made by the learned Counsel for the applicants and learned A.G.A. and from perusal of the record including the orders passed by the learned Magistrate and learned Sessions Judge Bhadohi it appears that the learned Magistrate has committed an error by not committing the case to the Court of Sessions because on the basis of CTScan report prima facie offence under Section 307 I.P.C is made out which was triable by the Court of Session. The learned Magistrate has committed an error by making the meticulous analysis of the material available on the record. At this stage he had to see whether any offence triable by the Court of Session is made out or not, and if it was made out the Magistrate was under an obligation to commit the case to the Court of Session. Therefore, the order dated 7122006 is illegal which has been rightly set aside by learned Additional Sessions Judge Bhadohi in Criminal Revision No. 129 of 2006. The revisional Court has not committed any error in passing the impugned order and directing the Magistrate concerned to commit the case to the Court of Session because prima facie offence under Section 308 or 307 I.P.C. was made out by passing such order the learned Sessions Judge has not committed any manifest error. The impugned order dated 1042007 is perfect which does not require any interference by this Court.

7. The present application is devoid of merits, therefore, this prayer for quashing the impugned order dated 1042007 is refused. However, it is directed that in case the applicants appear before the Court concerned within 30 days from today and apply for bail, their bail application shall be heard and disposed of expeditiously if possible on the same day and for 30 days from today no coercive step shall be taken against the applicants.

8. With these directions, this application is finally disposed of.