(2009) 05 AHC CK 0180

Allahabad High Court

Case No: None

Mukteshwar Singh	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision: May 8, 2009

Hon'ble Judges: A.K.Roopanwal, J

Final Decision: Dismissed

Judgement

A.K. Roopanwal, J.

This criminal revision has been filed against the order dated 17.3.09 passed by the Additional Sessions Judge, FTC No.2, Ballia in S.T. No.2/98, State Vs. Jitendra and others, under Sections 363, 376, 511, 336, IPC, P.S. Garhwar, District Ballia whereby application 281 Kha moved by the revisionist was rejected.

It appears from the record that during the trial of the aforesaid case an application was moved by the accused persons with the prayer that the proceedings be quashed and the case be sent back to the Magistrate. It was alleged in the application that in the aforesaid Sessions Trial first charge sheet against accused Jitendra Prasad, Sageer Ahmad and Gufran was submitted on 30.9.95, under Section 363, 376, 511, IPC. Names of Mukteshwar Singh, Ramji Chaurasia, Ishaq @ Ishtahaq and Vishwanath were shown as absconders. No cognizance order was passed by the Magistrate on this charge sheet. Second charge sheet in the case was submitted on 30.12.95 against Vishwanath and Mukteshwar Singh. On this charge sheet too no specific cognizance order was passed. Third charge sheet was submitted in the case on 13.6.96 showing Mukteshwar Singh as the complainant while Ramji Chaurasia and Ishaq @ Ishtahaq were shown to be the accused. On this charge sheet also no cognizance order was passed. Actually Mukteshwar Singh should have been the accused and Awadhesh Singh should have been shown as the complainant in this charge sheet. This shows that the Magistrate had not applied his mind while taking proceeding further.

It was alleged in the application that as no cognizance order was passed on any of the above charge sheets, hence, the whole proceedings on the above charge sheets were illegal and were liable to be quashed. The trial Judge did not agree with the case as set up in the application and consequently, rejected the same.

Heard Mr. C.P. Upadhyay, learned counsel for the revisionist, learned AGA for the State and perused the record.

Mr. Upadhyay argued this revision on two points. Firstly, that no cognizance was taken on any of the charge sheets, hence, the whole proceedings before the Magistrate as well as before the Sessions Judge were illegal and liable to be quashed as without cognizance no proceedings were permissible. Secondly, that the Magistrate did not apply his mind on the third charge sheet dated 13.6.96 as the names of the complainant and the accused were wrongly shown in the charge sheets.

First of all, I will take up the argument regarding taking of the cognizance. To appreciate the argument it would be necessary to know as to how a cognizance can be said to be taken by a Magistrate.

In Bala Yadav Vs. State of Bihar, 1995(1) East Cri Cases 422 (Pat.) it has been said that the expression "taking cognizance" means only application of judicial mind to the offence alleged. In that sense when the Magistrate takes note of the police report submitted against the accused concerned, it shall be deemed that cognizance has been taken and inquiry has commenced within the meaning of Section 2(g), Cr.P.C. Only because a formal order of taking cognizance has not been passed, it cannot be said that the court below has not taken cognizance of the offences against the accused even after submission of the charge sheet. In R. Rajendra Reddy Vs. M/s. Sujaya Feeds, 1995 Crl. L. J. 1427 (Karnataka High Court) in which the reference was made of AIR 1976 SC 1672, Devarapalli Laxminarayana Vs. Narayana it was held that the expression taking cognizance of an offence means that the Magistrate should apply his mind for the purpose of proceeding in the case. There is no need for the Magistrate to specifically state that he is taking cognizance.

In view of the above Rulings it is clear that for showing that cognizance has been taken it is not required that the Magistrate should specifically write or state that he has taken cognizance. If the proceedings of the case show that the Magistrate had applied his mind and had proceeded with the case, then it would be deemed that he had taken cognizance.

In the light of the above legal position if we go through the facts of the present case, we would find that the Magistrate not only furnished the copies as required under Section 207, Cr.P.C. to the accused he also committed the case to the Court of Sessions. These actions on the part of the Magistrate clearly indicated that he had applied his mind and that was sufficient to show that he had taken cognizance in the case. Thus, inspite of the fact that no specific order of taking cognizance was passed

on the charge sheets it cannot be said that no cognizance was taken by the Magistrate. In this regard the argument advanced by Mr. Upadhyay is not an acceptable argument.

Now, comes the second argument.

It is no doubt true that in the charge sheet dated 13.6.96 name of accused Mukteshwar Singh has wrongly been shown as complainant of the case. This appears to be only a clerical mistake. When Mukteshwar Singh was committed to the Court of Sessions, it hardly matters that he was shown as complainant of the case. The factual position is that Mukteshwar Singh was taken to task and his case was committed to the Court of Sessions. This clearly indicated that the Magistrate had taken cognizance against Mukteshwar Singh and he was the person whose case was committed to the Court of Sessions. Thus, the above irregularity cannot be sufficient to indicate that no cognizance was taken against Mukteshwar Singh or no cognizance was at all taken.

In view of the above discussion, I do not find any merits in this revision. It is, accordingly, dismissed.