
(2012) 01 AHC CK 0406

Allahabad High Court

Case No: Application No. - 36953 of 2011

Dr. Harendra Sharma
Bairagi and Another

APPELLANT

Vs

State of U.P. and
Another

RESPONDENT

Date of Decision: Jan. 3, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(1), 157(1), 2
- Penal Code, 1860 (IPC) - Section 147, 148, 323, 342, 356

Hon'ble Judges: Rajesh Dayal Khare, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Hon'ble Rajesh Dayal Khare, J.

Heard learned counsel for the applicants and learned AGA for the State-respondent.

2. The only argument raised by counsel for the applicants is that, it is not disputed that offence under Sections 147, 148, 323, 504, 356, 342 IPC is non-cognizable and the offence u/s 506 IPC was cognizable and non-bailable vide Uttar Pradesh Government Notification No. 777/VIII94(2)-87 dated July 31, 1989. This notification issued by the government was held to be illegal by the Division Bench of this Court in the case of Virendra Singh and others vs. State of U.P. and others, XLV 2000 ACC 609 and so the position is that now the offence u/s 506 IPC is also a non-cognizable offence. It has been further argued that the offence under Sections 147, 148, 323, 504, 506, 356, 342 IPC, are non-cognizable so in view of the explanation to Section 2(d) Cr.P.C. the court below cannot proceed as State case and it can only be proceeded as complaint case and the person who has filed the report shall be treated to be complainant and the learned Magistrate erroneously passed an order treating it as State case.

3. In view of this the offence u/s 147, 148, 323, 504, 506, 356, 342 IPC are non-cognizable so in view of the explanation of Section 2(d) of Cr.P.C. report of police officer after investigation regarding commission of non-cognizable offence shall be deemed to be complaint and the police officer who submitted the report shall be deemed to be the complainant. So the report submitted by the police officer in an non-cognizable offence only shall be treated to be complaint and the procedure prescribed for hearing of complaint case shall be applicable to that case. In the present case according to the explanation of Section 2(d) of Cr.P.C. charge sheet submitted by the police u/s 147, 148, 323, 504, 506, 356, 342 IPC shall be treated as a complaint and it is to be decided as complaint. The learned Magistrate felt in legal error by taking cognizance as State case and the order passed by him is, therefore, liable to be set at rest.

4. Per contra learned AGA has contended that Section 506 IPC has been made cognizable and the vires of the amendment in Cr.P.C. making it cognizable has been upheld by a full bench of this Court in the case of Mata Sewak Upadhyaya vs. State of U.P. and others, reported in 1995 AWC 2031 : 1996 All. JIC 107. He further submitted that in view of this the judgment of Mata Sewak Upadhyaya delivered by the full bench has to be followed.

5. Taking note of the submissions of the counsel for the parties and having perused the material placed on record as well as the Division Bench judgment and Full Bench Judgment rendered by this Court, I find that the division bench of this Court in the aforesaid decision came to the conclusion that making Section 506 IPC cognizable and non-bailable by the State Government through the above notification is illegal and Section 506 IPC has to be treated as bailable and non-cognizable offence for the reasons mentioned in the aforesaid judgment of the Division Bench declaring the above mentioned notification illegal.

6. However, the said notification dated 31.07.1989 of the State Government was also considered by the full bench of this Court in the case of Mata Sewak Upadhyaya and another (supra). The full bench of this Court in the aforesaid judgment came to the conclusion that aforesaid notification dated 31.07.1989 is intra vires. The full Bench of this Court also considered the reasons for issuing such notification and also considered the compelling circumstances which necessitated the issuance of such notification.

7. Moreover, the division bench of this Court in Criminal Misc. Writ Petition No. 3251 of 2008, Ravi Prakash Khemka vs. State of U.P. and another decided on 23.05.2008 has been pleased to observe that "in view of the matter the full bench judgment has to be followed". Thus it is clear that there is contrary view of full bench and division bench of this Court while rendering the judgment in Virendra Singh (supra), judgment of Mata Sewak Upadhyaya (supra) appears that it was not placed before the Division Bench and hence it has no occasion to consider the same.

8. After advertent the above aspects and the sum and substance of the dictum of the full Bench does not permit me to take different view except the view taken by full Bench. Since the judgment of full Bench of this Court rendered in the matter of Mata Sewak Upadhyaya (supra) was not placed before this Court, therefore, following the Division Bench, order has been passed for treating the case as complaint case. However, in view of the full Bench decision of this Court, aforementioned, I am of the opinion that once an FIR u/s 506 IPC has been registered it is a cognizable and non-bailable offence, then the police has to investigate the case in the said FIR u/s 156(1) Cr.P.C. unless it decides otherwise u/s 157(1) Cr.P.C. and in the event charge sheet is filed and cognizance is taken by the court concerned, the magistrate had to proceed as a case arising out of charge sheet.

9. In view of above, this application fails and is accordingly dismissed.