

(2011) 09 AHC CK 0360

Allahabad High Court

Case No: Criminal Miscellaneous Application No. 18183 of 20111

Ram Ayodhya and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: Sept. 27, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 190(1), 482
- Penal Code, 1860 (IPC) - Section 323, 395, 504, 506

Citation: (2012) 1 ACR 146 : (2011) 9 ADJ 679

Hon'ble Judges: Kant Tripathi, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Hon"ble Shri Kant Tripathi, J.

Heard Mr. S.K. Dubey for the petitioners, Mr. B.K. Mishra for the respondent No. 2 and learned AGA for the respondent No. 1 and perused the record.

2. This is a petition u/s 482 of the Code of Criminal Procedure (in short "the Code") for quashing the summoning order dated 30.4.2011 passed by the Additional Chief Judicial Magistrate, Kasaya, district Kushi Nagar in the case crime No. 599 of 2010 u/s 395 IPC, police station Sevarahi, district Kushi Nagar.

3. It appears that in the aforesaid matter the investigating officer submitted a final report. The respondent No. 2 filed a protest petition against the final report and submitted that neither his statement nor statements of his witnesses were recorded during the investigation, therefore, submission of the final report was unjustified. The learned Additional Chief Judicial Magistrate perused the final report as well as the protest petition and other materials filed alongwith the protest petition and passed the summoning order dated 30.4.2011 hording that prima facie a case under Sections 323, 504, 506 and 395 IPC was made against the petitioners, who are eighteen in number.

4. Mr. S.K. Dubey submitted that the summoning order has been passed on the basis of the materials supplied by the respondent No. 2 alongwith the protest petition and there was no evidence at all in the case diary to make out a case against the petitioners, therefore, the summoning order, being based on the materials filed alongwith the protest petition, was not proper. The proper course for the Magistrate was to treat the protest petition as complaint and to proceed therewith under Chapter XV of the Code. He could take the cognizance only on the basis of the materials, if any, collected during the investigation and not otherwise.

5. Mr. B.K. Mishra, on the other hand, submitted that the investigating officer had not done the investigation in a fair manner. Despite there being adequate evidence, the investigating officer submitted a final report, therefore, the materials produced alongwith the protest petition could be taken into consideration by the Magistrate while passing the summoning order.

6. The law with regard to the power of the Magistrate to agree or not to agree with the police report is well settled. In my opinion, the Magistrate is not bound by the conclusion of the Investigating Officer. He is competent under law to form his own independent opinion on the basis of the materials collected during the investigation. The Magistrate may or may not agree with the conclusion of the Investigating Officer. If the Investigating Officer submits charge-sheet, in that eventuality the Magistrate may differ from the charge-sheet and refuse to take cognizance by holding that no case is made out. In a case where the final report is submitted the Magistrate may on perusal of the materials placed in support of the final report opine that the conclusion of the Investigating Officer is not correct and the offence is made out. In that eventuality, the Magistrate may reject the final report and take cognizance of the offence. In appropriate cases, the Magistrate, after rejecting the final report may direct for further investigation/re-investigation. This preposition has been settled by the Hon"ble Apex Court in catena of cases and some of the them are as follows:

1. [Abhinandan Jha and Others Vs. Dinesh Mishra,](#)
2. [State of Maharashtra Vs. Sharadchandra Vinayak Dongre and Others,](#)
3. [Sanjay Bansal and Another Vs. Jawaharlal Vats and Others,](#)
4. [India Carat Pvt. Ltd. Vs. State of Karnataka and Another,](#)
5. [H.S. Bains, Director, Small Saving-Cum-Deputy Secretary Finance, Punjab, Chandigarh Vs. State \(Union Territory of Chandigarh\),](#)
6. [Minu Kumari and Another Vs. The State of Bihar and Others,](#)
7. [Popular Muthiah Vs. State represented by Inspector of Police,](#)
8. [Gangadhar Janardan Mhatre Vs. State of Maharashtra and Others,](#)

7. The law in regard to the protest petition is also well settled. If any protest petition is filed against the final report, the Magistrate may proceed to examine the matter on the basis of materials collected during the investigation and to see whether or not any case for taking cognizance of the offence is made out from the materials collected during the investigation. If a prima facie case is made out, the Magistrate may take cognizance of the offence u/s 190(1)(b) of Code and reject the final report. But if such materials do not make out any case for taking cognizance of the offence, the Magistrate may, in that situation, treat the protest petition as complaint. If any protest petition is treated as complaint, it should be dealt with in accordance with Chapter XV of Code.

8. It is also equally well settled that at the stage of taking cognizance of an offence, the Magistrate is not required to examine thoroughly the merits and demerits of the case and to record a final verdict. At that stage he is not required to record even reasons, as expression of reasons in support of the cognizance may result in causing prejudice to the rights of the parties (complainant or accused) and may also in due course result in prejudicing the trial. However, the order of the Magistrate must reflect that he has applied his mind to the facts of the case. In other words at the stage of taking cognizance what is required from the Magistrate is to apply his mind to the facts of the case including the evidence collected during the investigation and to see whether or not there is sufficient ground (prima facie case) to proceed with the case. The law does not require the Magistrate to record reasons for taking cognizance of an offence.

9. I have perused the impugned order. The learned Magistrate was of the view that the statements of the complainant and witnesses were not recorded correctly. He has referred to various documents in the impugned order on which basis the summoning order has been passed and those documents were filed alongwith the protest petition, therefore, the summoning order was passed on the basis of extraneous materials not forming part of the case diary. As such it cannot be upheld. The proper course for the Magistrate was to see as to whether the materials collected during the investigation had made out any case against the petitioners or not. If the materials so collected had not made out any case against the accused and were sufficient to proceed with the matter, the proper course for the Magistrate was to treat the protest petition as complaint and proceed therewith under Chapter XV of the Code. The summoning order, which is based on extraneous materials filed alongwith the protest petition and having no support from the materials collected during the investigation, cannot be sustained.

10. The petition is allowed. The impugned order is quashed. The Magistrate is directed to reconsider the matter in accordance with law.