
(2008) 04 AHC CK 0175

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 3878 of 2006

Surya Mani Bhartiya and others

APPELLANT

Vs

State of U.P.and another

RESPONDENT

Date of Decision : 06-04-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 323, 395, 504, 506

Citation : (2008) 04 AHC CK 0175

Hon'ble Judges : Amar Saran, J

Final Decision : Disposed Of

Judgement

Amar Saran, J.—Heard Shri Satish Trivedi, learned Senior Counsel for the applicants, Shri Lalji Pandey for the complainant and learned Additional Government Advocate representing the State.

2. By means of this application the applicants have prayed for quashing of an order dated 4.4.2006 passed by the learned Additional Chief Judicial Magistrate, Court No. 13, Allahabad in case No. 78 of 2006 (State v. Surya Mani Bhartiya and others) whereby the learned Magistrate after investigation conducted by the third investigating officer has preferred the investigation report of the earlier two investigating officers and issued nonbailable warrants for the appearance of the applicants.

3. In this connection, it may be noted that an application under section 156(3) of the Code of Criminal Procedure (herein after referred to as the Code) was filed by opposite party No. 2 on 2.9.2005. The Magistrate called for a report from the police station Meja, Allahabad, which was favourable to the accused. However, in spite of the said report the learned Magistrate passed an order dated 29.10.2005 directing the police to lodge an FIR. The applicants filed a Criminal Revision No. 4805 of 2005 before this Court and an order was passed on 10.11.2005 directing the police not to arrest the applicants till submission of a report under section 173(2) of the Code. On 12.11.2005 the case was registered against the

applicants at case crime No. C55 of 2005, under sections 323, 395, 504 and 506 IPC in which the chargesheet was submitted against the applicants on 17.12.2005 under sections 307, 323, 325, 504 and 506 IPC.

4. Thereafter, it appears that the second investigation was conducted on orders of the DIG, which after examining some additional witnesses reached the same conclusion and submitted the chargesheet dated 17.12.2005. However, it appears that on an application made by the accused the investigation was transferred to a third investigating officer by the Circle Officer, who submitted the third chargesheet dated 16.2.2006. This charge sheet excluded section 307 IPC and also exonerated the applicants Surya Mani Bhartiya and Chandra Bali. On an objection filed by the complainant/opposite party No. 2, the impugned order was passed by the learned Additional Chief Judicial Magistrate on 4.4.2006, which, as mentioned above, disagreed with the conclusion of the third investigating officer, took cognizance of all the offences as per the first and second chargesheets under sections 307, 323, 325, 504 and 506 IPC and included the names of the applicants Surya Mani Bhartiya and Chandra Bali, whose names had been excluded in the third chargesheet.

5. It was firstly argued by the learned Counsel for the applicants that there was no right of the opposite party No. 2 to file the aforesaid objection after hearing of which the impugned cognizance order dated 4.4.2006 was passed because according to the learned Counsel the objection or protest petition can only be filed when a final report is submitted, but in the present case the chargesheet had been submitted.

6. I am not in agreement with this contention of the learned Counsel for the applicants. In fact there is no provision in the Code of Criminal Procedure for filing a protest petition or objection, but it is only in the light of the basic principle and the right of the complainant/informant to be heard if he is aggrieved that the Apex Court in *Bhagivant Singh v. Commissioner of Police* 1985 (26) ACC 280 (SC) = AIR 1985 SC 1285 has conferred a right on the complainant/informant to file a protest petition or objection. Moreover, the contention of the learned Counsel for the applicants is not correct that no final report had been submitted because as pointed out above, the charge sheet clearly excluded the names of the applicants Surya Mani Bhartiya and Chandra Bali, who were first named in the application under section 156(3) of the Code and in the statements of the witnesses as recorded by the first and second investigating officers.

7. Thereafter, it was argued by the learned Counsel for the applicants that in some Division Bench decisions of this Court, it has been held that once extraneous materials in the form of affidavits etc. are considered by the Courts taking cognizance, then it must follow the procedure of a complaint case. He sought to draw an analogy from this Division Bench (which I presumed is the case of *Pakhandoo v. State of U.P.*, 2001 (43) ACC 1096 (SC) and argued that as in the present case the learned Magistrate has made a detailed analysis of the

third chargesheet, hence the learned Magistrate should be deemed to have considered extraneous materials and it was not open to him to pass the cognizance order.

8. This argument appears to be somewhat far fetched. There is no mention in the impugned order of any extraneous material, but only such material collected by the third investigating officer and has been filed along with the objection of opposite party No. 2 has been considered for passing the impugned order.

9. Adopting a wholly contrary contention to the aforesaid argument, learned Counsel for the applicants thereafter argued that the order passed by the learned Magistrate appeared to be an administrative order and not judicial order.

10. Again, I am not in agreement with this submission of the learned Counsel as a detailed order was passed by the learned Magistrate. He has specifically placed reliance on the decision of the Apex Court in *M/s. India Carrot Private Limited v. State of Karnataka*, 1989 (26) ACC 280 (SC) = AIR 1989 SC 885 *Cangadhar Janardan Mharte v. State of Maharashtra*, 2004 (23) AIC 612 (SC) = AIR 2004 SC 4753 *Bhagivant Singh v. Commissioner of Police* 1985 (22) ACC 246 (SC) = AIR 1985 SC 1285 and some other cases for the proposition that for taking cognizance, he is not bound by the conclusion of the investigating officer and if on the material on record, the complicity of other accused or other offences are disclosed, there is no fetter on the Court in taking cognizance also against the other accused or under additional sections.

