

(2008) 10 AHC CK 0134

Allahabad High Court

Case No: Criminal M. Application No. 26723 of 2008

Umesh Kumar and
Another

APPELLANT

Vs

State of U.P. and
Another

RESPONDENT

Date of Decision: Oct. 15, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 304, 337, 338

Citation: (2009) 1 ACR 41

Hon'ble Judges: Ravindra Singh, J

Bench: Single Bench

Advocate: Dharmendra Kumar, for the Appellant; A.G.A., for the Respondent

Final Decision: Disposed Of

Judgement

Ravindra Singh, J.

Heard learned Counsel for the applicants and learned A.G.A. for the State of U. P.

2. This application has been filed with a prayer to quash the order dated 27.10.2007, passed by learned Chief Judicial Magistrate, Chitrakoot, in Misc. Case No. 1694/IX of 2007, whereby learned Magistrate concerned has rejected the final report of Case Crime No. 29 of 2005, under Sections 337, 338 and 304, I.P.C., Police Station, Rajapur, district Chitrakoot and summoned the applicants to face the trial for the offence punishable u/s 304, Part-II, I.P.C., and order dated 11.9.2008, passed by learned Sessions Judge, Chitrakoot, in Criminal Revision No. 37 of 2008 whereby revision filed by the applicants has been dismissed.

3. It is contended by learned Counsel for the applicants that in the present case, learned Chief Judicial Magistrate, Chitrakoot, has rejected the final report only on the ground that

the injured witnesses namely Deo Kumar and Ram Milan had sent their affidavits to Superintendent of Police, Chitrakoot, the same have not been considered by the Investigating Officer and submitted final report but the learned Magistrate concerned has not expressed his opinion in the impugned order that on the basis of the material collected by Investigating Officer, prima facie any offence is made out or the material collected by Investigating Officer is sufficient to proceed further against the applicants. The learned Magistrate concerned has not perused the police report submitted by Investigating Officer and without going through the police report, the final report has been rejected and applicants have been summoned to face the trial for the offence punishable u/s 304, Part II, I.P.C. Learned revisional court has also not considered the error committed by learned Chief Judicial Magistrate concerned and dismissed the revision. The impugned orders dated 27.10.2007 and 11.9.2008 are illegal and are liable to be set aside by this Hon"ble Court.

4. In reply of the above contention, it is submitted by learned A.G.A. that learned Chief Judicial Magistrate, concerned has passed a reasoned order by which final report has been rejected and the applicants have been summoned to face the trial for the offence punishable u/s 304, Part II, I.P.C. The revisional court has also not committed any error in dismissing the revision and the present application filed by the applicants is devoid of merits, the same may be dismissed.

5. Considering the submissions made by learned Counsel for the applicants and learned A.G.A. for the State of U. P., and from the perusal of records, it appears that in the present case, first information report has been lodged by opposite party No. 2 Sri Bachcha Lal Kewat, against unknown persons in Case Crime No. 29 of 2008, under Sections 337, 338 and 304, I.P.C. at Police Station, Rajapur, district Chitrakoot on 17.5.2005 at 4 a.m. in respect of an incident which had occurred in the night of 16/17.5.2005 at about 2 a.m., after investigation, final report has been submitted by Investigating Officer in the Court of learned C.J.M., Chitrakoot thereafter the notice was sent to the first informant, the same was served upon him but opposite party No. 2 did not appear in the Court of learned Chief Judicial Magistrate, concerned even after service of notice upon him thereafter the learned Chief Judicial Magistrate, concerned rejected the final report only on the ground that affidavits of injured namely Deo Kumar and Ram Milan were sent to Superintendent of Police, Chitrakoot, but the same have not been properly considered by the Investigation Officer, the charge-sheet has been submitted in a routine manner. According to the affidavits of Deo Kumar and Ram Milan, co-accused Kamla Kant discharged the shots by licensed rifle of Umesh Kumar Shukla as a result of which Km. Rajni (deceased), Deo Kumar and Ram Milan have sustained injuries and subsequently, Km. Rajni succumbed to her injuries. It is also mentioned in their affidavits that except co-accused Kamla Kant no other person of marriage party had discharged the shots and the co-accused Kamla Kant was apprehended at the spot but the learned Magistrate concerned has not given any reference in the impugned order dated 27.10.2007 in respect of the statements of witnesses interrogated by Investigating Officer

u/s 161, Cr. P.C. even no reference has been made about the statements of injured persons namely Deo Kumar and Ram Milan whether they were interrogated by Investigating Officer or not ; the learned Magistrate concerned has not expressed any opinion about constitution of the offence on the basis of material collected by Investigating Officer.

6. The impugned order dated 27.10.2007, passed by learned Chief Judicial Magistrate concerned has been passed after considering the police report but the learned Magistrate concerned has not discussed about the material collected by the Investigating Officer, constituting any offence which is sufficient for the prosecution of the applicants. The affidavits of the injured witnesses sent to S.P., Chitrakoot have not been considered by the Investigating Officer, may not be a ground for summoning the applicants to face the trial because it cannot be an evidence against the applicants. In such circumstances if proper investigation has not been done by Investigating Officer, the matter would have been remitted for further investigation or if witnesses have supported the prosecution version in their statements recorded u/s 161, Cr. P.C., learned Magistrate concerned would have taken cognizance on the basis of statements recorded by Investigating Officer. But in the present case, no such view has been taken by learned Magistrate concerned and without giving any proper reason, final report has been rejected and cognizance has been taken for the offence punishable u/s 304, Part II, I.P.C. The impugned order dated 27.10.2007 is illegal and the revisional court has also not considered the above-mentioned error committed by learned Chief Judicial Magistrate, concerned and dismissed the revision vide its order dated 11.9.2008 which is also illegal. Therefore, the impugned order dated 27.10.2007, passed by learned Chief Judicial Magistrate, concerned and impugned order dated 11.9.2008, passed by learned Sessions Judge, Chitrakoot are hereby set aside.

7. However, it is directed that learned Chief Judicial Magistrate, Chitrakoot shall pass fresh order on the final report submitted by Investigating Officer after perusing the case diary in accordance with the provisions of law.

With this direction, the application is finally disposed of.