

**Radha Krishna Versus State of U.P. and others - 2013,(82)ACC 241, ALL.H.C.**

***U.P. Police regulation Para 6, 7, 7-B, 9 and 10- relating to power of District Magistrate in dealing with criminal cases. Order of re-medical examination of petitioner on application of accused, by a committee of doctors, may not be said to be interference in the investigation.***

***Fair investigation and fair trial is a right of a person involved therein either from the accused side or from the prosecution side.***

Criminal Misc. Writ Petition No. 6319 of 2013  
Radha Krishna Versus State of U.P. and others  
Hon'ble Ravindra Singh,J.  
Hon'ble Anil Kumar Agarwal,J.

Heard Sri Upendra Upadhyay, learned counsel for the petitioner and Sri Neeraj Kanta Verma, learned Additional Government Advocate for the State of U.P.

This writ petition has been filed by the petitioner Radha Krishna for the following prayer :

- 1.issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 25.3.2013 (Annexure-3 to the writ petition) passed by the District Magistrate, District Etah and Chief Medical Officer, Etah i.e. respondent no. 2 and 3 respectively on the application of the respondent no. 4.
- 2.Issue a writ, order or direction in the nature of mandamus commanding the respondents not to compel the petitioner for re-medical in pursuance to the impugned orders dated 25.3.2013 passed by the respondent no.2 and 3 respectively.
- 3.Issue any other writ, order or direction in any other suitable nature which this Hon'ble court may deem fit and proper under the facts and circumstances of the case.
- 4.Award cost of the instant writ petition in favour of the petitioner.

The facts in brief of this case are that an FIR has been lodged by Anil Kumar son of the petitioner at Police Station Nidhauri Kalan in case crime no. 30 of 2013 under sections 307,323 and 504 IPC on 3.2.2012 at 12.30 p.m. alleging therein that on 2.2.2013 at about 3.00 p.m. the accused persons namely Om Prakash, Kaptan, Dori Lal and Bhagwati were digging the road approaching to the house of the first informant, which was objected by the injured Radha Krishna, then the accused persons hurled abuses and extended threat and he was assaulted by them by using lathi blow by the accused Kaptan causing injury on the head of the injured. The accused Bhagwati caused gunshot injury on the chest of the petitioner. The injuries were caused at the exhortation of the accused Om Prakash. The injured was taken by the first informant to the CHC Nidhauri Kalan where the doctor was not available then the injured was referred to the District Hospital Etah where he was medically examined and was admitted for treatment but during the course of investigation one of the accused Om Prakash moved an application before the District Magistrate Etah mentioning therein that according to the FIR allegation has been made that firing was done by his licensed gun whereas no shot was discharged by his licensed gun. He had given his gun to the District Magistrate for testing. According to the allegation made, the injured Radha Krishna was medically examined in District Hospital, Etah. but he alleged that the medical examination report was procured, therefore, the medical examination of the injured may be again done by a panel of the doctor. On that application the District Magistrate, Etah directed the Chief Medical Officer for ensuring medical examination by a committee of the doctors. In pursuance of this order dated 25.3.2013 the Chief Medical Officer, Etah directed the CMS to constitute a panel of the doctor and to do necessary for re medical examination of the injured Radha Krishna. This order was passed by the Chief Medical Officer 28.8.2013, feeling aggrieved from the order dated 25.3.2013 passed by the District Magistrate, and the subsequent order passed by the Chief Medical Officer, Etah, this writ petition has been filed.

it is contended by the learned counsel for the petitioner that the petitioner has been medically examined in District Hospital Etah. There was no manipulation in the medical examination report, and the investigation is going on. According to the medical examination report dated 2.2.2013. he had sustained two lacerated wounds in which injury no.1 was on the left side of scalp and injury no. 2 was on the right side of the chest. According to the medical examination report both the injuries were caused by some hard and blunt object. Both were kept under observation and advised for x-ray, but according to the supplementary medical examination report multiple irregular shaped radio opaque shadows metallic density foreign body were seen in right side chest no bony or abnormality was seen. According to the opinion expressed by the doctor both the injury no.1 and 2 were kept under observation, advised for x-ray, both the injuries were simple in nature. Injury no.2 was caused by the same firearm weapon.

According to the CT scan of the brain hairline fracture was found on frontal bone on left side. The accused persons have not appeared before the court concerned and moved an application before the District Magistrate Etah for conducting the medical examination of the injured by penal of doctor, such application has not been moved by the I.O. investigating the matter, though the petitioner is an injured and he has been medically examined in District Hospital but after expiry of one month and 23 days application has been moved by the applicant Om Praksh for re-medical examination of the injured such application may not be allowed and the District Magistrate is not authorised for passing such order of re-medical examination under the Code of Criminal Procedure, which amounts interference in the investigation and the I.O. is a competent person if during the course of investigation he is not satisfied with the medical examination report or any reasonable suspicion is created about the genuineness of the medical examination report, he may ask the injured for re-medical examination but in the present case I.O. has not made such an application. The impugned order dated 25.3.2013 and subsequently order passed by the CMO dated 28.3.2013 are illegal and the same may be set aside.

