

Ram Ashraya and Another Vs. State of U.P and Another

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Court : Allahabad

Decided On : Jan-13-2011

Judge : Raj Mani Chauhan, J.

Appeal No. : Cr. Misc. Case No. 4633 of 2010

Appellant : Ram Ashraya and Another

Respondent : State of U.P and Another

Advocate for Pet/Ap. : Sri. R.B.S. Rathaur

Judgement :

1. Heard Sri R.B.S. Rathaur, learned counsel for the petitioners and Sri Rajendra Kumar Dwivedi, learned Additional Government Advocate for the State as well as perused the documents available on record.
2. Sri Saurabh Srivastava, Advocate learned counsel for the opposite party no. 2 before final disposal of the case appeared before the court and filed written argument, which was taken on record.
3. This petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') has been filed by the accused-petitioners for quashing the order dated 9.11.2010 passed by the learned Chief Judicial Magistrate, Lucknow in Criminal Case No. 3015 of 2010 (State VS. Anup Kumar and Others), under Sections 498-A, 304-B IPC and $\frac{3}{4}$ Dowry Prohibition Act, P.S. Gomti Nagar,

District Lucknow whereby he has rejected the application moved by the petitioners for staying the proceeding of above criminal case pending before him.

4. The only legal question involved in the present petition for consideration before this Court is "whether the proceeding of impugned Criminal Case No. 3015 of 2010 (State v. Anup Kumar and Others) pending before the Chief Judicial Magistrate, Lucknow is liable to be stayed on the ground that the matter is still under investigation which is being conducted by the CBCID?"

5. This legal question may be decided without issuing notice to the opposite party no. 2 to curtail the delay in proceeding of the criminal case pending before the Chief Judicial Magistrate. Moreover, the order which is going to be passed will not cause any prejudice to the opposite party no. 2. Therefore, with the consent of learned A.G.A. the petition is being finally disposed of at this stage.

6. The relevant facts giving rise to the present petition may be briefly stated as under:

7. The opposite party no. 2-Sri Rajesh Chandra Chowdhary, S/o Late Munna Lal, R/o A-64, Avas Evam Vikas Colony, Police Station Shahpur, District Gorakhpur lodged a written report on 03.2.2010 at P.S. Gomti Nagar, Lucknow with the allegation that his younger sister-Smt. Sudha was married to Anup Kumar on 07.5.2009. Both of them were living in House No. 1/101, Virat Khand, P.S. Gomti Nagar, Lucknow with Ram Ashraya and Smt. Madhuri who were brother-in-law and sister of Anup Kumar. He had spent on dowry and other presents at the time of marriage of his younger sister within his financial limits but the husband of his sister as well as his other family members were not satisfied with the dowry, therefore, they used to harass and torture her. At about 12:00 in the night of 02/03.2.2010 he received a telephone call from Lucknow. He was called from Gorakhpur to Lucknow immediately consequently he on 03.2.2010 reached at the house No. 1/101, Virat Khand, Gomti Nagar, Lucknow where his sister was found lying dead on a bed kept in a room of her brother-in-law (Nandoi) and sister-in-law (Nanad). He found a piece of dupatta lying in the side of dead body. It appeared to him that his sister had been done to death by her husband, her brother-in-law (Nandoi) and her sister-in-law (Nanad).

8. On the written report of the complainant-opposite party no. 2, the police of P.S. Gomti Nagar, Lucknow registered a case under Sections 498-A, 304-B IPC and $\frac{3}{4}$ Dowry Prohibition Act at Crime No. 65 of 2010 against the accused for investigation. The petitioners are the brother-in-law (Nandoi) and sister-in-law (Nanad) of the deceased. The petitioner filed Writ Petition No. 1531 (MB) of 2010 before Division Bench of this Court for quashing the First Information Report lodged by the opposite party no. 2 in which the court was pleased to pass an order of stay the arrest of the petitioners till the next date of hearing of the case. However, the investigation was not stayed by the Court. The Investigating Officer proceeded with the investigation. He recorded the statement of the witnesses acquainted with the facts and circumstances of the case and collected other evidence too. He on the basis of evidence collected by him during the investigation found, prima facie, case against all the accused in support of commission of offences under Sections 498-A, 304-B IPC and $\frac{3}{4}$ Dowry Prohibition Act consequently he submitted charge-sheet against the accused before the Chief Judicial Magistrate, Lucknow who took cognizance of the offences and summoned them. Thereafter, the writ petition was dismissed by the court as the same had become infructuous. The petitioners thereafter filed petition under Section 482 of the Code for quashing the charge-sheet filed by the Investigating Officer. The learned counsel for the petitioners instead of pressing the petition on merit requested that the petition be finally disposed of with the observation that in case the petitioners appear before the court below and move any application for bail, the same be disposed of by both the courts below on the same day. The petition was accordingly disposed of finally and the petitioners were allowed three weeks time from the date of order to appear before the court concerned. It was provided that in case the accused appear before the court concerned within the time allowed by the court and move any application for bail, the same will be disposed of by the courts below expeditiously. The petitioners instead of appearing before the court concerned i.e. Chief Judicial Magistrate, Lucknow moved an application through their counsel before the Chief Judicial Magistrate, Lucknow for staying the proceeding of above criminal case in the light of order dated 01.10.2010 passed by this Court in Writ Petition No. 5261 (MB) of 2010. It had been alleged by the petitioners that they had filed Writ Petition No. 5261 (MB) of 2010 (Ram Ashraya v.

