

Chhedi Lal Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-13-2012

Judge : Sunil Hali

Appeal No. : Application U/s 482 No. 3162 of 2007

Appellant : Chhedi Lal

Respondent : State of U.P.

Judgement :

1. Submission of the petitioner is that an F.I.R. dated 16.8.2004 was lodged by them against the opposite party no. 2 which was registered as Case Crime No. 747 of 2004 under Sections 147,148, 149,323,307, 302 I.P.C. Police Station Line Bazar , District Jaunpur. Investigation in that case proceeded and charge sheet has been submitted before the concerned court and accused are facing trial. It is further submitted that as a counter blast the present F.I.R. has been lodged by the opposite party no. 2 against the petitioners which has been registered as Case Crime No. 747-A of 2004 under Sections 147, 148, 149, 307, 326, 323,504, 506 I.p.C. at Police Station Line Bazar, District Jaunpur. The police on investigation filed its closure report. After the closure report, protest petition was filed by the other side which has been allowed and in consequence thereof, process against the applicants has been issued. I have heard learned counsel for the parties. After the closure report is submitted by the Investigating Officer, there are four options available to the Magistrate-

(a) to order for fresh investigation in the matter;

(b) to treat the protest petition as a complaint and issue process under Section 204 of the Cr.P.C.;

(c) to directly issue process on the basis of the investigation whereby the closure report has been submitted;

(d) to accept the report of the Investigating Officer. In the present case, the Magistrate has exercised option of taking cognizance directly on the basis of the report of the investigating officer and rejected the closure report submitted by him. While doing so, the Magistrate has observed that the affidavits filed along with the protest petition by the witnesses, who claim to be eye witnesses, have not been examined by the Investigating Officer. On that premises, he has proceeded to issue process against the petitioners.

2. Undoubtedly, the Magistrate has power to issue process against the accused despite the closure report submitted by the Investigating Officer, however, while doing so, he is required to examine the record collected during the investigation. What is contemplated by the statute is that he cannot place reliance on any other material which is not part of the record of the Investigating Officer. The deficiency in the investigation has to be looked only from the record collected by the Investigating Officer. No evidence can be examined by the Magistrate which is not part of the Investigating Officer's record. If the Magistrate decides to take into consideration the documents in the protest petition in that case only option left to him is to treat it as a complaint. This recourse has not been adopted by the Magistrate and he has directly issued process under Section 191(b) by taking into consideration documents and evidence which was part of the protest petition. I, therefore, set aside the order of the Magistrate and direct him to consider the matter as fresh in the light of the observations made hereinabove. With the aforesaid observations, the application is allowed.