
(2012) 01 AHC CK 0571
In the Allahabad High Court
Case No : Application No. 6260 of 1999

Shyam Singh

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 190, 190(1), 200, 202
Penal Code, 1860 (IPC) — Section 307, 323, 427, 504, 506

Citation : (2012) 01 AHC CK 0571

Hon'ble Judges : Surendra Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Surendra Kumar, J.—Heard Sri Dharmendra Singhal, learned counsel for the applicant, Sri Dharmendra Singh, learned AGA for the State.

2. One Shyam Singh who is an accused along with Kamla, Gopal Singh and Dharmveer Singh in Case Crime No. 82 of 1998 under Sections 323, 307, 427, 504, 506 IPC, Police Station Khair, District Aligarh, on the basis of the first information report lodged by the complainant Kishor Singh, has moved the instant application u/s 482 Cr.P.C. impleading the State of U.P. and the complainant Kishor Singh as opposite party nos.1 and 2 respectively with the prayer that the order dated 23.9.1999 (Annexure No. 7) passed by the IInd Additional Chief Judicial Magistrate, Aligarh, in Criminal Case No. 431 of 1998 State Vs. Kamla Singh and others under Sections 323, 307, 427, 504, 506 IPC, Police Station Khair, District Aligarh, be quashed.

3. The complainant, Kishor Singh lodged the first information report at Case Crime No. 82 of 1998 at Police Station Khair, District Aligarh, against the above four accused persons including the applicant Shyam Singh with the allegation that on 28.3.1998 around 6:00 a.m., he was at his house, the accused Kamla tried to damage the outer wall of his house with spade which was objected by the complainant. This led to abuses between the parties and then the applicant

Shyam Singh armed with licenced gun and other three accused persons armed with Lathis came there and all of them assaulted the complainant Kishor Singh with their respective weapons causing injuries to the complainant Kishor Singh. The applicant is further alleged to have fired from his licenced gun causing injury on finger of his left hand. When the witnesses reached the spot, the accused persons left the place extending life threats.

4. The Investigating Officer after making investigation into matter submitted charge sheet to the Senior Prosecuting Officer finding the involvement of all the accused persons in the said incident. The Superintendent of Police, Rural Areas, District Aligarh, ordered reinvestigation to another Police Station Peshawa and directed S.H.O. of Police Station Peshawa to obtain record relating to the investigation and make investigation. Thus, the Superintendent of Police, ordered for reinvestigation into the matter and entrusted the same to different Police Station namely Peshawa. Subsequently, the investigation was made by Shri Brahma Singh, S.H.O. of Police Station Peshawa. Copy of the order has been annexed as Annexure No. 2 to the affidavit filed in support of this application.

5. It is apparent from the record that the first investigation was made by the S.H.O. of Police Station Khair, District Aligarh who submitted charge sheet against all the named accused persons including the applicant on finding sufficient evidence against them to the Senior Prosecuting Officer. Reinvestigation was made by Sri Brahma Singh, S.H.O. Peshawa of the same District, who submitted a report to the Superintendent of Police Rural Areas recommending for cancellation of the earlier charge sheet submitted by the Investigation Officer of Police Station Khair on the ground that offence u/s 307 IPC was not found to have been made out from the evidence and the applicant was falsely implicated in this case.

6. It appears from the record that second Investigating Officer, Police Station Peshawa submitted charge sheet in this crime only against three accused persons namely Kamla, Gopal Singh and Dharmveer Singh under Sections under Sections 323, 504, 506, 427 IPC exonerating the present applicant Shyam Singh.

7. The charge sheets came before the concerned Magistrate who after going through the material, took cognizance against all the four accused persons under Sections 323, 307, 504, 506, 427 IPC. When the case reached the stage of committal, the learned Magistrate in pursuance of the order of cognizance earlier passed by his predecessor complied with the provisions of Section 207 Cr.P.C. and furnished relevant copies to the accused persons. The applicant raised objection at the time of committal of the case by the Magistrate to the Court of Session submitting that since he was exonerated in the subsequent charge sheet submitted by S.H.O. Peshawa, he cannot be committed to the Court of Session. The learned Magistrate vide impugned order dated 23.9.1999 giving details of the facts and material and citing sufficient reasons committed the case against all the four charge sheeted accused persons including the applicant to the Court of Session on the ground that the offence punishable u/s 307 IPC was triable by

the Court of Session as provided u/s 209 of the Cr.P.C.

8. The main submission of the learned counsel for the applicant is that since first Investigating Officer submitted charge sheet against all the accused persons including the applicant to the Senior Prosecuting Officer, charge sheet did not reach before the concerned Magistrate and before receipt of the charge sheet in the concerned court of the Magistrate, the Superintendent of Police Rural Areas ordered for reinvestigation to another Police Station vide order dated 1.6.1998, the Magistrate had no power to take cognizance upon that charge sheet.

9. Learned counsel for the applicant has elaborated this submission saying that since the second Investigating Officer belonging to another Police Station submitted charge sheet against three accused persons finding their involvement in the crime and the applicant Shyam Singh though was named in the first information report was exonerated on the ground that no evidence connecting him with the said offence was available. The impugned order passed by the learned Magistrate is erred in law and not sustainable.

