

Mahendra and ors. Vs. State of Uttar Pradesh and ors.

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Court : Uttaranchal

Decided On : May-10-2007

Reported in : 2007CriLJ3249

Judge : Prafulla C. Pant, J.

Appellant : Mahendra and ors.

Respondent : State of Uttar Pradesh and ors.

Advocate for Pet/Ap. : Shri. P. N. Mishra

Disposition : Petition dismissed

Judgement :

ORDER

Prafulla C. Pant, J.

1. By means of these two petitions, (and a third one No. 950 of 2001 (Old No, 4435 of 1998)). moved under Section 482 of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr. P. C), the petitioners have sought quashing of the order dated 14-9-1998, passed by learned Additional Chief Judicial Magistrate, Roorkee, District Haridwar, in case crime No. 70A of 1998, State v. Mahendra and Ors. whereby the said Court summoned the petitioners as accused after rejecting the final report, submitted by the investigating agency and accepted

the protest petition, filed by the respondent/complainant-Rifaqat, s/o. Munna. The petitioners have further prayed that the final report be accepted and protest petition be rejected. The facts relating to all the petitions are same and strangely same petitioners have sought same relief again and again. Earlier on 4-3-2006, this Court passed following order on criminal misc. application No. 950 of 2001 (old No. 4435 of 1998):

4-3-06.

It is very strange that two petitions i.e. Criminal Misc. Application No. 950 of 2001 (Old No. 4435 of 1998) and Criminal Misc. Application No. 953 of 2001 (Old No. 4279 of 1998) have been filed arising out of the same impugned order. C-482 No. 950 of 2001 was filed on 12-10-1998 in which the petitioners could not get the stay. Thereafter, the petitioners have again filed a petition against similar order and in the second petition the petitioners got success in obtaining stay order.

Thus, the petitioners have concealed the fact from the Court that the second petition has been filed while the first petition is pending for disposal, Therefore, Criminal Misc. Application No, 950 of 2001 (Old No. 4435 of 1998) and Criminal Misc. Application No. 953 of 2001 (Old No. 4279 of 1998) are misconceived and liable to be dismissed as such.

Therefore, both the petitions i.e. Criminal Misc. Application No. 950 of 2001 (Old No. 4435 of 1998) and Criminal Misc. Application No. 935 of 2001 (Old No. 4279 of 1998) are hereby dismissed. Sd/- J.C.S. Rawat, J. 4-3-2006.

2. It appears that above order dated 4-3-2006, was challenged by the petitioners before Hon'ble Supreme Court. The Apex Court passed the following order on 9-1-2007 in criminal appeal No. 34 of 2007 arising out of Special Leave to Appeal (Criminal) No. 2893 of 2006, Mahendra and Ors. v. State of Uttaranchal and Ors. 2007 AIR SCW 765:

In the peculiar circumstances of the case we are satisfied that the filing of the second application was on account of a bona fide mistake and the confusion arose because of the fact that the second criminal application was renumbered as Cri.

Misc. Application 950 of 2001 while the earlier petition was re-numbered as 953 of 2001. In the aforesaid background we set aside the order of the High Court and remit the matter to the High Court for fresh consideration on merits. Since the learned Counsel for the appellant has stated that Criminal Misc. Application No. 4435 of 1998 was not pressed, the same need not be considered by the High Court.

Before we part with the case, it has to be noted that several instances have come to our notice that several petitions of similar nature are being filed without disclosing that earlier a petition had been filed. It would be therefore appropriate for the High Court to make provision in the relevant Rules that in every petition it shall be clearly stated as to whether any earlier petition had been filed and/or is pending in respect of the same cause of action. It shall also be indicated as to what was the result of the earlier petition. If this procedure is followed, the confusion of the kind which has surfaced in this case can be ruled out.

3. In compliance of the order passed by the Apex Court, quoted above, the petition No. 953 of 2001 (re-numbered as No. 128 of 2007) (Allahabad High Court Old No. 4279 of 1998) stood restored. However, on 23-3-2007, when this case was taken up, after hearing the parties, in view of the fact that it is a case of triple murder, it is clarified that Allahabad High Court's interim order dated 23-12-1998, is not extended further and it is further clarified that trial Court may proceed with the case.

4. Heard learned Counsel for the parties and perused the papers filed with the affidavits of the parties.

5. Brief facts of the case are that complainant Rifaqat purchased crop of Mango Orchard in Village Ibrahimpur, P. S. Bhagwanpur, District Haridwar. It is alleged in the First Information Report that on 9-7-1998, Rifaqat along with his brother-in-law Furkan and servants-Islam and Irfan, loaded mango boxes in a tractor trolley and took the same to Bhagwanpur. At about 8.30 p.m., the three returned back to the orchard. At 9.30 p.m. when reached near Chhanga Majari, they met accused (petitioners) namely Mahendra, Som Singh, Balmukund, Virendra, Anup and Zulfikar and some other persons, who were armed with deadly weapons. The said

