

(2008) 04 AHC CK 0132

Allahabad High Court

Case No: None

Lekhraj

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: April 9, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 195, 344, 482
- Penal Code, 1860 (IPC) - Section 182, 193, 211, 307, 506

Hon'ble Judges: Vijay Kumar Verma, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Vijay Kumar Verma, J.

Heard Sri Mohd. Irfan learned Counsel for the applicant, learned AGA for the State and perused the record.

2. By means of this application u/s 482 of the Code of Criminal Procedure (in short the "Cr.P.C."), the applicant has invoked inherent jurisdiction of this Court, praying for quashing of that part of the judgment dated 20.02.2008 passed by Sri N.K. Jain, the then Sessions Judge Rampur, in S.T. No. 223 of 2007 (State v. Mahendra and Ors.), whereby the SSP Rampur has been directed to get the FIR lodged against the applicant for the offence punishable u/s 182 of Indian Penal Code (in short the "IPC") for lodging false report against the accused persons at crime No. 322 of 2002 u/s 307/506 IPC at P.S. Kotwali, Rampur.

3. Shorn of unnecessary details, the facts leading to the filing of the application u/s 482 Cr.P.C. in brief, are that the applicant Lekh Raj had lodged an FIR at P.S. Kotwali, Rampur at Crime No. 322/2002. After investigation of the case, chargesheet was filed and on committal of the case to the court of session for trial, S.T. No. 223 of 2007 was registered against the accused Mahendra and others. While passing judgment in that Session Trial on 20.02.2008, the learned Sessions Judge Rampur,

was of the opinion that the informant Lekh Raj (applicant herein) had lodged false FIR against the accused persons and hence, FIR should be lodged against him for the offence punishable u/s 182 I.P.C. Consequently, SSP Rampur was directed to get the FIR lodged against the informant for lodging false report against the accused.

4. It is contended by learned Counsel for the applicant that at the time of passing the judgment in session trial No. 223 of 2007, the court below could not issue direction for lodging the FIR for the offence punishable u/s 182 IPC against the informant and if the informant had given false evidence during the trial, then he could be punished either by adopting the procedure provided u/s 344 Cr.P.C. or complaint could be filed against him in the competent court for giving false evidence, but FIR cannot be lodged at this stage for the offence punishable u/s 182 IPC.

5. Having given my thoughtful consideration, in my view, aforesaid contention of the learned Counsel for the applicant has got force and must be accepted. If the applicant had given false evidence in S.T. No. 223 of 2007, it was open to the learned trial court to initiate proceedings u/s 344 Cr.P.C. for punishing him for giving false evidence. In the alternative, complaint could also be filed against the informant in the competent court for the offences punishable under Sections 193 or 211 IPC. None of these procedures was adopted by the learned Trial judge and at the time of passing the impugned judgment, S.S.P. Rampur has been directed to get the FIR lodged against the informant (applicant herein) for the offence punishable u/s 182 I.P.C. In my considered opinion, the procedure adopted by the learned Trial court for punishing the applicant for lodging false report by way of lodging FIR against him is not in accordance with law.

6. Section 195 Cr.P.C. bars the lodging of FIR for certain offences. According to Sub section (1) (a) (I) of Section 195 Cr.P.C. cognizance for the offence punishable u/s 182 IPC can be taken on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. In view of this specific bar created by Section 195(1)(a)(I) Cr.P.C., the learned Sessions Judge Rampur at the time of passing the judgment in Session Trial No. 223 of 2007 had no jurisdiction to issue direction to S.S.P. Rampur, to get the FIR lodged against the informant for the offence punishable u/s 182 I.P.C.

7. The applicant had lodged FIR against the accused persons at P.S. Kotwali Rampur. The averments made by the informant in that FIR were not found false and after investigation charge sheet was filed by the investigating officer in case crime No. 322 of 2002. Hence there was no occasion for the S.H.O. P.S. Kotwali Rampur or his superior officer to file complaint against the informant for the offence punishable u/s 182 IPC. During trial in S.T. No. 223 of 2007, the applicant Lekh Raj did not support FIR version in his statement recorded as P.W.1 and he stated that name of the accused persons were mentioned in the report on the saying of village people. If this statement was false in the opinion of learned Trial Judge, then the informant

Lekh Raj could either be punished for giving false evidence in the summary proceedings u/s 344 Cr.P.C. or complaint could be filed against him in competent court for the offence punishable u/s 193 IPC, as lodging of FIR for this offence is barred by Section 195(1) Cr.P.C. If the informant (applicant) had falsely charged the accused persons with having committed an offence, knowing that there is no just or lawful ground for such charge against the accused persons, then also complaint could be filed against the informant/applicant for the offence punishable u/s 211 IPC, as lodging of FIR for the offence punishable u/s 211 IPC is also prohibited by Sub section (1) (b) (I) of Section 195 Cr.P.C. For these offences, cognizance can be taken on the basis of the complaint only, as provided in Section 195 Cr.P.C. and lodging of FIR for committing these offences is not permissible. In any case, there was no occasion for the learned Trial Judge at the time of passing the judgment in S.T. No. 223 of 2007 to direct SSP Rampur to lodge the FIR against the informant for the offence punishable u/s 182 IPC.

8. For the reasons mentioned herein-above, the challenged part of the impugned judgment being wholly illegal and without jurisdiction deserves to be quashed.

9. Consequently, the application u/s 482 Cr.P.C. is allowed and that part of the impugned judgment dated 20.02.2008, passed by the Sessions Judge Rampur in S.T. No. 223 of 2007 (State v. Mahendra and Ors.), whereby direction has been issued to SSP Rampur to get the FIR lodged against the informant/applicant Lekh Raj for the offence punishable u/s 182 IPC and consequent FIR, if lodged in pursuance of that direction, are hereby quashed.

The Registrar General is directed to send a copy of this order to Shri N.K. Jain, the then Sessions Judge Rampur (Now Sessions Judge Ghaziabad) for his guidance in future.