10. Learned AGA refuting the submission has stated that cognizance of the said offence was not taken by the impugned order but cognizance on the basis of the charge sheet submitted in the court of the Magistrate was taken by different order by the predecessor in office and the order taking cognizance on the basis of the charge sheet has not been assailed in the instant application.

11. Learned AGA has further submitted that by the impugned order, learned Magistrate committed the case of the accused persons to the Court of Session on the ground that offence punishable u/s 307 IPC is triable by the Court of Session. It was not open for the Magistrate to go into legality of the order of cognizance passed by his predecessor.

12. The submission of the learned counsel for the applicant is that impugned order was challenged through Criminal Revision before the learned Sessions Judge but the same was also rejected as not maintainable, hence this Court should interfere in this case in exercise of inherent powers u/s 482 Cr.P.C..

13. Learned counsel for the applicant has further submitted that the impugned order is neither the order passed u/s 190 Cr.P.C. nor the order u/s 319 Cr.P.C. but was passed by the Magistrate at the stage of Section 209 Cr.P.C. which cannot be said to be legal one. The applicant could be summoned only after recording evidence of the prosecution witnesses u/s 319 Cr.P.C. but the applicant, even though was exonerated in the second charge sheet filed by the second Investigating Officer, had wrongly been committed to the Court of Session for trial by the impugned order.

14. Two charge sheets were submitted in the court of the learned Magistrate, one finding sufficient evidence showing complicity of the accused persons named in the first information report and second charge sheet finding involvement of the only three named accused persons and exonerating the present applicant Shyam

Singh and also finding no material to make out any offence u/s 307 IPC. The Magistrate after going through the case diary and other material and considering two charge sheets, took cognizance against all the four charge sheeted accused persons under Sections 323, 307, 427, 504, 506 IPC and summoned them. Since in the first charge sheet, all the four named accused persons were charge sheeted, the Magistrate was perfectly justified in acting upon the charge sheet. The Magistrate is not bound by the police report submitted as a result of investigation and he is free to apply his own judicial mind on the basis of the material collected during investigation and then proceed accordingly.

15. It appears from the record that the first Investigating Officer submitted Charge Sheet No. 65 against Shyam Singh, Kamla and Dharmveer Singh on 28.4.1998 and Charge Sheet No. 65-A against fourth accused Gopal Singh on 21.5.1998 under Sections 307, 323, 427, 504, 506 IPC. The first charge sheet submitted u/s 307 IPC besides other Sections after signature of the Circle Officer/Dy. S.P., was sent in the court of the Magistrate. The second Investigating Officer submitted second charge sheet in the same crime on 24.8.1998 against three accused persons exonerating the present applicant under Sections 323, 427, 504, 506 IPC excluding 307 IPC. The Magistrate took cognizance upon these charge sheets u/s 307 IPC as well.

16. The point raised before the Magistrate on behalf of the accused-applicant was that since the first charge sheet was approved by the Circle Officer/Dy. S.P. who forwarded the same to the Court, had no value in law as the Superintendent of Police Rural Areas had ordered for reinvestigation to another Police Station. The Prosecuting Officer raised a very important point before the Magistrate to the effect that the first investigation was completely made by the Investigating Officer who submitted charge sheet through Dy. S.P. to the Court and investigation was not kept pending and chapter of investigation was closed. Since the first charge sheet came in the Court after conclusion of the investigation, there was no occasion for the police authority to direct for reinvestigation. The order of reinvestigation or process of reinvestigation was not a bar for the Magistrate not to take cognizance and keep the charge sheet pending and to wait for result of reinvestigation. The Magistrate acted legally on the basis of the charge sheet and proceeded further. Learned Magistrate in the impugned order had discussed various rulings in support of his order observing that the investigation should be made in accordance with law on the basis of evidence available. It has been further mentioned in the impugned order by the Magistrate that no legal infirmity had been pointed out on behalf of the accused persons including the present applicant in the charge sheet. It has also been mentioned in the impugned order that since cross cases are pending and trial of both cross cases should be conducted by the same Court, hence committal of the case in hand was very necessary.

17. Hon"ble Apex Court in India Carat Pvt. Ltd. Vs. State of Karnataka and Another, , held that if final report u/s 173 Cr.P.C. that no case is made out, is

submitted, the Magistrate can ignore it and independently apply his mind and take cognizance u/s 190(1) (b) Cr.P.C. and issue process. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 Cr.P.C. though it is open to him to act under Sections 200 and 202 Cr.P.C. Thus, it is settled law on the point that even though second charge sheet submitted against some of the named accused persons and anyone of them was exonerated on the ground of his false implication, the Magistrate could ignore it and independently apply his mind and take cognizance u/s 190(1)(b) Cr.P.C. and issue process. Thus, the Magistrate in case in hand proceeded in accordance with law in passing the impugned order and the submission raised by the learned counsel for the applicant has no force in law.

18. In view of the above discussions, I do not find any kind of illegality, irregularity in the impugned order warranting any kind of interference by this Court at this stage. The application u/s 482 Cr.P.C. is, accordingly, dismissed.

19. The Court concerned is directed to proceed with the case expeditiously as the case relates to the year 1999.