
(2004) 09 AHC CK 0269

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 5580 of 1990

Vishnu Dutt and Another

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 01-09-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 340, 341, 401, 482
Penal Code, 1860 (IPC) — Section 205

Citation : (2005) 1 ACR 285

Hon'ble Judges : Amar Saran, J

Bench : Single Bench

Advocate : M.D. Mishra, for the Appellant; Rajeev Chaddha, A.G.A., for the Respondent

Judgement

Amar Saran, J.—Heard Sri M.D. Mishra, learned Counsel for the applicants, Sri Rajeev Chaddha, learned Counsel for the opposite party No. 2 and the learned A.G.A. appearing for the State.

2. This application u/s 482, Cr. P.C. read with Section 401, Cr. P.C. has been filed for quashing an order passed by the IVth Additional Sessions Judge, Gorakhpur, dated 3.10.1989, whereby the learned Judge has allowed the Criminal Appeal No. 18 of 1988 u/s 341, Cr. P.C. and set aside the order passed by the Judicial Magistrate IInd, Gorakhpur in Criminal Case No. 23 of 1988 dated 23.2.1988, refusing to proceed u/s 340, Cr. P.C. against the applicants. By the impugned judgment, the appellate court has directed the trial court to proceed in the matter against the applicants u/s 340, Cr. P.C.

3. By the order dated 23.2.1988, the learned Judicial Magistrate, IInd, Gorakhpur, had refused to direct filing of a complaint against the applicants when an application was moved by the opposite party No. 2 before him. In this application, it was alleged that the applicants Vishnu Dutt and Santosh Kumar were absent on 21.8.1986, but they set up some other persons, who got themselves bailed out in the case and hence a case of false impersonation be

lodged against the applicants. The applicants denied this allegation and stated that they were the actual persons, who got themselves bailed out and none appeared on their behalf. The complainant-opposite party No. 2 examined himself and one R. K. Jaiswal, hand writing expert in his support of their case. The applicants examined themselves, the surety Shankar Prasad and hand writing expert Radha Krishna Sahai, who supported their case.

4. The learned Magistrate IInd, Gorakhpur, refused to proceed with the complaint u/s 340, Cr. P.C. holding that the complainant Dogarmal could not substantiate the allegation that applicant Vishnu Dutt had gone out of station 3 or 4 days earlier in connection with some business. The complainant even admitted that he was not present in Court on that date, hence no reliance could be placed on his testimony in this regard. He also observed that the opposite party No. 2 Dogarmal was inimically disposed towards the applicants, as there was a landlord tenant dispute pending between them. So far as the hand writing experts, who have been produced from both the sides, their testimony was inconsistent, as the hand writing expert produced by Dogarmal supported him and the applicants' hand writing expert supported them. In such cases, a handwriting expert's evidence is considered a weak piece of evidence, because generally they support the party calling them, hence there was no corroboration of the allegation that the applicants had absented themselves on the date and someone appeared on their behalf and the learned Judicial Magistrate, accordingly, dismissed the application. The appellate court, however, allowed the appeal on 3.10.1989, holding that the paper (Ext. 2 Kha-3), which was an application, in which earlier Vishnu Kumar was written and thereafter, Kumar was cut out and Dutt written in its place, and no person would make such a mistake about his own name. According to the Court on perusal by the Court, the admitted hand writing of the applicant Vishnu Dutt taken in Court, did not tally with those on the vakalatnama and application, which was submitted on 21.8.1986, as in the admitted signatures Dattya, had been written. There may be some weight in this finding of the appellate court. However, when people are illiterate or semi illiterate, they may sign their names differently sometimes described themselves as Sharma or Verma or Kumar. Be that as it may, the order dated 3.10.1989, was stayed by this Court on 17.5.1990, no useful purpose now would be served after more than 14 years in allowing this prosecution to take place in the uncertain state of evidence, because the Magistrate had given good reasons for not acting only on the hand writing evidence without there being any proper corroboration from any reliable independent evidence. In view of this great delay, even though the possibility of some persons having impersonated themselves as others before the Court, I do not think any useful purpose would be served in allowing proceedings to continue against the applicants. Furthermore, the case for which, the applicants could have been tried, would have been an offence u/s 205, I.P.C. only. For constituting this offence, the principal accused would be the person, who impersonated another and became the bail or surety. That person is nowhere in the picture, as he has not been named, or identified in this case. Now

when there is no possibility of prosecuting the main accused under the substantive sentence of 205, I.P.C., no purpose would be served in permitting the prosecution of the alleged abettor of that unknown impersonator.

5. In this view of the matter, the order dated 3.10.1989, passed by the IVth Additional Sessions Judge is quashed and the order passed by the Judicial Magistrate, IInd, Gorakhpur, dated 23.2.1988 consigning the case to the records is affirmed.

6. The application is allowed as above.