
(2009) 04 AHC CK 0005

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No"s. 4400 of 2009, 36005 of 2008

Yogendra Singh Jha alias Yogi and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 151, 200, 202
Penal Code, 1860 (IPC) — Section 147, 323, 324, 395, 406

Citation : (2009) 2 ACR 1773

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Advocate : S.A. Imam and R.K. Rai, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Vinod Prasad, J.—Half a dozen applicants, namely, Yogendra Singh Jha alias Yogi, Govinda Jha, Deepak Jha, Raj Kumar Jha, Rajesh Thakur and Bhushan Jha have challenged their summoning order dated 26.11.2005 (Annexure-8 to the affidavit) passed by Judicial Magistrate, Gautam Budha Nagar in Complaint Case No. 5738 of 2005 (Faikan Chaudhary v. Yogendra Singh Jha and Ors. Complaint Case No. 5738 of 2005), under Sections 406, 147, 324, 504 and 506, I.P.C., Police Station Sector 20, N.O.I.D.A., District Gautam Budha Nagar.

2. The pleadings made in this application indicate that Respondent No. 2, Faikan Chaudhari instituted prosecution of Complaint Case No. 5738 of 2005, Faikan Chaudhry v. Yogendra Singh Jha and Ors. Complaint Case No. 5738 of 2005, in the Court of Chief Judicial Magistrate, Gautam Budha Nagar on 5.4.2005 with the allegations that he had given Rs. 5,000 to Yogendra Singh alias Yogi, the first applicant, for erecting a thatch. After some time when he demanded his money back then Yogendra Singh Jha alias Yogi started making excuses. On 23.3.2005 at 10.30 p.m. Respondent complainant Faikan Chaudhry went to the house of Yogendra Singh Jha alias Yogi, applicant No. 1 and repeated his demand to repay

Rs. 5,000 on which Govinda Jha, Deepak Jha, Raj Kumar Jha, Rajesh Thakur and Bhushan Jha, at the instigation of Yogi, assaulted Respondent complainant with sharp edged weapons already carried by them due to which Respondent complainant sustained lacerated wound on the head. Assault was witnessed by Kamla Kant Mishra, Ravindra and many other co-villagers, who intervened and saved the life of the complainant Respondent. When the victim was being transported to the hospital he was also abused filthily by the accused persons, who also threatened him to be murdered.

3. Endeavour by Respondent complainant to get a F.I.R. registered did not yield desirable result, as the F.I.R. only for non-cognizable offences under Sections 323 and 504, I.P.C. was registered by the police under the influence of accused persons. Wife of Respondent complainant had also approached the police officers in vain to get the F.I.R. of serious offences registered. Since complainant Respondent was assaulted and threatened and the money advanced by him was not repaid that he invoked the power of the Magistrate and lodged a complaint on 5.4.2005 (Annexure-5).

4. The medical examination report of Faikan Chaudhry, Annexure-6, indicates that he had sustained as many as seven injuries, which were caused by hard blunt objects.

5. The complaint of the complainant was registered as Criminal Case No. 5738 of 2005. In support of his case complainant examined himself u/s 200, Cr. P.C., and Ravindra son of Sone Lal and Kamal Kant Mishra, as his witnesses u/s 202, Cr. P.C. The statements of the witnesses have been appended cumulatively as Annexure-7 to this application. Vide Annexure-8, an order dated 26.11.2005, Judicial Magistrate, Gautam Budh Nagar summoned the accused applicants for offences under Sections 406, 147, 324, 504 and 506, I.P.C. fixing 24.12.2005 for their appearances. Hence, this application by the applicants to quash the summoning order Annexure-8.

6. When this application came up for admission learned Counsel for the applicants argued that a cross version instituted by the applicants against Respondent No. 2 and Ors. accused persons has been stayed by this Court in Criminal Miscellaneous Application No. 36005 of 2008 and hence, this application was directed to come up alongwith the aforesaid criminal miscellaneous application. The matter was listed before the Court on two or three dates but the counsel in connected Criminal Miscellaneous Application No. 36005 of 2008 did not appear inspite of intimation being given by learned Counsel for the applicant.

7. I have gone through the record of both the above criminal miscellaneous applications and have heard Sri S. A. Imam, learned Counsel for the applicants in the present Criminal Miscellaneous Application No. 4400 of 2009.

8. A perusal of the record of connected Criminal Miscellaneous Application No. 36005 of 2008 indicates that the said criminal miscellaneous application relates with the prayer of quashing charge-sheet dated 9.1.2008 relating to Crime No.

