
(2011) 11 AHC CK 0077

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 12300 of 2006

Vishwanath Upadhyay and others

APPELLANT

Vs

State of U.P. and another

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155, 157(1), 460, 461
Penal Code, 1860 (IPC) — Section 160, 307, 323, 324, 326

Citation : (2011) 11 AHC CK 0077

Hon'ble Judges : Naheed Ara Moonis, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Naheed Ara Moonis, J.—This petition was connected by order dated 16.10.2006 alongwith the Criminal Misc. Application No. 8782 of 2005. The instant 482, Cr.P.C. petition has been filed by the applicants with a prayer for quashing the order dated 15.9.2006, passed by the learned Additional Sessions Judge/Fast Track Court No. 5, Deoria in Session Trial No. 113 of 2004, State v. Vishwanath and others, under Sections 307, 323, 324 and 504, I.P.C., P.S. Maiel, district Deoria, whereby the application of the applicants dated 10.8.2005 was rejected.

2. The factual matrix of the instant case is that a first information report was registered by the opposite party No. 2, Satyadeo Upadhyaya that some altercation took place between Vishwanath Upadhyaya and brothers of the applicants on issue of some partition. The applicant No. 1 armed with knife and, Amit Upadhyaya and his son armed with spear and two others Radheyshyam and Rakesh had attacked upon him on account of which he had sustained serious injuries. After investigation the first information report culminated into charge-sheet, which was submitted by H.C.P. Ramdhair Singh on 22.6.2002. The applicants moved an application that the Investigating Officer was not authorised to investigate the case who had submitted the charge-sheet, whereby the cognizance has been taken against the applicants.

3. Heard Shri S.S. Tripathi, the Learned Counsel for the applicants, Shri J.P. Pandey, the Learned Counsel appearing on behalf of the opposite party No. 2 and the learned A.G.A. appearing on behalf of State and perused the record.

4. It is contended by the Learned Counsel for the applicants that the investigation into the offence has been done by a person who was not authorised to investigate the case, therefore, the entire proceeding is vitiated under the law and the court below has completely overlooked this aspect of the case, which is unsustainable in the eye of law. The trial court has illegally rejected the application of the applicant.

5. The contention of the Learned Counsel for the applicants is based on a notification dated 15.9.1997 and the Government order dated 18.9.1997, wherein it is mentioned that a head constable is authorised to conduct the investigation only in respect of the offence fallen under Sections 160, 323, 324, 504 and 506, I.P.C. by exercising its power u/s 157 (1), Cr.P.C., therefore, the investigation by the Investigating Officer and submission of charge-sheet is absolutely illegal and without jurisdiction.

6. Per contra, the Learned Counsel appearing on behalf of opposite party No. 2 has contended that the court below has rightly held that the trial cannot be vitiated merely on account of procedural lapse. Any omission or illegality in the procedure does not affect the core of the cases, therefore, there is no ground for quashing of the trial. The trial is now proceeding and the evidence of P.W. 1 had already been recorded and on a very belated stage an application was moved by the applicants that the investigation was done by a person who was not authorised to investigate the case. In these circumstances the present petition is absolutely misconceived and is liable to be dismissed. The Investigating Officer on the basis of injuries sustained by complainant found prima facie offence u/s 307, I.P.C. The notification in question is not relevant in the present set of facts and circumstances of the case. The said notification relates to the Head Constable and not for the Sub Inspector. The investigation and the charge-sheet submitted by the Investigating Officer while working in the capacity of the Sub Inspector of Police and on the basis of charge-sheet submitted the case was rightly committed to the Court of Session. The proceeding is pending on account of the interim order passed by this Court on 5.9.2007. There is neither any illegality nor irregularity in taking cognizance by the court below and as such the present 482 petition is bereft of any merit and is liable to be dismissed.

7. The Learned Counsel for the opposite party No. 2 has relied upon the decision of Apex Court in *State of M.P. v. Bhooraji and others*, XLIII 2001 ACC 696 : 2001 (3) ACR 2239 (SC), and the decision of this Court in *Dharam Pal and others v. State of U.P. and another*, 2006 (2) JIC 357 (All) : 2006 (1) ACR 878, wherein it has been laid down that where the defect or illegality in investigation however serious has no direct bearing on the competence or procedure relating to the cognizance or trial and has further held that the expression "a court of competent jurisdiction" envisaged in Section 465 is to denote the validly

constituted court conferred under jurisdiction to try the offence or offences.

8. The learned A.G.A. has also contended that after investigation Sections 326 and 307, I.P.C. was added on the basis of evidence collected and medical report of the injured and the charge-sheet was submitted by Gopal Mishra.

9. I have considered the submissions made by the Learned Counsels for the parties and have gone through the record.

10. The only question raised by the Learned Counsel for the applicants is that investigation was conducted by the Head Constable who is not authorised to investigate the case, and on account of procedural defect the entire proceeding is liable to be quashed.

11. In my opinion the investigation was conducted by the police who is said to be the Head Constable will not vitiate the entire trial. On the basis of submission of charge-sheet after investigation the entire proceedings cannot be quashed merely because there was any illegality or irregularity in the investigation. In the case of AIR 1944 73 (Privy Council) , it is held that if cognizance in fact taken on a police report initiated by the breach of mandatory provision relating to an investigation there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about the miscarriage of justice and that illegality committed in the course of investigation does not affect the competence and the jurisdiction of a court for trial. This being the legal position even though there was an error or irregularity in the submission of charge-sheet, whereby the cognizance was taken by the learned Chief Judicial Magistrate can be set aside, nor further proceedings can be quashed. The alleged irregularity of the police officer in not being empowered to investigate the case is not one of the irregularities mentioned in Section 461, Cr.P.C., which vitiates the proceedings. In Section 460 (b), Cr.P.C. it is provided that if any Magistrate not empowered by law by orders, u/s 155, Cr.P.C. the police to investigate an offence, then the irregularity does not vitiate the proceedings. The applicants have failed to show any miscarriage of justice or the applicants had been prejudiced in any manner by the police in investigating the offence without obtaining prior information of the Magistrate.

12. In view of the decisions of the Apex Court as well as of this Court and in the backdrop of the present facts and circumstances, a defect or illegality in discussion however serious, has no direct bearing on the competence or procedure relating to cognizance or trial. Therefore, there is no illegality in the order passed by the court below and as such the present petition has no force and is accordingly dismissed. The interim order passed by this Court is hereby vacated.

13. The trial court is directed to procure the attendance of the witnesses and conclude the trial as expeditiously as possible, if possible within six months from the date of the certified copy of this order. With the above direction this petition is accordingly dismissed.