
(2011) 04 AHC CK 0215

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 1771 of 2011

Vinod Kumar Tiwari

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 21-04-2011

Acts Referred:

Citation : (2011) 8 RCR(Criminal) 1029

Hon'ble Judges : Shri Narayan Shukla, J

Final Decision : Allowed

Judgement

Shri Narayan Shukla,J.

Heard Mr.N.K.Pandey, learned Counsel for the petitioner as well as Mr.Rajendra Kumar Dwivedi, learned Additional Government Advocate for the State.

The petitioner has challenged the order dated 23rd of March, 2011, passed by the Additional Chief Judicial MagistrateII, Lucknow in Misc. Case No.1 of 2011, arising out of Case Crime No.249 of 2010, under Sections 498A, 306 IPC and ? D.P.Act, Police Station Husainganj, district Lucknow, on the ground that on the protest application the learned Magistrate has proceeded to pass an order for reinvestigation without making any observations on the material available there for.

It is stated that once the final report was submitted, as no offence to have been committed by the petitioner was found, on the event of moving the application of protest the learned Magistrate was obliged to discuss the material available therein and only being satisfied with the material placed before him, he should have passed the order for reinvestigation. Though he also challenged that reinvestigation as not permissible, but so far as the question of reinvestigation is concerned, I am of the view that it is well permissible, but with the permission of the court, as has been held by the Hon"ble Supreme Court in the case of Babubhai versus State of Gujarat and others, reported in (2010) 12 SCC 254. In support of his submission that the learned Magistrate should have passed the

order for reinvestigation by forming the opinion that there is a reasonable ground, he cited a case of Hon"ble Supreme Court rendered in the case of State Through CBI versus Raj Kumar Jain, reported in (1998) 6 SCC 551. The relevant paragraph 6 of the same is reproduced hereunder:

"6.As regards the direction for further investigation, it is, of course, true that the Special Judge has poser to so direct if he finds, on consideration of the police report, that the opinion formed by the Investigating Officer seeking discharge of the respondent is not based on full and complete investigation, as observed by this court in Abhinandan Jha v. Dinesh Mishra, reported in AIR 1968 SC 117. Unfortunately, however, in issuing the above direction, the Special Judge has not given any reason whatsoever which promoted him to direct further investigation nor does it appear that he has gone through the police report and its accompaniments."

He also cited some other cases, but there is no need to discuss all of them herein.

After going through the order impugned, I do not find any discussion on the material available in the protest application for reinvestigation, therefore, I am of the view that the order impugned is without application of mind and the same is hereby quashed with liberty to the learned Magistrate to pass a fresh and reasoned order.

In the aforesaid terms the petition is allowed.