accused (present petitioners) surrounded the three, namely Furkan, Islam and Irfan and started assaulting them. Meanwhile, Sultan Liyakat and Mansab along with few others also reached there and tried to stop Mahendra and others. But the aforesaid accused (present petitioners) killed Furkan, Islam and Irfan and took the dead bodies with them. A report was lodged by Rifaqat (respondent No. 3), with police station Bhagwanpur. Though the police registered the report of Rifaqat (respondent No. 3), but after investigation, it submitted a final report. Notices were sent to the complainant Rifaqat (respondent No. 3) by the Magistrate. He submitted protest petition and filed his affidavit and affidavits of witnesses Mansab, Mahboob, Mahmood, Sultan, Fakkar and Liyakat, in which it is stated on oath that in their presence, accused (petitioners) Mahendra, Som Singh, Virendra, Balmukund, Anup Singh and Zulfikar along with others caused injuries on the person of Furkan, Islam and Irfan (all the three deceased) with lathi and sharp edged weapons - 'TABAL', 'GANDASA' and 'DARAATI' and they succumbed to the injuries received by them. Considering the facts and circumstances, evidence on record, the Magistrate passed the impugned order dated 14-9-1998, rejecting the final report submitted by the Investigating Agency in case crime No. 70 A of 1998, State v. Mahendra and Ors. and summoned the accused taking cognizance against them in respect of offences punishable under Sections 147, 148, 302, 504 of Indian Penal Code, 1860 (hereinafter referred as I. P. C.) Non-Bailable Warrants were directed to be issued by the Magistrate. Aggrieved by said order dated 14-9-1998, these petitions were filed by the petitioners.

6. Learned Counsel for the petitioners, drew attention of this Court to the principle of law laid down in R. N. Chatterji v. Havildar Kuer Singh 1970 (1) SCC 496 and it is argued that the Magistrate has committed error of law in summoning the accused. I have gone through said case law. In R. N. Chatterji case (supra), what Supreme Court has simply said is that the Magistrate cannot direct the investigating agency to submit the charge sheet. In the present case before this Court, the Magistrate has not directed the investigating agency to submit the charge sheet, as such, the aforesaid case law is of no help to the petitioners in the present case.

7. On behalf of the petitioners, attention of this Court is further drawn to the principle of law laid down in *Gangadhar Janardan Mhatre v. State of Maharashtra and Ors.* (2004) 7 SCC 768 : 2004 Cri LJ 4623 : AIR 2004 SC 4753 and it is argued that the Magistrate should have treated the protest petition as a complaint case and recorded the statement of the witnesses under Sections 200 and 202, Cr. P. C. It is further contended that the Magistrate has erred in law by taking cognizance and directing to issue Non-Bailable Warrants against the accused (petitioners) without adopting the procedure contained in Sections 200 and 202 of Cr. P. C. I have gone through aforesaid case law. In the case of *Gangadhar Janardhan Mhatre* (supra), through a writ petition, relief was sought for transfer of investigation on which High Court of Bombay declined to transfer the investigation, as the case had already been committed to the Court of Session. While affirming the order of Bombay High Court, the Apex Court has discussed the position of law, clarifying that though there is no provision for filing the protest petition under Cr. P. C. against the final report submitted by the police and it is open for the Magistrate to take cognizance of offence on a criminal complaint adopting procedure under Section 200 and 202, Cr. P. C. The notices are required to be sent to the informant before accepting the final report in view of the principle of law laid down in *Bhagwant Singh v. Commissioner of Police* (1985) 2 SCC 537 : AIR 1985 SC 1285. This judgment nowhere says that the Magistrate has no power to consider the affidavits filed before it with the protest petition before accepting or rejecting the final report, in as much, the case of *Gangadhar Janardhan Mhatre* (supra) is of no help to the petitioners.

8. Lastly, Shri P. N. Mishra, learned Counsel for the petitioners, referred and received on the order dated 10-12-2004, passed by Single Judge of this Court in Criminal Misc. Application No. 573 of 2004, *Nakli and Ors. v. State*, in which learned Single Judge of this Court has expressed the view that the Magistrate cannot consider the affidavits of the complainant in the proceedings while accepting or rejecting the final report. Similar view appears to have been taken by another bench in its order dated 2-11-2002, passed in Criminal Misc. Application No. 250 of 2002, *Deshraj and Ors. v. State of Uttaranchal and Ors.* But it is pertinent to mention here that there is no bar in Code of Criminal Procedure, which prohibits the Magistrate from considering the affidavits of the informant and that of

the witnesses, filed with the protest petition of the informant at the time of considering evidence collected by investigating agency placed with final report. In a case like the present one of a triple murder, the informant cannot be forced to file criminal complaint and to litigate privately against the accused persons. The impugned order, passed by the Magistrate is a detailed one in which not only the affidavits of the witnesses are considered but also the evidence collected by the investigating agency, has been considered. It is not a case unlike the cases of Nakli and others, and Deshraj and others mentioned above in which only affidavits are the basis for summoning the accused while taking cognizance of offences against them.

9. Therefore, for the reasons, as discussed above, the petitions under Section 482, Cr. P. C. are liable to be dismissed. Both the petitions are dismissed.

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