(2008) 04 AHC CK 0293

Allahabad High Court

Case No: Criminal M.A. No. 9687 of 2008

Rajesh Kumar Tripathi		APPELLANT
	Vs	
State of U.P. and Another		RESPONDENT

Date of Decision: April 28, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 190, 200, 204
- Penal Code, 1860 (IPC) - Section 420, 427, 457, 467, 468

Citation: (2008) 3 ACR 2606

Hon'ble Judges: Ravindra Singh, J

Bench: Single Bench

Advocate: Indra Mani Tripathi, for the Appellant; A.G.A., for the Respondent

Final Decision: Disposed Of

Judgement

Ravindra Singh, J.
This application has been filed with a prayer to quash the proceedings of Case No. 1401 of 2007 under Sections 420, 467, 468, 471, 457, 427 and 506, I.P.C., arising out of the charge-sheet submitted in Case Crime No. 222 of 2006 P. S. George Town, District Allahabad, pending in the court of learned Additional C.J.M.-I, Allahabad and the order dated 11.3.2008 by which bailable warrant has been issued against the applicant.

2. The facts in brief, of this case are that F.I.R. of this case has been lodged by Sri Prabhunath Pandey at P. S. George Town on 13.11.2006, at 2.20 p.m. against the applicant and Ors. with the allegations that the applicant is a land Mafia, he is involved in purchasing and selling of the land on the basis of forged document and takes illegal possession of the land by way of extending threats of life. After investigation charge-sheet has been submitted by the Investigating Officer against the applicant on which the learned Magistrate concerned has taken cognizance, on 25.5.2007, thereafter, the applicant moved an application u/s 156(3), Cr.P.C., in the Court of learned Additional Civil

Judge (Junior Division)/Judicial Magistrate, Court No. 6, Allahabad, the same was allowed on 6.8.2007 directing the officer in-charge of the P.S. George Town to ensure that investigation of this case, be done by any superior officer, or any other investigating agency. Thereafter, the learned A.C.J.M.-I, Allahabad issued bailable warrant against the applicant on 11.3.2008, because the applicant has not appeared in the Court concerned even after the order of taking cognizance dated 25.5.2007. In the present application, the applicant has prayed to quash the proceedings to Case No. 1401 of 2007 pending in the Court of learned Additional C.J.M.-I, Allahabad and to set aside the bailable warrant issued against him on 11.3.2008 by the aforesaid Court.

3. Heard Sri Indra Mani Tripathi, learned Counsel for the applicant and the learned A.G.A.

4. It is contended by the learned Counsel for the applicant that the charge-sheet of the present case has been submitted by the Investigating Officer without doing fair investigation, on which the learned Magistrate concerned has illegally taken cognizance on 25.5.2007, thereafter, the applicant moved an application u/s 156(3), Cr.P.C., mentioning therein that fair investigation has not been done by the Investigating Officer due to influence of Sri Vasistha Singh Yadav, the then Officer In-charge of P.S. George Town, therefore, fair investigation of this case may be done by any superior officer of the police or by some other independent agency, after considering the same the learned Additional Civil Judge (Junior Division)/Judicial Magistrate, Court No. 6, Allahabad, allowed the application u/s 156(3), Cr.P.C., on 6.8.2007 and the officer in-charge of the P.S. George Town has been directed to ensure that investigation may be done by any superior officer of the police or any investigating agency, thereafter, the matter went to the Court of learned A.C.J.M.-I, Allahabad who illegally issued the bailable warrant against the applicant on 11.3.2008.

5. It is further contended by the learned Counsel for the applicant that even on the basis of the material collected by the I.O., no offence under Sections 420, 467, 468, 471, 457, 427 and 506 I.P.C., is not made out.

6. It is further contended that after considering all circumstances of the case, the order of fresh investigation has been passed by the learned Additional Civil Judge (Junior Division)/Judicial Magistrate, Court No. 6, Allahabad, therefore, the proceedings pending against the applicant on the basis of earlier charge-sheet submitted by the Investigating Officer on which the cognizance has been taken by the learned Magistrate concerned on 25.5.2007 and the order dated 11.3.2008 issuing bailable warrant against the applicant are illegal, may be quashed.

