

(2009) 03 AHC CK 0193**Allahabad High Court****Case No:** Criminal M.A. No. 6629 of 2009

Faijina Siddiqui

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: March 30, 2009**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 173(8)
- Penal Code, 1860 (IPC) - Section 120B, 302, 307, 34

Citation: (2009) 2 ACR 1782**Hon'ble Judges:** Ravindra Singh, J**Bench:** Single Bench**Advocate:** Sharique Ahmad, for the Appellant; A.G.A., for the Respondent**Final Decision:** Disposed Of

Judgement

Ravindra Singh, J.

Heard the learned Counsel for the applicant and the learned A.G.A., for the State.

2. This application has been filed by the applicant Km. Faijina Siddiqui with a prayer to quash the proceedings of Criminal Case No. 6814 of 2007 under Sections 307, 302 and 120B/34, I.P.C. pending in the Court of learned C.M.M., Kanpur Nagar.

3. It is contended by the learned Counsel for the applicant that in the present case F.I.R. has been lodged by O.P. No. 2 in Case Crime No. 156 of 2006 P. S. Sisamau District Kanpur Nagar on 24.10.2006 at 10.40 p.m. against Mohd. Taufiq and three unknown persons alleging therein that co-accused Mohd. Taufiq caused gun shot injury on the person of Mohd. Shahnawaz Siddiqui, the injured was taken to Hallot Hospital to provide medical aid but he succumbed to his injuries on 5.11.2006, the matter was investigated by the I.O. who submitted the charge-sheet dated 10.4.2007 against the applicant and co-accused Fazil Siddiqui under Sections 307, 302 and 120B/34, I.P.C. on which the learned C.M.M., Kanpur Nagar has taken the

cognizance and summoned the applicant to face the trial. Thereafter, the learned Magistrate concerned has allowed the application u/s 173(8), Cr. P.C., for doing further investigation. After further investigation, the I.O. came to the conclusion that no credible evidence for constituting the offence u/s 120B, I.P.C. is available against the applicant, in such a situation the prosecution of the applicant is illegal. The applicant and the co-accused Fazil moved an application in the Court of learned C.M.M., Kanpur Nagar for accepting the final report and to close the proceedings pending against them but the same has been illegally rejected by the learned C.M.M., Kanpur Nagar on 4.3.2009, thereafter, the applicant has been summoned through the bailable warrant. The prosecution of the applicant is illegal, the same may be quashed.

4. In reply to the above contention, it is submitted by the learned A.G.A., that in the present case, applicant has been charge-sheeted by the I.O. under Sections 307, 302 and 120B/34, I.P.C., on which the learned Magistrate concerned has taken cognizance and summoned the applicant to face the trial. Thereafter, an application was moved on behalf of the prosecution for doing further investigation, the same has been allowed by the learned C.M.M., Kanpur Nagar, the report of further investigation has been submitted by the I.O. mentioning therein that no credible evidence constituting the offence punishable u/s 120B, I.P.C. is available against the applicant but in the same report it has been mentioned that the charge-sheet u/s 120B has already been submitted against the applicant and co-accused Fazil, the report submitted by the I.O. was not conclusive but it was a parcha of the case diary, thereafter the application filed by the applicant and other co-accused persons for accepting the final report and closing the proceedings has been rightly rejected by the learned C.M.M., Kanpur Nagar vide order dated 4.3.2009. There is no illegality in the prosecution of the applicant.

5. Considering the submission made by the learned Counsel for the applicant, learned A.G.A. and from the perusal of the record it appears that in the present case charge-sheet has been submitted against the applicant under Sections 307, 302 and 120B/34, I.P.C. on which the learned Magistrate concerned has taken cognizance and summoned the applicant to face the trial, thereafter, the application for doing further investigation u/s 173(8), Cr. P.C., has been moved by the prosecution, the same has been allowed. Subsequently, I.O. submitted the parcha of the case diary mentioning therein that during further investigation no such evidence constituting the offence u/s 120B, I.P.C. against the applicant and co-accused has been collected, on the basis of such report, the summoning order passed by the learned Magistrate cannot be recalled or the same cannot be set aside because it is settled position of law that after submission of the charge-sheet if the learned Magistrate concerned has taken cognizance thereafter final report is submitted after further investigation or by other investigation, the earlier order by which the cognizance has been taken shall not be adversely affected. The material collected by the I.O. in further investigation or by way of doing some other investigation may be used by the

accused person for the purpose of contradiction at the stage of the trial, in the present case, no final report has been submitted, the learned Magistrate concerned has not committed any error in rejecting the application filed by the applicant and other co-accused persons which was moved for accepting the final report and closing the proceedings. There is no ground for quashing the proceedings of Criminal Case No. 6814 of 2007 pending in the Court of learned C.M.M., Kanpur Nagar, therefore, such prayer is refused.

6. However, considering the facts and circumstances of the case, it is directed that the applicant shall appear before the Court concerned within 25 days from today, till then bailable warrant/N.B.W. if any, issued against her shall be kept in abeyance. In case, she applies for bail, the same shall be heard and disposed of expeditiously, if possible, on the same day.

7. With the above direction, this application is finally disposed of.