11. In this light, the contention of the learned Counsel for the applicants that it was not apparent from the order as to how an offence under section 307 IPC was made out, the learned Magistrate ought to have given detailed reasons why an offence under section 307 IPC is disclosed.

12. I have pointed out above that learned Magistrate has preferred the conclusion of the first and second investigating officers, who have reached a conclusion that an offence under section 307 IPC was also disclosed.

13. I do not think, there is any requirement on a Magistrate when he takes cognizance of an offence on a police report to give detailed reasons as to how an offence is made out. It has specifically been stated in paragraphs 8 and 9 in the case of *Deputy Chief Controller Import and Export v. Roshan Lal Agrawal*, 2003 (46) ACC 686 and *U.P. Pollution Control Board v. Mohan Meakins*, (AIR 2000 SC 1456) and *Kanti Bhadra v. State of West Bengal*, AIR 2000 SC 522 = 2000 (40) ACC 441 (SC) (paragraph 12) that detailed reasons are not required in summoning order, but only when Magistrate disagrees with the conclusions of the investigating officer and declines to summon the accused, then better reasons may be furnished.

14. The allegations in the application under section 156(3) of the Code and in the statements of the witnesses who supported the application were that on 17.8.2005 during the course of Gram Panchayat election in which Prem Shanker

Mishra, a relation of the informant was a contestant for the post of Pradhan and the applicants herein were inimical to him as he was a supporter of Prem Shanker Mishra. On the day of election at about 3.00 P.M. when he was returning after casting his vote and when he reached near the Chamrauti Basti, which was to the south of his house, then Raj Mani armed with lathi, Surya Mani armed with country made pistol, Chandra Bali alias Ram Shringar armed with lathi and Mohan Lal, Shyam Narayan armed with lathies came out on the call of Surya Mani and all belaboured the informant with lathies and his head was broken and many bones of his hands and shoulders were fractured. On the informant's cry, his son Vinod Kumar arrived there and tried to save him. As soon as he reached near the informant, Surya Mani fired at him with an intention to kill him. However, the fire missed Vinod Kumar, but Vinod Kumar fell down on a stone as a result of the shock of the incident and he received injuries on his chest and head. Thereafter the witnesses also arrived at the spot. There were also other allegations of removal of informant's wrist watch and golden chain etc.

15. From these allegations as it is not a necessarily condition for the application of section 307 IPC that the fire must strike the victim, even if the fire is made with the intention of killing a person, even when it does not strike him, it cannot be said that no prima facie case under section 307 IPC is disclosed. Whether eventually the case under section 307 IPC or other sections would be established, is a matter to be considered by the Trial Court and cannot be gone into at the threshold in an application under section 482 of the Code and an order summoning the accused passed by the Magistrate under the aforesaid sections cannot be set aside simply for the reasons that the injured Satya Dev Mishra and Vinod Kumar have not received firearm injuries.

The medical examination report of the informant Satya Dev Mishra, who was medically examined by the Medical Officer, MLN Hospital, Allahabad at 6.00 P.M. on 7.8.2005 shows that he has received a lacerated wound on the occipital process which is 3 cm x 1.5 cm x bone deep and 7 cm above left ear. Xray of the skull was advised. There were a contusion and swelling on the left scapular region which is 14 cm x 3 cm for which xray was advised. There were also contusion and swelling on the left forearm which is 10 cm x 4 cm area and 4 cm above wrist for which Xray was advised. Complain of pain on the right shoulder and the injuries were fresh.

16. The report prepared by the Radiologist, MLN Hospital, Allahabad showed that no radiological bony abnormality is seen in the skull. Fracture of neck of scapula bone was seen on the left shoulder and fracture of distal shaft of both radius and ulna bone was seen on the left hand and forearm.

17. There was a further observation in the order of the "learned Magistrate dated 4.4.2006 that the third investigating officer did not even examine the witnesses on the basis of whose testimony the case under section 307 IPC was disclosed and even the complicity of the applicant Surya Mani Bhartiya and Chandra Ball apart from the other accused was included and it was in an improper manner

that section 307 IPC had been scored out from the chargesheet of the first investigating officer and against the accused Surya Mani and Raj Mani the word "Galat" had been written. The third investigating officer did not even care to append his signature on the interpolation and he has not cancelled the first chargesheet.

18. Learned Additional Government Advocate has also rightly pointed out that the order passed by the Circle Officer at the instance of the accused for an investigation by another investigating officer was in the teeth of the decision of the Apex Court in CBI v. Rajesh Gandhi, (AIR 1997 SC 73) which lays down that normally the accused has no locus standi in the matter of getting the investigation changed.

For all these reasons, there is absolutely no merit in this application. The application is rejected.

The interim order is vacated.

19. However, for a period of three weeks, the execution of nonbailable warrants issued against the applicants shall not be given effect to in order to enable to applicants to appear before the Court concerned and seek bail. In case of failure to appear before the Court concerned in the time allowed the relief granted by this order shall stand withdrawn.

20. As the case has remained unnecessarily held up due to the pendency of this application before this Court, the Trial Court is now directed to dispose of the trial expeditiously and to conclude it within six months if possible.

The observations made above were only for the purpose of disposal of this application and the learned Courts below shall decide the trial uninfluenced by the aforesaid observations.