
(2013) 01 AHC CK 0477
In the Allahabad High Court
Case No : Criminal M.A. No. 3545 of 2000

Wahab Khan

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Citation : (2013) 2 ACR 2275 : (2013) 82 ALLCC 88

Hon'ble Judges : Ramesh Sinha, J

Bench : Single Bench

Advocate : A.P. Tewari and S.S. Tripathi, for the Appellant;

Final Decision : Dismissed

Judgement

Ramesh Sinha, J.—Heard Sri A.P. Tewari, learned counsel for the applicant and learned A.G.A. for the State. By means of present 482, Cr.P.C. application, the applicant has prayed for quashing of the charge-sheet dated 20.6.1998 and submitted against the applicant u/s 120B, I.P.C. in Criminal Case No. 400 of 1998, State v. Ramdeo and another, arising out of Case Crime No. 96 of 1998 u/s 120B, I.P.C., police station Khorabar, District Gorakhpur as well as the proceedings in pursuance of the aforesaid charge-sheet and the orders dated 9.2.2000 and 6.5.2000 passed by the lower revisional court.

2. Brief facts of the case is that one Devendra Singh, who was the then M.L.C. from district Gorakhpur was assaulted by some unknown miscreants on 20th February, 1998 at about 10:00 a.m. and when the attack was made on him, his shadow died in the incident while saving him. Two of the accused persons were shot dead on the spot by the police and another accused Ramdeo, who was injured in the incident was taken into custody and later on he also died. The two accused Indrajeet and Ram Kishun managed to escape.

3. An F.I.R. of the incident was lodged by police constable Deena Nath Yadav as Case Crime No. 96 of 1998 under Sections 307, 302, 394, I.P.C., police station Khorabar, District Gorakhpur against two persons, namely, Indrajeet and Ram

Kishun, who were later on shot dead in a police encounter. Thereafter, the investigation was carried out and during investigation it has come that the applicant conspired for the killing of Devendra Singh alongwith one Ramdeo against whom charge-sheet was submitted by the Investigating Officer in the Court of C.J.M., Gorakhpur on 20.6.1998. The learned Magistrate took cognizance of the offence on 22.6.1998. Against accused Ramdeo, who was dead, a charge-sheet was submitted under Sections 302, 307, 427, 353, 394, 120B, 412, I.P.C. Section 3 /5 Explosive Substance Act and 7 Criminal Law Amendment Act. The applicant was charge-sheeted only for offence u/s 120B, I.P.C. for hatching conspiracy to kill Devendra Singh, a copy of the charge-sheet has been annexed as Annexure-8 at Page 35 of the affidavit filed in support of the present application.

4. It has been submitted by the learned counsel for the applicant that the applicant is a Press Reporter of a newspaper, i.e. Hindustan Times and also Bureau Chief of Weekly Rochak Prasang. The applicant is a reputed person. He was publishing news items against the police and due to this reason, he has been falsely implicated in the present case. He further submits that being aggrieved by the impugned charge-sheet dated 20.6.1998 and the order passed by the Magistrate on 22.6.1998, the applicant approached this Court by filing Criminal Misc. 482, Cr.P.C. Application No. 2032 of 1999 for quashing of the impugned charge-sheet dated 20.6.1998. This Court vide order dated 18.6.1999 has directed the learned Magistrate to decide the objection/discharge application of the applicant considering the provisions of Section 209, Cr.P.C. as it was submitted that the Magistrate without recording any reason committed the case to the Court of Session, a copy of the same has been annexed as Annexure-9 to the affidavit. It is further submitted by the learned counsel for the applicant that the learned Magistrate while passing the impugned order dated 9.2.2000 has observed that there is no evidence collected during investigation by the Investigating Officer against the applicant for hatching conspiracy for the murder of Devendra Singh for which a charge-sheet has been submitted against the applicant for an offence u/s 120B, I.P.C. It was then urged that the learned Magistrate did not comply with the order passed by this Court on 18.6.1999 and has observed that as the offence in question is under Sections 302, 307, 427, 353, 394, 120B, 412, I.P.C. Section 3 /5 Explosive Substance Act and 7 Criminal Law Amendment Act, he has no jurisdiction to discharge the applicant as the offence in question is exclusively triable by Court of Session. Learned counsel for the applicant further submits that without there being any substantive offence for which a charge-sheet is required to be submitted against the applicant, he cannot be prosecuted for an offence u/s 120B, I.P.C. only, hence the order of the learned Magistrate dated 9.2.2000 as well as the order dated 6.5.2000 of the lower revisional court confirming the order of Magistrate are bad in the eyes of law. He has further submitted that the Investigating Officer in over zeal submitted the charge-sheet against Ram Deo, who died in police custody during investigation.

