
(2010) 07 AHC CK 0275
In the Allahabad High Court
Case No : Criminal Revision No. 2721 of 2010

Vishal Singh and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 21-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190(1)(a), 190(1)(b)

Citation : (2011) 8 RCR(Criminal) 2867

Hon'ble Judges : A.K.Roopanwal, J

Final Decision : Allowed

Judgement

Ashok Kumar Roopanwal, J.

This revision has been filed against the order dated 19.5.10 passed by the Additional Chief Judicial Magistrate, Mathura in case no.1147/IX/2010 whereby the concerned court rejected the final report submitted by the police, accepted the protest petition and summoned the revisionists in exercise of the powers conferred upon it under Section 190 (1) (b), Cr. P.C.

It appears from the record that an FIR was lodged by O.P. No.2 against the revisionists and one other on 21.3.10 at P.S. Baldeo, District Mathura. This FIR was investigated upon and after investigation final report was submitted by the police. The complainant was issued notice against the final report whereupon he filed a protest petition. He was heard. During hearing it came to light that the I.O. did not record the statements of the complainant and his witnesses and solely relied upon the affidavits filed on behalf of the accused persons and submitted the final report. In such view of the facts, the trial court rejected the final report and passed the impugned order.

Heard Mr. Kamal Krishna, learned senior counsel assisted by Mr. D.K. Srivastava, learned counsel for the revisionists, learned AGA and perused the record.

It has been argued by Mr. Krishna that the statements of the complainant and witnesses were recorded by the I.O. under Section 161, Cr. P.C. and because

these statements did not support the prosecution version, as set up in the FIR, hence, there was every justification for the I.O. to conclude the matter by submitting the final report.

A look at the statements filed along with this revision would reveal that none of the witnesses including the complainant had supported that version which was disclosed in the FIR. It is strange that even the complainant did not support the prosecution version. This is nothing but a twist given to the story by the I.O. In such view of the matter, the proper course would have been to analyse the facts by the courts himself and for that the cognizance should have been taken under Section 190(1)(a), Cr. P.C. and not under Section 190(1)(b), Cr. P.C. The cognizance under Section 190(1)(b), Cr. P.C. could have been taken if there was some material in the case diary and because no such material was available in the case diary, hence, the cognizance under Section 190(1)(b), Cr. P.C. could not be said to be proper one. However, considering that the investigation was suspicious, the court should have proceeded for taking cognizance under Section 190(1)(a), Cr. P.C.

Accordingly, revision is allowed. Order dated 19.5.10 is, hereby, set aside. However, it shall remain open to the court concerned to take cognizance under Section 190(1)(a), Cr. P.C., if deemed proper by it.