State of U.P. & Others) before this court wherein they had prayed for transferring of the investigation of the above case from the civil police to CBCID. The court vide order dated 01.10.2010 dismissed the petition as infructuous as the case had already been transferred to the CBCID. The case is being investigated by the CBCID, therefore, the proceeding of criminal case arising out the charge-sheet filed by the civil police in Crime No. 65 of 2010, under Sections 498-A, 304-B IPC and $\frac{3}{4}$ Dowry Prohibition Act is liable to be stayed till the final outcome of the further investigation which is being conducted by the CBCID.

9. The application was opposed by the complainant. The learned Chief Judicial Magistrate rejected the application filed by the petitioners observing that he had already taken cognizance of the offences against the petitioners on the basis of charge-sheet filed by the civil police. The case was thereafter transferred to the CBCID for further investigation. The proceeding of criminal case could not be stayed on the ground that the case was being further investigated by the CBCID.

10. The petitioners have again approached before this court for quashing the order dated 09.11.2010 passed by the Chief Judicial Magistrate, Lucknow by filing the instant petition under Section 482 of the Code.

11. The submission of the learned counsel for the petitioners is that the petitioners are the brother-in-law (Nandoi) and sister-in-law (Nanad) of the deceased. They were already living separate from the deceased and her husband. They had got not concerned with the family affairs of Sri Anup Kumar (husband of the deceased). Since Anup Kumar was unemployed, therefore, they being his near relative had given shelter to him as well as his wife-Smt. Sudha (deceased) for few days. The petitioners could neither be expected to have ever made any demand of dowry nor they could be expected to have ever put the deceased to harassment and torture for dowry. They had no motive to cause the death of the deceased. They have been falsely implicated by the opposite party no. 2 just being nearest relative of Anup Kumar (husband of the deceased).

12. Learned counsel submits that the opposite party no. 2 has falsely roped the petitioners in this case. The Investigating Officer who belong to civil police of Uttar Pradesh had colluded with the opposite party no. 2. He did not fairly investigate

the case. The Investigating Officer without conducting fair investigation of the case submitted charge-sheet against the petitioners. The petitioner no. 1-Ram Ashraya filed writ petition no. 5261 (MB) of 2010 for transferring the case from civil police to CBCID. The writ petition was dismissed as infructuous as the relief prayed by the petitioner was already satisfied and the case was transferred to CBCID for investigation. The Chief Judicial Magistrate had already taken cognizance of the offences on the charge-sheet submitted by the civil police. Since the case is under further investigation by the CBCID, therefore, it was obligatory on the part of the Chief Judicial Magistrate to stay the proceeding of criminal case arising out of charge-sheet filed by the Investigating Officer of the civil police till the final outcome of the further investigation which is being conducted by the CBCID. The petitioners, therefore, moved an application before the Chief Judicial Magistrate, Lucknow for staying the proceeding of criminal case pending before him but the Chief Judicial Magistrate vide impugned order has rejected their application. The impugned order is, therefore, illegal and is liable to be quashed. The learned counsel for the petitioners in support of his argument has placed reliance on the law laid down by this Court in the case of Rakesh Kumar Srivastava v. State of U.P.; [2004 (48) ACC 18].

13. Sri Rajendra Kumar Dwivedi, A.G.A. vehemently opposed the petition and argued that the Investigating Officer belonging to civil police had already completed the investigation of the case, he on the basis of evidence collected by him found that there was prima facie evidence against the accused in support of commission of offence under Sections 498-A, 304-B IPC and $\frac{3}{4}$ Dowry Prohibition Act. He, therefore, submitted charge-sheet against the accused before the learned Chief Judicial Magistrate, Lucknow who on the basis of charge-sheet took cognizance of the offences mentioned therein. Thereafter, the further investigation of the case was entrusted to the CBCID.

14. Sri Dwivedi submits that as per established principle of law if a Magistrate takes cognizance of an offence on the basis of the charge-sheet submitted by the Investigating Officer after investigation and summons the accused, the proceeding of criminal case cannot be stayed on the ground that the case had been entrusted to the same agency or any other agency for further investigation. There is no

provision in the Code that the subsequent investigation will be a bar for proceeding of the criminal case initiated on the earlier charge-sheet in the same case. The impugned order passed by the learned Chief Judicial Magistrate, Lucknow is well reasoned and detailed order which does not suffer from any illegality and as such the same does not call for any interference. Sri Dwivedi in support of his argument has placed reliance on the law laid down by this Court in the case of Daya Shankar Singh v. State of U.P.; [1988 (25) ACC 270], Zulfiqar Beg alias Baby VS. State of U.P.; [1992 (29) ACC 260], Smt. Ramawati and others. v. State of U.P. And others; [2001 (42) ACC 751] and Bhopal and others v. State of U.P. And others; [1997 (34) ACC 371].