5. Learned A.G.A. in reply to the aforesaid submission submitted that the Courts below has rightly passed the impugned order rejecting his objection for the discharge of the offence.

Considered the submissions advanced by learned counsel for the parties. Perused the Impugned charge-sheet and the order passed by this Court as well as the order passed by the Court below. It is apparent that the charge-sheet has been submitted against the applicant u/s 120B, I.P.C. for committing the aforesaid offence. It appears from the record that an attack was made on the life of M.L.C. Devendra Singh in which his shadow was killed while saving him and two accused were shot dead by the police and the two accused were later on killed in a police encounter. The Investigating Officer had submitted a charge-sheet against one Ram Deo (dead) u/s 302, 307, 427, 353, 394, 120B, 412, I.P.C. and Section 7 of the Criminal Law Amendment Act and for the offence u/s 3 /5 of the Explosive Substance Act and against the applicant u/s 120B, I.P.C. for conspiring the murder of Devendra Singh.

6. Section 209, Cr.P.C reads as under:

When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall--

(a) commit, after complying with the provisions of Section 207 or Section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session.

7. From a perusal of the order dated 9.2.2000 passed by A.C.J.M.-V, Gorakhpur and the order dated 6th May, 2000 passed by the Session Judge, lower revisional court, it is evident that the contention raised by the learned counsel for the applicant does not find force as the lower revisional court has lightly held that the learned Magistrate has rightly rejected the discharge application of the applicant as the offence in question is exclusively triable by Session Judge. If by error, wrong Section of the Penal Code is quoted, he may look into that aspect. If made up facts unsupported by any material evidence are reported by the police and an offence exclusively triable by the Court of Session is made to appear, it is within the Jurisdiction of Session Court to discharge the accused u/s 227, Cr.P.C. The lower revisional court has relied upon a Judgment of the Apex Court in the case of Raj Kishore Prasad Vs. State of Bihar and another, , wherein while dealing

with the power of the Magistrate u/s 209, Cr.P.C., the Apex Court relying upon several judgments pronounced by it on the issue has observed that in the sphere of the limited functioning of the Magistrate no application of mind is required in order to determine an issue raised or to adjudge any one guilty or not, or otherwise to pronounce upon the truthfulness or any version. The role of the Magistrate is only to see that the package sent to the Court of Session is in order so that it can proceed straightway with the trial and that nothing is lacking in content as per requirement of Section 207 and 208 of the Cr.P.C. Such proceedings thus do not fall squarely within the ambit of Inquiry as defined in Section 2(g) of the Cr.P.C. It is apparent that in view of the observation of the Hon"ble Apex Court, the directions Issued by the High Court in the 482, Cr.P.C. application for consideration of the points raised by, the applicant stands complied with and when on the case diary there is material against the applicant for the offence u/s 120B, I.P.C., the argument that the Magistrate should have considered the sufficiency or Insufficiency of that evidence available against him or that the allegation for offence u/s 120B, I.P.C. were not made in the F.I.R. and it came late at the case diary, have no force particularly when the Magistrate has rightly observed that the power of discharge was with the Session Court and not with the Magistrate's Court when the evidence made out the case exclusively triable by the Sessions Court.

8. In view of the above, I am of the opinion that the lower revisional court has rightly upheld the order of the Magistrate rejecting the discharge application of the applicant to be without jurisdiction holding that he had no jurisdiction to adjudicate the same. The order passed by the courts below does not suffer from any illegality, infirmity which call for any interference by this Court in its inherent power u/s 482, Cr.P.C.

9. The application lacks merit is accordingly dismissed. The interim order, if any, stands vacated.