

(2006) 07 AHC CK 0197

Allahabad High Court

Case No: Criminal Miscellaneous Writ Petition No. 8278 of 2006

Jai Narayan Singh

APPELLANT

Vs

State of Uttar Pradesh, Home
Secretary, The Senior
Superintendent of Police (S.S.P.)
and Station Officer (S.O.)

RESPONDENT

Date of Decision: July 5, 2006

Acts Referred:

- Constitution of India, 1950 - Article 227
- Criminal Procedure Code, 1973 (CrPC) - Section 156
- Penal Code, 1860 (IPC) - Section 147, 307, 323, 452, 504

Hon'ble Judges: Imtiyaz Murtaza, J; Amar Saran, J

Bench: Division Bench

Advocate: Girish Chandra Saxena, for the Appellant; A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

1. This petition has been filed for a direction in the nature of mandamus seeking transfer of the investigation in Crime No. 65 A of 2006 under Sections 147 452 504 and 506 IPC, registered at P.S. Railway Road, Meerut at the instance of the petitioner Jai Narayan Singh on 13.5.2006 at 00.10 a.m. to some independent investigating agency. The accused were not named in that report.

2. The allegations in the aforesaid FIR were that on 12.5.2006 at about 9 p.m. when the petitioner Jai Narayan Singh was present at his house along with his children, wife, and grand son, about 40-50 boys carrying illegal firearms, sariyas and dandas arrived looking for Suraj Sirohi and said they would not leave him alive and started raising a hue and cry. When the informant tried to stop them they fired at him, but he escaped receiving any injuries by taking shelter behind a wall, however the firing by the accused persons caused injuries to two persons on their own side. On the

cries of the petitioner and others about 50-60 persons of the neighbourhood arrived there resulting in the accused persons leaving the spot firing their weapons. One injured, who had been injured by the firing from his own side was carried by the police. It appears that prior to this report by the petitioner, an earlier report was lodged at the instance of Ankit Yadav at crime No. 65 of 2006 under Sections 307, 323 and 504 IPC at P.S. Railway Road, Meerut on 12.5.2006 at 11 p.m. against the petitioner's side. The petitioner's apprehension was that as the police had lodged their report with reluctance and as the accused in this case were connected with Shisu Pal Yadav a close aide to Chief Minister Mulayam Singh Yadav hence he had no hope for justice in the State of U.P. and was desirous that the case be investigated by some independent agency (presumably the C.B.I.).

3. It may be noted that it has become a fashion these days as a ploy for obtaining favourable orders from this Court, allegations are made stating that the opposite party is connected to the ruling party. This Court has on several earlier occasions deprecated this practice and this invidious attempt to win its favour even where the facts of a particular case may not prima facie entitle a person to any such relief. It may be noted that in the present case itself the allegation in the petitioner's FIR was that 40-50 persons variously armed arrived at the house of the petitioner and even resorted to firing, but no one whatsoever from the side of the petitioner received injuries and the firing from the other side caused injuries to two of the attacking miscreants. Such versions are not glibly accepted by Criminal Courts. Furthermore, it is always open to the petitioner to approach the Magistrate concerned or to file a complaint, if he feels that police is not properly investigating the case set up by him and the Magistrate concerned is expected to pass orders therein in accordance with law. The petitioner however has raised reliance on a head note in *Zahira Habibulla H. Sheikh and Anr. v. State of Gujarat and Ors.* 2004 SCC 999 for the proposition that the Courts must intervene, if the investigation appears to be perfunctory and biased for establishing public confidence in the administration of justice and upholding the Majesty of the law. It may be noted that *Zahira Habibulla H. Sheikh v. State of Gujarat* (which is also known as the Best Bakery Case), was a case where 14 persons had been killed in a business concern at Vadodara by an unruly mob and a number of witnesses had resiled in the trial. The Apex Court observing that faulty and biased investigation and perfunctory trial had marred the sanctity of the entire exercise, had set aside the acquittal and directed reinvestigation and retrial. The facts of the present case as has been shown hereinabove are completely different and the persons, who have received injuries in the present case are from the side of the accused and not from the side of the petitioner.

4. Likewise another case cited by the learned Counsel for the petitioner, *K. Vidya Sagar v. State of U.P.* 2005 SCC 1553, was simply a case, where the High Court in a writ petition by an interim order had directed C.B.I. to investigate into the grievances of the petitioner, and pursuant to the said investigation a report had been filed. In view of the report, the main grievance of the petitioner for taking

criminal action against the respondent stood redressed, hence the Apex Court did not go into the rival contentions of the parties. The said case is not concerned with defining the parameters and situations wherein the High Court can pass orders transferring investigation to the CBI.

5. On the other hand in another decision, *Anandwardhan and Anr. v. Pandurang and Ors.* (2006) 1 SCC 769, it has been held that the High Court should refrain from transferring investigation to a particular agency in exercise of its power under Article 227 of the Constitution and that the proper remedy for the informant/complainant is to move the Magistrate concerned u/s 156 Cr. P. C. or to file a complaint for obtaining appropriate orders for issuance of process against the accused for trial. In this context, the aforesaid law report has observed in paragraph 7 as follows:

We do not wish to make any comments about the investigation of the case or the result of the investigation. The law provides that if the police fails to investigate a case arising from a first information report lodged before it disclosing commission of a cognizable offence, it is open to the informant complainant to move the Magistrate concerned for appropriate orders u/s 156 CrPC, or may file a complaint and obtain appropriate orders from him for issuance of process against the accused for trial. If the grievance of the respondent was that the police was not properly investigating his case, or that the report made by the police was wrong or based on no investigation whatsoever, it was open to him to move the Magistrate concerned. Having failed to do so, he found the novel device of moving the High Court under Article 227 of the Constitution. Such a writ petition should not have been entertained by the High Court when remedy is provided to the aggrieved party under the Code of Criminal Procedure in accordance with the procedure established by law.

6. In this view of the matter we are of the view that the petitioner has made out no case for transferring the investigation to the C.B.I. or any other agency. It is however observed that the remarks which have been made hereinabove have only been made for purpose of disposal of this writ petition and the investigating officer, Magistrate and trial Court may proceed with the case uninfluenced by these observations.

7. The petition is accordingly dismissed.