
(2015) 07 AHC CK 0259
In the Allahabad High Court
Case No : Criminal Revision No. 2414 of 2015

Suresh Kumar Sonkar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 193, 227, 482
Penal Code, 1860 (IPC) — Section 120-B, 147, 201, 302

Citation : (2015) 3 ACR 2761 : (2015) 9 ADJ 88

Hon'ble Judges : Ramesh Sinha, J.

Bench : Single Bench

Advocate : A.P. Paul, B.B. Paul and Rajesh Kumar Sonkar, for the Appellant

Judgement

Ramesh Sinha, J.—Heard Sri B.B. Paul, learned counsel for the revisionist and learned A.G.A. for the State. The present criminal revision has been preferred against the judgment and order dated 3.7.2015, passed by Additional Sessions Judge, Court No. 1, Ballia, in Sessions Trial No. 91 of 2015, arising out of Case Crime No. 79 of 1996, State v. Santosh Prasad Dwivedi and others, under Sections 147 , 302 , 201 , 120-B IPC, Police Station-Gadwar, District-Ballia.

2. The brief facts, which emerge from the record, are that the applicant being the then Station House Officer of the concerned police station was involved in case of custodial death alongwith other accused persons for which the First Information Report was lodged by one Virendra Singh against him as Case Crime No. 79 of 1996, under Sections 147 , 302 , 201 , 120-B IPC, Police Station-Gadwar, District-Ballia and after investigation a charge-sheet has been submitted by C.B. C.I.D. (Crime Bureau, Crime Investigation Department) against the applicant and co-accused persons and cognizance has been taken against him and other accused persons on 17.3.2008 by the learned Magistrate. It further transpires that on 8.4.2015 the case was committed by the Chief Judicial Magistrate, Ballia to the Court of Sessions on 8.4.2015 and the Sessions Trial No. 91 of 2015 with respect to the three accused namely, Vijay, Jagdish and Kripa Shankar only and so far as

the applicant is concerned and the co-accused Arvind Kumar Upadhyay and Mahesh Prasad are concerned, the case has not yet been committed to the Court of Sessions.

3. The co-accused Santosh Prasad Dwivedi filed a Criminal Revision No. 1333 of 2009, Santosh v. State of U.P., before this Court challenging the order dated 17.3.2008 passed by the learned Magistrate and the order dated 27.2.2009 passed by learned Magistrate issued a non bailable warrant in Case No. 537 of 2008 before this Court and the said revision was disposed of on 13.4.2009 with a direction to the revisionist to appear and move a discharge application, copy of the order dated 13.4.2009 has been annexed as Annexure 6 to this affidavit.

4. The revisionist also filed an application under Section 482 Cr.P.C. No. 40348 of 2014, Suresh Kumar Sonkar v. State of U.P., for quashing the entire proceedings of case No. 537 of 2008 State v. Santosh Dwivedi, arising out of Case Crime No. 79 of 1996, under Sections 147 , 302 , 201 , 120-B IPC, Police Station-Gadwar, District-Ballia pending in the Court of Chief Judicial Magistrate, Ballia and which was disposed of by this Court on 19.9.2014 directing him also to move discharge application, a copy of which has been filed as Annexure 7 to this affidavit.

5. Thereafter co-accused Arvind Kumar Upadhyay alongwith another co-accused also filed an application under Section 482 Cr.P.C. No. 43655 of 2014, Arvind Kumar Upadhyay v. State of U.P., in which the similar order for discharge application filed was also passed, vide order dated 15.10.2014, copy of which has been filed as Annexure 8 to this affidavit.

6. Subsequently, the revisionist alongwith two accused Arvind Kumar Upadhyay and Mahesh Prasad filed a discharge application before the Chief Judicial Magistrate, Ballia, which was rejected on the ground that none has appeared on behalf of the revisionist or the other co-accused to press the said discharge application, further non bailable warrants were issued against the applicant and other person, vide order dated 8.4.2015, a copy of the order dated 8.4.2015 passed by the Chief Judicial Magistrate, Ballia, has been annexed as Annexure 9 to this affidavit.

7. The revisionist, aggrieved by the said order filed a Criminal Revision No. 1309 of 2015, Suresh Kumar Sonkar v. State of U.P., which was dismissed by this Court vide order dated 18.4.2015 observing that "after the revisionist surrenders to the process of Court and the matter is committed to the Court of Sessions, it would be open to the revisionist to move the discharge application before the Court of Sessions, which shall be considered in accordance with law at the appropriate stage", a copy of the order dated 18.4.2015 is annexed herewith and marked as Annexure 10 to the affidavit.

8. On 23.4.2015 the revisionist again moved a discharge application before the Chief Judicial Magistrate, Ballia, praying that the order dated 8.4.2015 be recalled. A copy of the said application has been annexed as Annexure 11 to the affidavit. It appears that the said application is pending.

9. The revisionist then filed a time extension application before this Court in Criminal Misc. Application No. 40348 of 2014 on the ground that he could not move discharge application in pursuance of the order dated 19.4.2014 passed by this Court hence, one month's time has to be allowed to him to move the same in pursuance of the said order, the said time extension application, which was marked as Criminal Misc. Time Extension Application No. 154867 of 2015, was allowed by this Court, vide order dated 18.5.2015 granting one month's time to the revisionist to file discharge application in compliance of the order dated 19.9.2014, in pursuance of the said order, the revisionist filed a discharge application before the Sessions Judge, Ballia, in Sessions Trial No. 91 of 2015, State v. Santosh Dwivedi and others, which was rejected by the trial Court on 3.7.2015 on the ground that as the case of the revisionist has not yet been committed to the Court of Sessions, hence, the said discharge application was premature one. Hence, the present revision before this Court.