7. In reply to the above contention it is submitted by the learned A.G.A. that in the present case after doing investigations, the charge-sheet has already been submitted, considering the same learned Magistrate concerned has taken cognizance on 25.5.2007, there is no illegality in the submission of the charge-sheet and the order dated 25.5.2007 by which the cognizance has been taken and the applicant has been summoned to face

the trial. It is very surprising that the learned Additional Civil Judge (Junior Division)/Judicial Magistrate, Court No. 6, Allahabad has passed an illegal order dated 6.8.2007 on an application u/s 156(3), Cr.P.C. and without having any authority directed the Investigating Officer of Police, for fresh investigation be done by the superior officer or other investigating agency. The order dated 6.8.2007 has been passed arbitrarily without applying judicial mind and ignoring the correct position of law, it is an illegal order, it appears that it has been passed on some other considerations, the applicant has not appeared before the Court concerned even after the submission of the charge-sheet, therefore, on the basis of an illegal order dated 6.8.2007, the proceedings, in pursuance of the charge-sheet submitted against the applicant may not be quashed, learned Magistrate concerned has not committed any error in passing the order dated 11.3.2008 issuing bailable warrant against the applicant, the grounds taken by the applicant for quashing the proceedings are baseless, the application filed by the applicant is having no substance, the same may be dismissed.

8. It is further submitted that the order dated 6.8.2007, passed by learned Additional Civil Judge (J.D.)/ Judicial Magistrate, Court No. 6, Allahabad may also be quashed.

9. Considering the submission made by the learned Counsel for the applicant and the learned A.G.A. and from the perusal of the record, it appears that in the present case, F.I.R. has been lodged by O.P. No. 2 at P. S. George Town in Case Crime No. 222 of 2006, after its investigation, the charge-sheet was submitted by the Investigating Officer on which the learned Special C.J.M., Allahabad has taken cognizance and summoned the applicant to face the trial on 25.5.2007, thereafter, the applicant moved an application u/s 156(3), Cr.P.C., with a prayer that fair investigation may be done by any superior officer of the police or other investigating agency, the same was allowed by the learned Additional Civil Judge (Junior Division)/Judicial Magistrate, Court No. 6, Allahabad on 6.8.2007 by issuing direction to the officer-in-charge of P.S. George Town to ensure that the investigation may be done by the superior officer of the police or other investigating agency, for the purpose of fair investigation, thereafter, the bailable warrant has been issued against the applicant on 11.3.2008 by the Court of learned A.C.J.M.-I, Allahabad.

10. The prayer for quashing the proceedings against the applicant is mainly based on the ground that the order dated 6.8.2007 passed by the Additional Civil Judge (Junior Division)/Judicial Magistrate, Court No. 6, Allahabad by which the application u/s 156(3), Cr. P.C., filed by the applicant has been allowed and the officer-in-charge of the P.S. George Town has been directed to ensure that the investigation of this case be done by any superior officer of the police or other investigating agency, therefore, for consideration of the prayer of this application, the legality of the order dated 6.8.2007 is required to be tested.

11. From the perusal of the order dated 6.8.2007, it appears that the name of the ''Presiding Officer'' who has passed the order has not been mentioned, the only designation of the Court has been mentioned, the Presiding Officer had made illegible

signature in the form of initial. The certified copy of the order sheet filed by the learned Counsel for the applicant of the Court of learned A.C.J.M.-I, Allahabad also does not show the name of the Presiding Officer, who passed the different orders. In the present case, the learned Additional Civil Judge (Junior Division)/Judicial Magistrate, Court No. 6, Allahabad has passed the order dated 6.8.2007 directing the officer in charge of the P.S. George Town to ensure that investigation be done by superior officer or other investigating agency whereas the investigation was already done and charge-sheet was submitted on which cognizance was taken by the learned Magistrate concerned on 25.5.2007 at this stage no order u/s 156(3), Cr.P.C., can be passed because the order u/s 156(3), Cr.P.C., may be passed at pre-cognizance stage but in the present case, the impugned order dated 6.8.2008 has been passed at post cognizance stage. The learned Additional Civil Judge (Junior Division)/Judicial Magistrate, Court No. 6, Allahabad was not empowered to pass such order of fresh investigation to be done by a superior officer or other investigating agency, the reasons shown for passing such order are not at all proper and judicious, it was very well known to the learned Judicial Magistrate, Court No. 6, Allahabad that in the present case after investigation charge-sheet has already been submitted and the learned Magistrate has taken cognizance even then the order of fresh investigation has been passed for which the learned Magistrate concerned was not legally empowered. It has been passed in arbitrary manner, whereas the settled principle of law is that the order u/s 156(3), Cr.P.C. can be passed at the pre-cognizance stage i.e., before taking cognizance under Sections 190, 200 and 204, Cr.P.C., once the cognizance has been taken the Magistrate is not entitled in law to order for investigation u/s 156(3), Cr.P.C., it has been held by the Apex Court in case of State of Assam Vs. Abdul Noor and Others, and Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others,

