

(2014) 11 AHC CK 0134

In the Allahabad High Court

Case No : Criminal Misc. Application No. 47207 of 2014

Veeru and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(2), 173(8), 460(e), 482
Penal Code, 1860 (IPC) — Section 323, 427, 504
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(X)

Citation : (2015) 1 ACR 542 : (2015) 1 ADJ 788 : (2015) 88 ALLCC 901

Hon'ble Judges : Akhtar Husain Khan, J

Bench : Single Bench

Advocate : Rajeev Sisodia and Shashank Kumar, Advocates for the Appellant

Judgement

Akhtar Husain Khan, J.—Heard learned counsel for the applicants as well as learned A.G.A. for State of U.P. and perused application moved under Section 482 Cr.P.C.

By filing this application under Section 482 Cr.P.C. applicants have prayed to quash charge-sheet No. 107 of 2014 dated 14.5.2014 in Case No. 488 of 2014 dated 14.5.2014 arising out of Crime No. 32 of 2014 (State v. Veeru and others), under Sections 427, 323, 504 I.P.C. and 3(1)(X) of S.C./S.T. Act, Police Station Hasanpur, District Amroha.

Learned counsel for applicants contended that original charge-sheet was submitted in N.C.R. No. 310 of 2013, Police Station Hasanpur, District Amroha against applicants under Sections 427, 323, 504 I.P.C. upon which Magistrate concerned took cognizance. But later on said N.C.R. was converted into Crime No. 32 of 2014, under Sections 427, 323, 504 I.P.C. and 3(1)(X) of S.C./S.T. Act and further investigation was made by police. Thereafter charge-sheet was submitted against applicants in Crime No. 32 of 2014, under Sections 427, 323, 504 I.P.C. and 3(1)(X) of S.C./S.T. Act whereupon another magistrate took

cognizance and summoned applicants.

2. Learned counsel for applicants contended that further investigation was made without order of Magistrate or Court. Therefore further investigation is again law and is without jurisdiction. Therefore, cognizance taken charge-sheet submitted after further investigation is illegal.

3. Learned counsel for applicants further contended that submission of fresh charge-sheet after further investigation and cognizance taken thereon by another magistrate is against law.

4. I have considered the submissions made by learned counsel for applicants.

Section 173(8) Cr.P.C. says that nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

In view of above provision of Section 173(8) of Cr.P.C. it is apparent that no permission of Magistrate or Trial Court is required for further investigation under Section 173(8) of Cr.P.C.

5. In the case of *Zahira Habibulla H. Sheikh and Another Vs. State of Gujarat and Others*, , Honourable Apex Court has held that Section 173(8) Cr.P.C. permits further investigation and even dehors any direction from the Court as it is open to the police to conduct proper investigation even after the Court has taken cognizance on the strength of the police report submitted earlier.

6. In view of discussion made above it is apparent that further investigation made without order of Magistrate or Court even after cognizance of Magistrate or Court is not illegal and without jurisdiction.

7. After submission of police report under Section 173(2) Cr.P.C. and cognizance of magistrate thereon only further investigation may be made under Section 173(8) Cr.P.C. Therefore conversion of non-cognizable report into cognizable report during further investigation may not change the nature of investigation.

8. Perusal of Section 173(8) Cr.P.C. shows that after further investigation under this section report submitted by police shall be further report or supplementary report. Therefore it shall be submitted before same Court in which case initiated on original police report is pending. Therefore submission of supplementary report to other Magistrate and cognizance taken by other Magistrate is not proper. But in view of provisions of Section 460(e) of Cr.P.C. the irregularity committed by second Magistrate in taking cognizance on supplementary charge-sheet may not vitiate proceeding of the case. Therefore in view of above facts

proper course to be followed is that both cases initiated on original charge-sheet and supplementary charge-sheet should be consolidated together. Therefore Chief Judicial Magistrate, Amorha is directed to pass order accordingly.

9. At this stage, learned counsel for applicants prayed that accused applicants have been granted bail in N.C.R. No. 310 of 2013, under Sections 323, 504, 427 I.P.C. Therefore Magistrate should be directed to permit the applicants to remain on same bail or to dispose of bail application of applicants expeditiously in accordance with law in view of principles laid down by Seven Judges Bench of this Court in the case of Amrawati and another v. State of U.P., 2004 (57) ALR 290, as well as by Hon''ble Apex Court in the case of Lal Kamendra Pratap Singh v. State of U.P., 2009 (3) ADJ 322 (SC). In view of submission made by learned counsel for applicants I am of the view that a direction for disposal of bail application in the light of principles laid down by this Court in the case of Amrawati and another v. State of U.P., 2004 (57) ALR 290, as well as by Hon''ble Apex Court in the case of Lal Kamendra Pratap Singh v. State of U.P., 2009 (3) ADJ 322 (SC), should be given to Magistrate and applicants should be given an opportunity to move bail application in amended sections in accordance with law. Therefore Magistrate concerned is directed accordingly.

With above directions application moved under Section 482 Cr.P.C. is finally disposed off.