

(2006) 08 AHC CK 0182

Allahabad High Court

Case No: Criminal M. Bail Application No. 7488 of 2005

Sameer Raza

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: Aug. 17, 2006**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 200, 202
- Penal Code, 1860 (IPC) - Section 302, 307

Citation: (2006) 3 ACR 3348**Hon'ble Judges:** Ravindra Singh, J**Bench:** Single Bench**Advocate:** I.M. Khan, for the Appellant; H.K.A. Khan, V.B. Shivhare and Shahabuddin, A.G.A., for the Respondent**Final Decision:** Disposed Of

Judgement

Ravindra Singh, J.

This application has been filed by the applicant Sameer Raza with a prayer that further proceedings of Case No. 97/11 of 2005 u/s 307, I.P.C. including the order dated 7.4.2005 passed by the 1st A.C.J.M. Rampur may be quashed.

2. Heard Sri I. M. Khan, learned Counsel for the applicant, learned A.G.A. for the State of U. P. and Sri Shahabuddin and Sri Vijay Bahadur Singh Shivhare, learned Counsel for O.P. M/No. 2.

3. The facts of the case in brief are that an F.I.R. has been lodged by O.P. No. 2 against the applicant and other co-accused persons on 12.3.2005 at 7.15 p.m. in case Crime No. 127 of 2005 u/s 307, I.P.C. P.S. Ganj district Rampur, mentioning therein that O.P. No. 2 has purchased a grove from the applicant about 6 month prior the date of the F.I.R. and an amount of Rs. 40,000 was paid by O.P. No. 2 to the applicant as an advance but the applicant was not permitting him to cut the trees of the grove and he was not refunding the amount to O.P. No. 2 but on the day of the

alleged occurrence O.P. No. 2 has demanded the amount which has been paid by him to the applicant but the same was not paid and the applicant had extended threat. On the same day at about 7.15 p.m. the applicant discharged the shot by country made pistol which hit on the back of O.P. No. 2. After causing injury the applicant ran away towards Civil Lines side. The O.P. No. 2 was medically examined by the Medical Officer, District Hospital, Rampur on 12.3.2005 at about 8.15 p.m. He has received two injuries in which injury No. 1 was multiple firearm wound on the back of the chest and injury No. 2 was abraded contusion on the back of the chest. After lodging the F.I.R. the matter was investigated by the Investigating Officer who came to the conclusion that the applicant was falsely implicated. Therefore, final report dated 13.3.2005 was submitted by the Investigating Officer in the court of learned A.C.J.M. 1st Rampur. The learned Magistrate concerned issued notices to O.P. No. 2 to hear him on that final report. Thereafter, O.P. No. 2 filed a protest petition on 7.4.2005 in the court of 1st A.C.J.M. with a prayer that final report may be rejected and the accused may be summoned to face the trial for the offence punishable u/s 307, I.P.C. and the same was allowed by the learned 1st A.C.J.M. Rampur on. 7.4.2005. The learned Magistrate rejected the final report after taking cognizance and the applicant has been summoned to face the trial for the offence punishable u/s 307, I.P.C. Being aggrieved by the order dated 7.4.2005 the applicant filed this application with a prayer that the order dated 7.4.2005 may be quashed and the Criminal Proceedings pending in the court of learned 1st A.C.J.M. Rampur may also be quashed.

4. It is contended by the learned Counsel for the applicant :

1. That after registration of the F.I.R. the statement of Achchan Mehraj O.P. No. 2, Wasi Khan, Haroon Khan, Babbu Khan, Nabbu Khan, Siraj Khan, Shahnawaz Miyan and Sami Ullah Khan were recorded by the Investigating Officer u/s 161, Code of Criminal Procedure According to their statements the applicant was not present at the time of alleged occurrence. The witnesses have not supported the prosecution story. Therefore, the Investigating Officer has submitted the final report dated 13.3.2005. The investigation was properly done by the Investigating Officer who has rightly come to the conclusion that the applicant has not committed the alleged offence.

2. That even on the basis of the F.I.R. and the statement of the witnesses recorded u/s 161, Code of Criminal Procedure prima facie a case u/s 307, I.P.C. is not made out against the applicant.

3. That the impugned order dated 7.4.2005 passed by the 1st A.C.J.M. Rampur is illegal because the learned Magistrate has not considered the statement of the witnesses recorded by the Investigating Officer but in a mechanical manner and without showing proper reasons final report has been rejected and the learned Magistrate has taken cognizance and the applicant has been summoned to face the trial u/s 307, I.P.C.

