

Court No. - 53

Case :- APPLICATION U/S 482 No. - 3138 of 2003

Applicant :- Syeed Ahmad And Others

Opposite Party :- Judicial Magistrate Court No.12 Basti And Another

Counsel for Applicant :- Pradeep Kumar,Uma Nath Pandey

Counsel for Opposite Party :- A.G.A,Ashok Kumar Rai

Hon'ble Syed Aftab Husain Rizvi,J.

1. List revised.
2. Learned counsel for applicants and learned AGA are present. However, none is present for opposite party No.2.
3. Applicant No.1 has died his death report has been received from the concerned Magistrate.
4. This application under Section 482 Cr.P.C. has been filed against the order dated 04.03.2003 passed by Judicial Magistrate, Court No.12, Basti in Crl. Case No.323 of 1999 (Ameeru Nisha vs. Afroz Ahmad and others).
5. Learned counsel for applicant submits that opposite party No.2 has lodged an N.C.R. No.78 of 1999 under Sections 323, 504 I.P.C. and after permission investigation was conducted and the charge sheet was submitted. Regarding the same incident complaint was filed by the opposite party No.2 and after evidence under Section 200 and 202 Cr.P.C. summoning order has been passed against the applicant-accused. Applicants, moved an application before the concerned Magistrate to proceed in accordance with the provision of Section 210 Cr.P.C. but the learned Magistrate has rejected the aforesaid application. The impugned order is illegal and arbitrary.
6. From the material on record, it is established that opposite party no.2 lodged an N.C.R. on 21.07.1999 at 19:15 with regard to the incident dated 21.07.1999 at 5:30 P.M. against the applicant-accused. After investigation, charge-sheet was submitted. Meanwhile, opposite party no.2 also lodged a Complaint No.323 of 1999 with regard to the same incident. The learned Magistrate after taking evidence under Sections 200 and 202 Cr.P.C.

summoned the applicant-accused to face trial for offence under Sections 323, 504, 506, 354 and 427 I.P.C. vide order dated 08.10.1999. So, it is undisputed that with regard to the same incident, two cases one state case and another complaint case are proceeding before the Magistrate.

7. Section 210 of Cr.P.C. provides as follows:

"Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report."

8. In view of the provisions of Section 210 Cr.P.C, if two cases are pending i.e. one state case and another complaint case with regard to the same incident, the Court has to follow the procedure prescribed therein. So, the learned Magistrate has failed to exercise the jurisdiction vested in him by law. The learned Magistrate must have examined all the facts and legal provisions and should have passed an appropriate order in consonance with the provisions of Section 210 Cr.P.C. The impugned order is illegal and not sustainable.

9. The application is liable to be **allowed** and the order dated 04.03.2003 is hereby set aside.

10. Learned Magistrate is directed to pass a fresh order, considering the provision of Section 210 Cr.P.C.

Order Date :- 27.10.2023

Md Faisal