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Ram Samujh and Others Vs State of U.P. and Another

Application No. 27919 of 2010

Court: Allahabad High Court

Date of Decision: Sept. 22, 2010

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 156(3), 173(2), 482#Penal Code, 1860 (IPC) â€" Section 420, 467, 468

Citation: (2010) 09 AHC CK 0497

Hon'ble Judges: Rajesh Dayal Khare, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rajesh Dayal Khare, J.
Heard learned Counsel for the applicants and learned A.G.A. for the State.

2. The present application u/s 482 Cr.P.C., has been filed for quashing the order dated 08.04.2010 passed by learned Additional Chief Judicial

Magistrate-IInd, District Jaunpur, in Case No. 24 of 2005 (Patiram v. State), under Sections 467, 468, 420 I.P.C., Police Station Kheta Sarai,

District Jaunpur. whereby the order for further investigation in the matter has been passed.

3. It is contended on behalf of the applicants, that opposite party No. 2 filed an application u/s 156(3) Cr.P.C. before the learned Judicial

Magistrate, Ist class, Jaunpur on 23.07.2005, which application was allowed by learned Magistrate, vide its order dated 30.07.2005 and direction

was made, for registration of the F.I.R., against the applicants. Pursuant to the aforesaid order F.I.R. was lodged against the applicants in Police

Station Kheta Sarai, District Fatehpur in Case Crime No. C-21 of 2005 under Sections 467, 468, 420 I.P.C. It is further contended by learned

Counsel for the applicants that thereafter, the Investigating Officer, investigated the matter and submitted final report on 15.09.2005 before the

learned Court below on which notice was issued to the opposite party No. 2, who filed a protest petition against the final report submitted by the

Investigating Officer, on which learned Magistrate passed the order for further investigation in the matter vide its order dated 30.10.2006 and set

aside the final report. It is also argued that after further investigation, final report was again submitted by the Investigating Officer but the opposite

party No. 2 again filed an application before the Superintendent of Police, Jaunpur on the ground, that the thumb impression of the witness was not

compared by the handwriting expert upon which the Investigating Officer filed an application before the learned Chief Judicial Magistrate on

08.04.2010 praying therein that he may be permitted for further investigation in the matter on which, the order impugned dated 08.04.2010 has

been passed directing for further investigation. It is next contended that without rejecting or disposing off, the final report filed by the Investigating

Officer, for the second time, no order for further investigation can be passed and therefore, the order impugned is liable to be set aside. Learned

Counsel for the applicants has relied upon a Judgment of Hon''ble Apex Court reported in 2009 (66) ACC 936 Kishan Lal v. Dharmendra Bafna

and Anr. in support of his contention wherein it has been held by Hon''ble Apex Court that when final report is filed by the Investigating in exercise

of power under Sub-section (2) of Section 173 of the Code, the first informant has to be given notice who may file protest petition which in a given

case may be treated as a complaint petition, on the basis of whereof after fulfilling the statutory requirements cognizance may be taken. It is further

held that learned Magistrate may also take cognizance on the basis material place on record by the Investigating Officer or the learned Magistrate

may direct for further investigation. The same preposition of law was held in a decision of Hon''ble Apex Court reported in 2004 (5) ACC 650

Gangadhar Janardan Mhatre v. State of Maharastra and Ors. on which reliance has been placed by learned Counsel for the applicants. It is next

contended that the opposite party No. 2 also filed a Civil Suit No. 731 of 1996 (Sughara v. Ram Samujh) before the learned Additional Civil

Judge (Junior Division) for cancellation of the sale deed which is stated to be pending before learned Civil Court.

4. Learned A.G.A. has contended that the order was passed for further investigation for the first time on the ground, that the thumb impression was

not tallied by the expert and the Investigating Officer without complying with the aforesaid direction issued by the learned Magistrate again

submitted the final report, thus, on the application moved by the opposite party No. 2 before the Senior Superintendent of Police, on which

Investigating Officer filed an application for further investigation before the learned Magistrate, the same was allowed by the order impugned.

Learned A.G.A. has further contended that there is no legal infirmity in the order impugned which may warrant any interference by this Court in

exercise of power conferred under 482 Cr.P.C., jurisdiction.

5. Heard learned Counsel for the applicants, learned A.G.A. and perused the averments made in the present present petition.

6. In any view of the matter, the Hon''ble Apex Court has held that it is the duty of the learned Magistrate to ensure that investigation be done fairly

and properly, and as such as the Investigating Officer did not comply with the directions of the learned Magistrate and again submitted final report,

therefore, this Court is of the opinion that there is no legal infirmity in the order impugned directing for further investigation.

7. Accordingly, the application lacks merit and is hereby dismissed.