10. Learned counsel for the revisionist argued that the discharge application, which was filed by the revisionist in pursuance of the orders dated 19.9.2014 and 18.5.2015 extending time for a further period of one month, learned trial Court was under obligation to decide the same and had committed illegality and erred in rejecting the same on the ground that the case has yet not been committed to the Court of Sessions by the learned Magistrate, hence, it was premature one is illegal and should be set aside by this Court. In support of his argument he placed reliance on the judgment of the Apex Court in the case of Union of India (UOI) Vs. Prafulla Kumar Samal and Another, ; Keasl Krishnal v. Suraj Bhan, 1980 Suppl. SCC 499 ; Niranjana Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others, ; Dilawar Balu Kurane Vs. State of Maharashtra, ; State of Tamilnadu by Ins. of Police Vigilance and Anti Corruption Vs. N. Suresh Rajan and Others, and State of Madras v. A. Arun Kumar, 2015 (II) SCC 471.

11. Per contra, learned AGA, on the other hand, has strongly refuted the argument of the learned counsel for the revisionist and argued that the revisionist has time and again approached this Court and further misused the process of law and move the discharge application, which was not maintainable before the Sessions Court, as his case was not yet committed to the Court of Sessions which is evident from the order dated 8.4.2015 passed by the Chief Judicial Magistrate as well as the impugned order dated 3.7.2015 passed by the Sessions Judge. He submitted that the orders, which were passed by this Court on 19.9.2014, was identical to that of order passed in the case of two co-accused persons in Criminal Revision No. 1333 of 2009 namely Santosh Prasad Dwivedi v. State of U.P. and whose case was also not committed to the Court of Sessions and it appears that it was also not pointed out to this Court that the case of the said accused and of the revisionist had not yet been committed to the Court of Sessions, therefore the order for discharge was passed by this Court. He submitted that the impugned order passed by the Sessions Judge is justified and legal and revision is liable to be dismissed by the Court.

12. Considered the submissions advance by the learned counsel for the parties and perused the record.

13. It is an admitted fact that the case of the revisionist has not yet been committed by the Court of Sessions by the learned Magistrate till date as is apparent from the order dated 8.4.2015 passed by the Chief Judicial Magistrate, Ballia whose discharge application was rejected alongwith other accused persons namely Arvind Kumar Upadhyay, Mahesh Kumar for non prosecution. The said order of the learned Magistrate was challenged by the revisionist before this Court in Criminal Revision No. 1309 of 2015 which was dismissed by this Court with a observation that "after the revisionist surrenders to the process of Court below and the matter is committed to the Court of Sessions it would be open to the revisionist to move discharge application before the Court of Sessions which shall be considered in accordance with law at the appropriate stage". The revisionist did not comply with the said order of this Court and he filed a time extension application in application Under Section 482 Cr.P.C. No. 40348 of 2014, Suresh Kumar Sonkar v. State of U.P., which was disposed of by this Court on 19.9.2014, directing him to move a discharge application praying for a month's further time to file the same, which was allowed by this Court on 18.5.2015, on the time extension application of the revisionist. In pursuance of which, he filed discharge application before the trial Court in Sessions Trial No. 91 of 2015, State v. Santosh Dwivedi and other, the trial Court after perusing the record found that the case of the revisionist has not yet been committed to the Court of Sessions of the Magistrate and the said application being premature one has rejected the same and it was only the case of three co-accused namely, Vijay, Jagdish, Kripa Shankar, Santosh and Ravindra were already committed to the Sessions Court and separated the trial of the revisionist and other co-accused Arvind, Mahendra, Damodar and Uma Shanker. In my opinion, the order passed by the trial Court is fully justified and correct. Moreover, the argument of the learned counsel for the revisionist that the trial Court was bound to consider the discharge application of the applicant, which can be filed at any stage, is not tenable, in view of the provisions contained in Section 193 Cr.P.C. which reads as follows:

"Section 193 : Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Sessions shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code".

The case laws cited by the learned counsel for the revisionist of the Apex Court is distinguishable on the facts and circumstances of the present case, as in those cases the case of the accused have been committed to the Court of Sessions and therefore the accused claim discharge. Here the stage of 227 Cr.P.C. has not yet reached, hence the Sessions Court cannot take cognizance of any offence under Section 193 Cr.P.C.

14. It further transpires that the conduct of the revisionist in approaching this

Court time and again shows the misuse the process of law which has been adopted by him, is also painful and the Court desired to impose a heavy cost on him but taking into account his age which is stated to age about 70 years, the Court restrict itself from imposing cost on him and directs him to surrender before the Chief Judicial Magistrate, Ballia, within a period of three weeks from today and the learned Magistrate is further directed to commit his case to the Court of Sessions forthwith as soon as he surrenders.

15. Learned Magistrate is further directed to ensure the presence of all the co-accused persons in accordance with law as the case pertains to the year 1996 and twenty years have passed as they had not yet surrendered and their cases are also yet to be committed to the Court of Sessions. If the revisionist does not surrender before the Magistrate as directed above coercive action shall be taken against him by the Magistrate in accordance with law to ensure his presence.

16. Thus the impugned order passed by Court below does not suffer from any illegality, infirmity or jurisdictional error requiring any interference by this Court. The revision lacks merit and is liable to be dismissed.

17. The revision lacks merits and is accordingly dismissed. Copy of this order shall be sent to the District Judge, Ballia by the Registrar General of this Court for information and copy of the same to the trial Court and Chief Judicial Magistrate, Ballia.