792 of 2007, under Sections 395, 452, 504 and 323, I.P.C. vide Case No. 1008 of 2007 pending before C.J.M., Gautam Budh Nagar. According to the pleadings made in the aforesaid Criminal Miscellaneous Application (36005 of 2008) an F.I.R. was lodged on 17.7.2007 against the applicants therein namely, Faikan Chaudhari, Ravindra Kumar, Raj Kumar and Sachindra Jha by Jogindra Jha, which was registered as Crime No. 792 of 2007, under Sections 395, 452, 504 and 323, I.P.C., P.S. Sector-20 N.O.I.D.A., District Gautam Budh Nagar vide Annexure-3. The accused applicants Faikan Chaudhari and three Ors. filed a Criminal Miscellaneous Writ Petition No. 19281 of 2007 challenging the said F.I.R. By an order dated 22.11.2007 (Annexure-4) this Court, in the aforesaid writ petition, called for a counter-affidavit from informant and A.G.A., and stayed the arrest of the accused Petitioners without staying the investigation, which ultimately culminated in filing of a charge-sheet against the four accused persons on 9.1.2008 vide Annexure-5 to the said criminal miscellaneous application. Judicial Magistrate, Gautam Budh Nagar before whom the said charge-sheet was laid by the police took cognizance of the offences and summoned the accused applicants on 7.2.2008. Hence, the four accused applicants Faikan Chaudhari, Ravindra Kumar, Raj Kumar and Sachindra Jha approached this Court through the above Criminal Miscellaneous Application No. 36005 of 2008 wherein this Court on 7.1.2009 issued notices for filing counter-affidavits and stayed further proceedings of the trial against accused applicants on the basis of the aforesaid charge-sheet being Criminal Case No. 1008 of 2007 for offences under Sections 395, 452, 504 and 323, I.P.C.

9. The record further reveals that in the F.I.R. lodged against four applicants, it was alleged by Jogindra Jha that his neighbour Chandra Bhushan Jha had taken a loan of Rs. 5,000 from Faikan Chaudhari at an interest of 15% regarding which he had paid interest only. On 22.3.2005 at 9.00 p.m. Faikan Chaudhari came to the hutment of Chandra Bhushan and demanded back his advance money and started abusing him under the influence of liquor. On inability being shown by Chandra Bhushan, Faikan Chaudhari left the spot making threatening utterances. On 23.3.2005 at 10.00 p.m. Faikan Chaudhari alongwith Ravindra Kumar, Raj Kumar and Sachindra Jha and Ors. armed with blunt objects came to the hutment of Chandra Bhushan hurling filthy abuses, entered into the hut and belaboured Chandra Bhushan. Jogindra Jha and his brother-in-law Rahul Jha reached at the spot to save the assaulted persons but they were also belaboured, resultantly both of them sustained injuries. Chandra Bhushan and his family members shelter themselves in Anr. house. Accused persons looted ornaments, utensils and Rs. 27,000 cash from the house of Chandra Bhushan Jha, which was saved for the marriage of the brother-in-law, to be solemnized on 19th May. Accused persons locked the hutment of Chandra Bhushan Jha which was got unlocked by the police of Sector-20 N.O.I.D.A. However, police arrested the informant u/s 151, Cr. P.C. When the informant returned back after being released on bail then he transcribed the F.I.R. on 17.7.2007 and lodged it at police station Sector-20 N.O.I.D.A. at 4.30 p.m. which was registered as Crime

No. 8970479207, under Sections 395, 452, 504 and 323, I.P.C. The Investigating Officer commenced the investigation and as mentioned above, charge-sheeted the accused persons with the aforesaid offences on 9.1.2008 vide charge-sheet number 592 of 2007. Hence, the accused persons had filed above Criminal Miscellaneous Application No. 36005 of 2008 before this Court for quashing the said charge-sheet .

10. From the discussions made above, it is perceptibly clear that both the criminal miscellaneous applications being Criminal Miscellaneous Application No. 4400 of 2009, Yogendra Singh Jha alias Yogi and Ors. v. State of U.P. and Anr. Criminal Miscellaneous Application No. 4400 of 2009 and Criminal Miscellaneous Application No. 36005 of 2008, Faikan Chaudhari and Ors. v. State of U.P. and Anr. Criminal Miscellaneous Application No. 36005 of 2008, relate with the same incident, which occurred on 23.3.2005 at 10.00 p.m. Both the sides had sustained injuries in the aforesaid incident. From the side of Yogendra Singh Jha alias Yogi, he and his brother-in-law Rahul Jha had sustained injuries. From the rival side Faikan Chaudhari had sustained injuries. Thus, it is apparent that the happening of the incident is admitted to both the sides. In such a view, it cannot be said that the prosecution launched by either side is mala fide or vexatious. Both the sides have their own version of the incident. Which version is correct can be seen and judged only by the trial court after giving opportunity to lead evidences to both the sides. Since, happening of the incident is admitted to both the rival contesting sides, the prosecution launched by either side cannot be quashed nor the prosecution can be nipped into bud. A legitimately launched prosecution cannot be thwarted specially when disputed questions of facts exists to be adjudicated.

11. In such a view, I find no reason to quash the prosecution of either of the criminal miscellaneous applications.

12. In view of the aforesaid, both Criminal Miscellaneous Application No. 4400 of 2009, Yogendra Singh Jha alias Yogi and Ors. v. State of U.P. and Anr. Criminal Miscellaneous Application No. 4400 of 2009, relating to Complaint Case No. 5738 of 2005, under Sections 406, 147, 324, 504 and 506, I.P.C., P.S. Sector-20, NOIDA, District Gautam Budha Nagar and Criminal Miscellaneous Application No. 36005 of 2008, Faikan Chaudhari and Ors. v. State of U.P. and Anr. Criminal Miscellaneous Application No. 36005 of 2008, relating to Crime No. 792 of 2007, under Sections 395, 452, 504 and 323, I.P.C., P.S. Sector-20 N.O.I.D.A. District Gautam Budh Nagar, pending in the Court of C.J.M. Gautam Budh Nagar as Case No. 1008 of 2007 are hereby dismissed.

13. Interim order granted in Criminal Miscellaneous Application No. 36005 of 2008, dated 7.1.2009 stands vacated.