In reply to the above contention it is submitted by the learned A.G.A. that in the present case genuineness of the medical examination report of the petitioner has been challenged by one of the accused by way of moving an application before the District Magistrate, Etah who has passed the impugned order for holding re-medical examination of the petitioner. In case the petitioner had sustained injuries, as shown in the medical examination report, he should have no objection for appearing before the penal of the doctor for the purpose of re-medical examination. In case the petitioner re-medically examined, it may give more credibility to the first medical examination report. If the petitioner is having objection in appearing before the penal of the doctor for re-medical examination, it may create doubt about the genuineness of the first medical examination report. There is no express provisions which confer this specific power to the District Magistrate. There is also complete absence of any bar to the same, but the District Magistrate being the head of the criminal administration of the District may direct for re-medical examination for the purpose of ensuring fair investigation. According to Chapter I, Rule VI of the Police Regulation the District Magistrate is the head of the criminal administration of the district being the head of the criminal administration, he is having supervisory power for ensuring fair investigation also, the restraint on medical examination contained in paragraph 146 of the U.P. Police Regulation will not apply since it is not a case of police forcing any medical examination of the accused. The Supreme Court also held that any medical examination which tends to incriminate the accused is to be avoided and if any such test is necessary, the Hon'ble Apex Court has prescribed guidelines for the same in the case of Selvi and others Versus State of Karnataka 2010(7) SCC 263. The District Magistrate being in charge of the prosecution in the district discharge his duties to ensure the fair and impartial medical examination by duly constituting the board either authenticating or negating a particular injury allegedly suffered by the injured. The District Magistrate has supervisory power over the investigation of the prosecutions including coordinating with the police as well as coordinating with the public prosecutors, which is reflected by the provisions of Legal Remembrancer Manual and the Police Regulation. In the present case, the petitioner allegedly sustained injuries caused by lathi and firearm. According to the medical examination report, he was brought to the hospital not by the police but by the private persons. It is also surprising that the petitioner steadfastly resisted the second examination ordered to be conducted by a duly constituted board, if his initial examination is truthful and correct, further medical examination will only reinforce his case by making his contention more strong. The impugned order passed by the District Magistrate is not suffering from any illegality or irregularity and for ensuring fair investigation such order has been passed, the present writ petition is devoid of merits, the same may be dismissed.

After perusing the record and considering the submission made by the learned counsel for the petitioner and the learned A.G.A. it appears that the controversy involved in the present case is with regard to the power of the District Magistrate ordering CMO to ensure re-medical examination of the injured during the pendency of the investigation of its criminal case, in the present case the petitioner himself is an injured, he has been medically examined in District Hospital Etah but according to the accused Om Prakash, medical examination report is not genuine one, the same has been challenged by him before the District Magistrate Etah with a prayer that the injured may be re-medically examined by a penal of the doctor. According to the provisions of section 36 Cr.P.C. police officer supervisor in rank to an officer in-charge of a police station may exercise the same powers through local area to which they are appointed, as may be exercised by such officer within the limits of his station, but no provision has been given in the Code of Criminal Procedure about the power of the District Magistrate with regard to the investigation in the criminal cases but according to Rule 6 Chapter I of the U.P. Police Regulation, the District Magistrate, is

the head of the criminal administration of the District and in the capacity control and directs action of the police. He has special power with reference to the allocation of village Chaukidar in his District. He has departmental powers in connection with the punishment of village Chaukidar. His approval is necessary to the transfer of inspectors and officers in-charge of police stations and he may recommend rewards and entries in service and character rolls.

According to Rule 7 of U.P. Police Regulation District Magistrate, should be promptly informed by the superintendent of the occurrence of all serious crimes and of any sudden increase in the volume of crime generally and should receive a forthrightly reviews of the crime in the district. According to Rule 7-A whenever any instances of inaction, corruption, harassment, abuse of authority and wrongful detention by the police comes to the notice of the District Magistrate, he shall have the authority to ask the Superintendent of Police to institute an enquiry promptly and report the result to him along with all the relevant records and papers.

According to Rule 7-B of U.P. Police Regulation whenever a situation likely to have a bearing on the general law and order situation arises in the district, the superintendent of police will immediately inform the District Magistrate by the quickest means available and seek his instructions in regard to the steps to be taken to meet the situation, unless circumstances make it impracticable to do so.

Rule 9 of U.P. Police Regulation empower the District Magistrate to inspect each police station once during the financial year. Rule 10 of the U.P. Police Regulation empower the District Magistrate for granting sanction necessary to the expunction of a crime from the crime register, except railway police cases, which shows that the District Magistrate is having the supervisory power. According to the Legal Remembrancer Manual District Magistrate, has power in dealing to the criminal cases also

In the present case the District Magistrate, allowed the application moved by the accused and directed the CMO for ensuring re-medical examination of the petitioner by a committee of doctor. In pursuance of the order dated 25.3.2013 CMO Etah directed the CMS Etah to constitute panel of the doctor for medical examination of the petitioner. The petitioner is injured in case crime no. 30 of 2013 under sections 307,323,504 I.P.C. The re-medical examination of the petitioner in any case may not be said to be an interference in the investigation of the criminal case. The district Magistrate has not issued any direction to the I.O. of this case. In the present case the injured has sustained injury, is a material fact of this case, by re-medical examination, it may be reinforced, the petitioner should have no objection in re-medical examination. Fair investigation and fair trial is a right of a person involved therein either from the accused side or from the prosecution side. The impugned order dated 25.3.2013 passed by the District Magistrate Etah is not suffering from any illegality or irregularity. The prayer for quashing the impugned order is refused.

Accordingly this petition is dismissed.

Dt. 6.5.2013