

(2006) 04 AHC CK 0123

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 3654 of 2006

Suresh and Others

APPELLANT

Vs

The State of U.P. and Sri Charan Singh

RESPONDENT

Date of Decision : 10-04-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 437(1), 437(4), 482
Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323
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Evidence Act, 1872 — Section 3
Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (2006) 9 ADJ 570 : (2006) CriLJ 4814

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Advocate : Ram Babu Sharma, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Vinod Prasad, J.—A set of uterine brothers-Suresh, Krishna and Kalyan along with Hardwari and Hardev have prayed for quashing of charge sheet of crime number 264A of 2004, under Sections 147, 148, 149, 324, 504, 506, 323 and 307 IPC, Police Station Islam Nagar, District Badaun, which has been registered as criminal case number 1501 of 2004 State v. Suresh and Ors. pending before Judicial Magistrate, Bisauli District Badaun, by invoking inherent power u/s 482 Cr.P.C. by this Court. They have also prayed for stay of further proceedings of the aforesaid case during the pendency of the above noted application in this Court.

2. The factual background of the case are that a FIR was lodged by Charan Singh at police station Islam Nagar district Badaun on 28.5.2004 against the present applicants under Sections 147, 323, 324, 504 and 506 IPC in respect of an incident alleged to have taken place on 28.5.2004 at 1 P.M. with the allegations

that the accused persons the present applicants, armed with Lathi and country made pistols firstly abused the informant filthily and then belaboured him with lathi and Dandas and accused Kalyan shot him near the waist. Rameshwar, Ram Sewak and many others witnessed the incident. The accused escaped threatening the family members of the informant. The police of PS Islam Nagar started investigation and recorded the statement of the informant and other witnesses who all supported the prosecution version. The informant was medically examined at 11 P.M. at P.H.C. Islam Nagar on the day of the incident itself and was found to have sustained gun shot injury and blunt object injury. His x-ray report dated 9.7.04 indicated that three metallic shadows were imbedded inside his body on left side back cum scapula. The said injury was found to be grievous in nature. After concluding the investigation the police submitted a charge sheet against the accused applicants on 13.6.04 under Sections 147, 148, 149, 324, 323, 504 and 506 IPC. It is important to note that the said charge sheet had been submitted when the supplementary report and x-ray report was not available with the investigating officer. Subsequently the aforesaid two documents were made available to the investigating officer and therefore incumbent investigating officer added Section 307 IPC in the offences vide his charge sheet dated 14.7.04. After the said date the trial court took cognizance of the offences on 5.11.04, as is clear from annexure No. 11 to the affidavit appended along with this application. The case is fixed for committal before Judicial Magistrate, Bisauli. At this stage the present criminal Misc. Application has been filed by the applicants for the relief mentioned herein before.

3. I have heard Sri Ram Babu Sharma advocate on behalf of applicants and learned AGA in opposition. Sri Sharma raised only one contention on merits of the matter. He submitted that further investigation can be carried out by the investigating officer only after seeking permission from the court in case the charge sheet has been submitted and the court has taken cognizance of the offence. The counsel contended that further investigation as well as the charge sheet submitted subsequently, by the police u/s 307 IPC is bad in law. He contended that there is no power with the police to make further investigation. He submitted that u/s 173(8) Cr.P.C. the word used is "evidence". This, word according to the counsel, means "evidence" as is mentioned u/s 3 of the Indian Evidence Act 1872. He contended that "Evidence" u/s 173(8) means evidence recorded before the court and unless such an evidence comes forth, the police does not have the power to make further investigation. He added that since, in the present case, the trial has not started as yet therefore further investigation conducted by the police is bad in law and consequently subsequent charge sheet deserves to be quashed. The learned AGA contrarily submitted that Section 173(8) relates with investigation and does not apply to trial and therefore the definition clause of Evidence Act will apply at all, Indian Evidence Act deals with evidences which are admissible or inadmissible and what is evidence and what is not and how the evidence has to be led at the trial and what will be the manner of taking evidence during the trial etc.. He contended that Indian Evidence Act

does not have any application during investigation and therefore this application is merit less and deserves to be dismissed.

4. Analysing the rival submissions made by the both the sides it is clear that the contention of learned Counsel for the applicant does not have any merit in it. The said contention is devoid of any substance at all. Section 173(8) Cr.P.C. relates with power of the police to make further investigation and if additional evidence is collected by it into the crime then the same has to be forwarded to the court where the case is pending. The word "Evidence" used in that Section (173(8) Cr.P.C.) has been used in a generic sense of additional material into the crime regarding which charge sheet has already been laid in the court and not as evidence recorded before the court. If the contention of the counsel is accepted it will lead to absurdity and will make Section 173(8) otiose. Section 173(8) permits further investigation and the word "Evidence" has been used for additional facts regarding the crime collected by the police and not evidence recorded during the trial. Thus the contention of the counsel for the applicants is without any merit and deserves to be rejected. Further, in this case, the charge sheet u/s 307 IPC was laid before the court prior to its taking cognizance of the offence, which was on 5.11.04. The second charge sheet was submitted much prior to it on 14.7.04. These dates are clear from annexure No. 10 and 11 filed along with the affidavit appended with this Criminal Misc. Application. Therefore factually also the contention of the counsel for the applicant is wrong and consequently is rejected.

5. Resultantly, this application is meritless and deserves to be dismissed.

6. It was lastly submitted that the applicants were allowed bail for all offences vide Annexures No. 8 and 9 but for Section 307 IPC and therefore they should be allowed to remain on the same bail bonds for offence u/s 307 1PC also. The said prayer can not be accepted as the same will be against Section 437(1) Forth proviso Cr.P.C. as well as Section 437(4) Cr.P.C. However looking to the facts and circumstances of the case it is hereby directed that if, the applicants surrender and/or appear before the courts below and makes an application for their bail u/s 307 IPC in the aforesaid crime number 264A of 2004, P.S. Islam Nagar District Badaun, their bail application shall be considered and disposed off the same day it is moved by the both the courts below, as the charge sheet is before them and the applicants have not misused the liberty of bail granted to them earlier in that very crime number.

7. With the aforesaid direction this application is dismissed.