12. The order dated 6.8.2008 is totally illegal and it has been passed ignoring all the settled principles of law, it reflects that the order has been passed deliberately against the law, arbitrarily or the Judicial Magistrate does not have elementary knowledge of criminal law. It is not expected from any judicial officer to pass such order. The manner in which the order dated 6.8.2007 has been passed is shocking, it compelled me to know the name of the judicial officer who passed the order, the office of the Registrar General of this Court has informed that name of the Judicial Officer is Mr. Abid Shamim, who appears to be a young officer, therefore, I am restraining to pass any adverse remark affecting his service career, but he is advised not to pass such order in arbitrary manner ignoring the judicial discipline, he must be careful in future in passing the judicial order and to follow judicial norms.

13. The order dated 6.8.2007 is not challenged in the present application whereas on the basis of this order dated 6.8.2007 the prayer for quashing the proceedings is made, therefore, this Court has taken cognizance of the order dated 6.8.2007, in exercise of the inherent power conferred u/s 482, Cr.P.C., to prevent abuse of the process of any Court, this Court has come to the conclusion as referred above that the order dated 6.8.2007 is

totally illegal, it is abuse of the process of the Court, therefore, it is hereby set aside and in pursuance of the order dated 6.8.2007 no investigation shall be done.

14. The prayer made in present application is based on the order dated 6.8.2008, passed by the learned Additional Civil Judge (Junior Division)/Judicial Magistrate, Court No. 6, Allahabad, the order dated 6.8.2007 itself is illegal which has been quashed as referred above, therefore, the prayer for quashing the proceedings, is having no substance. The order dated 11.3.2008 passed by the learned A.C.J.M.-I, issuing bailable warrant is having no illegality because due to non-appearance of the applicant, it has been passed. Therefore, the prayer for quashing the proceedings of Case No. 1401 of 2007 pending in the court of learned Additional C.J.M., Allahabad and the order dated 11.3.2008 issuing bailable warrant against the applicant is refused.

15. However, considering the submission made by the learned Counsel for the applicant that on the basis of the material collected by the Investigating Officer no offence is made out against the applicant, it is directed that in case the applicant moves a discharge application through his counsel before the Court concerned within 45 days from today, the same shall be heard and disposed of within a month thereafter in accordance with the provisions of law, till the disposal of discharge application no coercive steps shall be taken against the applicant.

16. From the perusal of the order sheet it appears that in the present case, the name of the Presiding Officer who passed the order dated 6.8.2007 is not mentioned anywhere, it could be found out from the office of the Registrar General of this Court whereas the name of the Judicial Officer who passes the order must be mentioned either at the top of the order/judgment or at the bottom where the Judicial Officer puts the signature, which is necessary for many purposes. To ensure the same, it requires that a circular may be issued to every Judicial Officer for such purpose, therefore, a copy of this order shall be placed before the Registrar General of this Court to issue a circular etc., to all Judicial Officer of the State of U.P., to ensure that in every judicial order the name of the Judicial Officer alongwith designation be mentioned either at the top of the order/judgment or at the bottom where the Judicial Officer puts signature.

17. It is further directed that the advice as mentioned above shall be communicated to Sri Abid Shamim, Additional Civil Judge (J.D.) Court No. 6, Allahabad through learned District and Sessions Judge, Allahabad.

With the above directions, this application is finally disposed of.