4. That after taking cognizance, the case has been treated as a complaint case but the procedure prescribed of a complaint case has not been followed because the protest petition filed by O.P. No. 2 has not been treated as a complaint. No statement under Sections 200 and 202, Cr.P.C. has been recorded even then the case has been marked as a complaint case *Achchan Mehraj v. Sameer Raza*, and not as *State v. Sameer Raza*.

5. That the applicant has been falsely implicated by O.P. No. 2 with the intention to prevent him from getting the passport so that he may not go to gulf countries to earn his livelihood.

6. That the proceedings have been initiated by O.P. No. 2 with ulterior motive and the learned Magistrate has also illegally taken cognizance by passing the impugned order dated 7.4.2005 which is liable to be set aside and the entire proceedings pending against the applicant are also liable to be quashed.

5. In reply to the above contentions advanced by the learned Counsel for the applicant the learned A.G.A. and the learned Counsel for the complainant submit :

1. That in the present case F.I.R. has been lodged by O.P. No. 2 against the applicant on 12.3.2005 at 7.50 p.m. in respect of the incident which had occurred on 12.3.2005 at about 7.15 p.m. In the said incident the applicant has fired at O.P. No. 2 by a country made pistol with intention to kill him, consequently, O.P. No. 2 received two injuries. Injury No. 1 was multiple fire arm wound injury on the back of the chest and injury No. 2 was abraded contusion on the back of right side of the chest. The first informant, O.P. No. 2 was medically examined and he has fully supported the prosecution story in his statement u/s 161, Code of Criminal Procedure The other witnesses have also fully supported the prosecution story in their statement recorded u/s 161, Code of Criminal Procedure Surprisingly, the Investigating Officer recorded the statement of such person who were on applicant side and relied upon their statement. The Investigating Officer submitted the final report. The final report submitted by the Investigating Officer was not proper because on the basis of the allegation made against the applicant prima facie offence u/s 302, I.P.C. was made out and O.P. No. 2 filed a protest petition. Thereafter the learned 1st A.C.J.M. Rampur perused the case diary and other material collected by the Investigating Officer during investigation and after considering the same a conclusion was drawn that final report was illegally submitted and on the basis of the material recorded by the Investigating Officer a prima facie case u/s 307, I.P.C. was made out. Therefore, the learned Magistrate concerned rejected the final report and took cognizance of this case and summoned the applicant to face the trial u/s 307, I.P.C. vide impugned order dated 7.4.2005. The impugned order dated 7.4.2005 is not suffering from any illegality, it is a perfect order and the learned Magistrate has not treated the present case as a complaint case and no such order has been passed but in the head note of the case *Achchan alias Mehraj v. Sameer Raza*, has been mentioned only on the basis of the protest petition filed by O.P. No. 2.

2. That there is no illegality in the impugned order and there is no ground to quash the proceedings in the court of learned 1st A.C.J.M., Rampur and the ground of mala fide taken by the applicant has no substance. Therefore, the present application may be dismissed.

6. Considering the facts and circumstances of the case and the submissions made by the learned Counsel for the applicant and the learned A.G.A, and the learned Counsel for O.P. No. 2 and from a perusal of the record and the impugned order dated 7.4.2005 it appears that in the present case on the basis of the F.I.R., medical examination report and the statement of the first informant and other witnesses, prima facie offence u/s 307, I.P.C. is made out but the Investigating Officer committed manifest error by giving importance to the witnesses of the defence and submitting final report, the learned Magistrate also did not commit any mistake in rejecting the final report and taking cognizance against the applicant by summoning him to face the trial for the offence punishable u/s 307, I.P.C. The learned Magistrate has not passed any order that this case as a complaint case. The learned Magistrate has passed order on the protest petition that is why it appears that the parties name was mentioned as Achchan alias Mehraj v. Sameer Raza. The impugned order dated 7.4.2005 has been passed by the learned Magistrate after perusing the police report and the learned Magistrate has considered the same and came to the conclusion that a prima facie offence u/s 307, I.P.C. is made out. The final report was wrongly submitted, therefore, it was rejected. The learned Magistrate was empowered to pass such order. There is no illegality in the impugned order, which requires interference of this Court. There is no illegality in the prosecution of the applicant, therefore, the prayer for quashing the impugned order dated 7.4.2005 and quashing the proceedings pending in case No. 97/11 of 2005 pending in the court of learned 1st A.C.J.M. Rampur is refused.

7. However, in view of the above discussion it is directed that this case shall be treated as State case and if the applicant appears before the court concerned within 30 days from today and apply for bail, the same shall be considered and disposed of by the courts below, if possible, on the same day in accordance with law.

8. For a period of 30 days today no coercive steps shall be taken against the applicant for his arrest.

9. With this direction this application is finally disposed of.