15. Sri Saurabh Srivastava, learned counsel for the opposite party no. 2 in his written submission has put the same submissions as the learned A.G.A. He in support of his argument has placed reliance on the law laid down by this Court in the case of Gulzar Ahmad & Ors. v. State of U.P. & Anr.; [2006 (2) JIC 736 (All)].

16. I have given thoughtful consideration to the rival submissions advanced by the learned counsel for the petitioners, learned counsel for the opposite party no. 2 and learned A.G.A.

17. In the case of Rakesh Kumar Srivastava (supra), a case was registered at Police Station Cantt., District Gorakhpur for investigation, the Investigating Officer after investigation of the case submitted charge-sheet before the Chief Judicial Magistrate, Gorakhpur subsequent thereto further investigation of the case was assigned to Economic Offences Unit, Varanasi Region by a Government Order dated 10th July, 2000. The Inspector Economic Offences, Varanasi Region moved an application before the court of Chief Judicial Magistrate to permit him to have copies of the relevant papers from the record for further investigation. The accused moved an application before the Chief Judicial Magistrate to stay the further proceeding of criminal case pending against them on the ground that the matter is being further investigated by Economic Offences Unit, Varanasi Region and final outcome of the further investigation is awaited. The application was rejected by the Chief Judicial Magistrate with the observation that the court had already taken cognizance of the offence on the basis of charge-sheet submitted by

the Investigating Officer and the trial is proceeding against the accused, therefore, the proceeding of trial cannot be stayed. The accused being aggrieved by the impugned order passed by the Chief Judicial Magistrate filed petition under Section 482 of the Code before this Court. This court was of the view that since the matter was under further investigation which was being conducted by Economic Offences Unit, Varanasi Region, therefore, it would not be proper to proceed further with the trial pending against the accused which had arisen out of the charge-sheet filed by the earlier Investigating Officer. The petition was, therefore, allowed by the Hon'ble Court. The relevant observation of the Hon'ble Court finds place in para 5 of the judgment which is being extracted below:

"...5. From the aforesaid facts and circumstances, it is quite clear that the Government had ordered further investigation in the case, which was going on. If the Cantt. Police have submitted charge-sheet it was not necessary that the trial should have forthwith started. There was every likelihood of certain positive result in the ongoing investigation in the case which could be favourable to the accused. As such it was not necessary rather, it could prejudice the interest of the accused, if the case is concluded without waiting for the results of further investigation going on in the matter. The order of the Magistrate refusing to grant the stay of the trial, which has been challenged in this petition appears to be not sound in the eye of law and it does require interference...."

18. In the case of of Daya Shankar Singh (supra), it has been held by this Court that where the court has already taken cognizance of the offence on the charge-sheet submitted by the Investigating Officer and the case is being further investigated, the court is not bound to stay the judicial proceeding which has already been initiated by it on the basis of charge-sheet filed by the Investigating Officer. The court after going through the earlier case laws has held that

"I hold that the contention that in every case of re-investigation the court is bound to stay the further judicial proceedings pending in

that court cannot be accepted and the matter will have to be considered on the facts and circumstances of each case by the Court in whose vest the discretion in this regard."

19. In the case of Zulfiqar Beg alias Baby (supra), the same view had been taken by the court as was taken by this court in the case of Daya Shankar Singh v. State of U.P. (supra). In this case, the Hon'ble Court declined to stay the proceeding of criminal case pending before the Trial Court which had been initiated on the basis of charge-sheet submitted by the Investigating Officer when the case was ordered to be further investigated by the CBCID.

20. In the case of Smt. Ramawati and others (supra), this court again relying on the law laid down by this court in Daya Shankar Singh VS. State of U.P. (supra) held that the proceeding of a criminal case initiated on the basis of charge-sheet submitted by the Investigating Officer cannot be stayed on the ground that the further investigation has been entrusted to the CBCID.

21. In the case of Bhopal and Others (supra), the Division Bench of this court following the law laid down by this Court in Daya Shankar Singh v. State of U.P. (supra) held that the court is not bound to stay the proceeding of a case merely on the ground that re-investigation by CBCID has been ordered.

22. The same view has been taken by the court in the case of Gulzar Ahmad & Ors (supra).

23. In view of the law laid by this court in the above cited cases, it is well settled that when a Magistrate takes cognizance of the offence/offences on the basis of charge-sheet submitted by the Investigating Officer and thereafter further investigation of the same case is entrusted to any other agency, the Magistrate is not bound to stay the proceeding of criminal case arising out of the charge-sheet submitted by the earlier Investigating Officer.

24. The impugned order in the opinion of the court does not suffer from any illegality as such the same does not call for any interference consequently the proceeding of criminal case pending before the Chief Judicial Magistrate, Lucknow

is not liable to be stayed.

25. The petition is devoid of any merit and is liable to be dismissed.

26. Accordingly, the petition is dismissed.

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