
(1990) 07 AHC CK 0001

In the Allahabad High Court

Case No : Criminal Misc. Petition No. 9524 of 1989

Zulfiqar Beg alias Baby

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-07-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 482
Penal Code, 1860 (IPC) — Section 120B, 302

Citation : (1990) 14 ACR 611

Hon'ble Judges : G. Malaviya, J

Bench : Single Bench

Advocate : S.P.S. Raghav, for the Appellant; V.M. Zaidi, for the Respondent

Judgement

G. Malaviya, J.—Heard Sri S.P.S. Raghav, Sri V.M. Jaidi and Sri Surendra Singh. Learned Additional Government Advocate.

2 This application was initially filed as a CrI. Misc. Writ petition under Article 226 of the constitution. However, by an order dated 8-11-1989 by a Division Bench of this court (of which I was one of the members), the Petitioner was directed to convert this writ petition into an application u/s 482 Code of Criminal Procedure since the charge sheet by the civil police had been submitted in the court below and the CJM thereafter had taken cognizance of the matter. After the writ petition was converted into an application u/s 482 Code of Criminal Procedure on 15-15-1989 this petition was entertained. On that date it was made clear that at the stage of admission itself the matter would be finally disposed of. Thereafter, a counter affidavit and rejoinder affidavit have been filed and this matter is consequently finally disposed of at this stage itself.

3. However, Sri Jaidi raised a preliminary objection that the relief sought in this application could be granted only in a petition under article 226 of the constitution as the relief would be resulting in some interference in the matter of investigation of the case and not in this application u/s 482 Code of Criminal Procedure. Since the point has been concluded by the order dated 8-11-1989,

mentioned above, no finding is needed on that point in this order.

4. For the disposal of this case all that is necessary to be stated is that an FIR nominating the applicant also was lodged by Mahfooj on 26-5-1989 alleging that the applicant alongwith two other persons had caught hold of his son Kaley and had committed his murder. The investigation proceeded by the civil police. Meanwhile on an application by the applicant to the Government, the State Government by a radiogram dated 26-7-1989 directed the investigation to be taken up by the C.B.C.I.D. The S.P. Bijnor had also by his letter dated 8-8-1989 desired the investigation to be conducted by the C.B.C.I.D. as both the parties used to blame the civil police of adopting a partisan attitude. The investigation was consequently taken up by Bareilly Sector of the C.B.C.I.D. Meanwhile the Government again decided by its order dated 16-10-1989 that instead of C.B.C.I.D. the investigation should be transferred to Civil Police. Consequently the civil police took up the case and after completing the investigation, submitted the charge-sheet in pursuance of which the CJM Bijnor registered a case at No. 1717 of 1989, State v. Sajid alias Sajju, u/s 302/120-B IPC pertaining to Police Station Kotwali, Bijnor, and by its order dated 28-10-1989 directed the case to be put up on 8-11-1989. This order indicates that charge-sheet has been submitted in the case against Sajid and Nairn, who were in custody as also against Zulfiqar Beg, who was absconding.

5. The present petition is based on a report of the Inspector, C.B.C.I.D. dated 20th of October, 1989, which clearly states that people were not coming forward to give statements as it was revealed that unless the chairman desired no person would appear to give evidence in the case. The report further said that on his effort to find the truth the general opinion appeared in the township to be that the applicant Zulfiqar alias Baby had been got falsely implicated in the case at the instance of Chairman Javed, Aftab, whereas the applicant was not actually involved in this case. The Learned Counsel for the applicant states that since Javed Aftab was apprehensive that if the C.B.C.I.D. investigated the case, the false implication of the applicant would be established, hence by wielding his weight at higher level of the Government, he got the investigation by the C.B.C.I.D. stalled. Consequently this matter has been brought to the High Court with the prayer that to secure justice, fair and impartial investigation by the C.B.C.I.D. may be directed. Learned Counsel in this case also placed reliance on the endorsement dated 15-9-1989 of the CJM on the application of Banshi Mohan Sharma, Inspector, C.B.C.I.D. seeking permission to investigate the matter further u/s 173(8) Code of Criminal Procedure, which was apparently granted by the CJM. It is contended that unless C.B.C.I.D. investigates the matter true and factual position would not come to light and the ends of justice would not be secured.

6. On the other hand Sri Zaidi, Learned Counsel for the first informant, has contended that the note dated 20-10-1989, of the Inspector C.B.C.I.D. was subsequent to the order dated 16-10-1989 issued by the Joint Secretary to the

Government of U.P. from Lucknow by which the investigation had again been directed to be completed by the civil police. His contention is that in view of this order dated 16-10-1989, no credence should be given to the report dated 20-10-1989 submitted by the Inspector, C.B.C.I.D.

7. After considering the submissions of the Learned Counsel for the parties, I find that merely on the ground that on 16th October, 1989, the Government had decided at Lucknow to transfer the investigation to the civil police again, it cannot be said that the report of the Inspector C.B.C.I.D. dated 20-10-1989 is non-est. Consequently it appears desirable to have this matter investigated by the C.B.C.I.D.

8. Accordingly this application is allowed. It is directed that the investigation of this case shall be transferred to the sector officer of C.B.C.I.D. of Bareilly sector within ten days from the production of the certified copy of this order before the Home Secretary, Government of U.P. Thereafter, the C.B.C.I.D. shall complete investigation in this crime within three months and submit the report to the CJM alongwith the conclusions arrived at by him.

9. However, since after a case is instituted before a competent court, it cannot be withdrawn under any circumstance, save on an application by the Public Prosecutor when the court alone can permit withdrawal of the case, the procedure hereafter to be adopted in the case shall be decided by the CJM before whom the case is pending. Since the petition is finally disposed of, the interim order is automatically vacated.

10. Let a certified copy of this order be made available to the Learned Counsel for the parties within a week, on payment of usual charges.