

Devendra Pratap Singh and Others Vs. State of U.P. and Another

Devendra Pratap Singh and Others Vs. State of U.P. and Another

SooperKanoon Citation : sooperkanoon.com/918831

Court : Allahabad

Decided On : Sep-08-2010

Judge : Shri Kant Tripathi, J.

Appeal No. : APPLICATION U/S 482 No. - 20565 of 2007 A.F.R.

Appellant : Devendra Pratap Singh and Others

Respondent : State of U.P. and Another

Advocate for Def. : Govt. Advocate; Amarjeet Singh; Satish Trivedi; Suchit Tandon; Vijay B. Shivhare, Advs

Advocate for Pet/Ap. : Rakesh Pande; N.I. Jafri; Vikas Sahai, Advs

Judgement :

1. Heard Sri N.I. Jafri, learned counsel for the applicants and the learned A.G.A. for the respondent no. 1 and perused the record. None is present for the respondent no. 2.

2. This is an application under section 482 Cr.P.C. for quashing the impugned order dated 16.10.2006 passed by the Chief Judicial Magistrate, Allahabad in complaint case no. 16758 of 2006, Nanhey Lal Mishra v. Devendra Pratap Singh and others.

3. It appears that in the case crime no. 62305660091, under sections 147, 148, 149, 323, 504, 506, 336 I.P.C. , P.S. Civil Lines, District Allahabad, the investigating officer submitted a final report, against which the respondent no. 2 filed a protest petition along with affidavits. The learned Chief Judicial Magistrate considered the protest petition and the final report and passed the impugned order dated 16.10.2006 rejecting the final report and taking cognizance of the offences and issuing processes against the applicants.

4. The learned counsel for the applicants submitted that the impugned order has been passed without application of mind and the learned Chief Judicial Magistrate has taken into consideration the protest petition and affidavits while passing the summoning order. Therefore, the summoning order is bad. It was next submitted that the Magistrate had no doubt power to differ from the conclusion of the police and arrive at his own conclusion but this could be done on the basis of the materials collected during the investigation. The Magistrate had no jurisdiction to take any other materials into consideration while rejecting the final report and taking cognizance of the offences.

5. A perusal of the impugned order reveals that the learned Magistrate considered the protest petition and affidavits and arrived at the conclusion that there were sufficient materials to summon the accused. It is not clear from the impugned order as to whether the materials collected during the investigation were sufficient to proceed with the matter or not. The learned Chief Judicial Magistrate should have indicated that the summoning order was passed on the materials collected during the investigation. In absence of any specific finding in this regard, it cannot be contended that the summoning order has been passed on the basis of the materials collected during the investigation.

6. It is well settled that a civil as well as criminal proceeding in regard to same act may be launched and continued simultaneously. If certain acts constitute an offence, the criminal proceeding can not be held up or kept in abeyance till the finalization of the civil proceeding.

7. In the case of Syed Askari Hadi Ali Augustine Imam vs. State (Delhi Admn.), (2009) 5 Supreme Court Cases 528, the Apex Court has held that indisputably, in

a given case, a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the criminal court upon arriving at the satisfaction that there exists a prima facie case.It is now well settled that ordinarily a criminal proceeding will have primacy over the civil proceeding. Precedence to a criminal proceeding is given having regard to the fact that disposal of a civil proceeding ordinarily takes a long time and in the interest of justice the former should be disposed of as expeditiously as possible. If primacy is to be given to a criminal proceeding, the civil suit must be determined on its own merit, keeping in view the evidence brought on record therein and not in terms of the evidence brought in the criminal proceeding.

8. The aforesaid principles have been reiterated by the Apex Court in the case of *Devendra & others vs. State of U.P. and another*, (2009) 7 SCC 495 (para13).

9. For the reasons discussed above, the summoning order does not appear to have been passed on the materials collected during the investigation, therefore, the summoning order cannot be upheld.

10. The application is allowed.

11. The summoning order dated 16.10.2006 is quashed. The learned Chief Judicial Magistrate, Allahabad is directed to re-consider the matter in the light of the observations made hereinbefore and pass afresh order in accordance with law.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com