
(2007) 02 AHC CK 0064

Allahabad High Court

Case No: None

Mohit Daniyal and Satish Daniyal

APPELLANT

Vs

State of U.P. and Rajeev Kumar

RESPONDENT

Date of Decision: Feb. 28, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 133, 143, 190, 2, 200
- Penal Code, 1860 (IPC) - Section 323, 465, 506

Citation: (2007) CriLJ 2408 : (2007) 4 RCR(Criminal) 1019

Hon'ble Judges: Barkat Ali Zaidi, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Barkat Ali Zaidi, J.

On police report filed by police, the Magistrate has summoned the applicant u/s 323 I.P.C., and what brings the applicants to this application u/s 482 Cr.P.C.

2. On the basis of a report by Opp. Party No. 2, which was entered as Chick report, the police investigated the case and submitted a charge-sheet before the Magistrate, pursuant to which, the Magistrate ordered issuance of summons.

3. I have heard Sri Dharmendra Singhal assisted by Sri Vimlendu Tripathi, learned Counsel for the applicants and Sri R.K. Maurya, Addl. Government Advocate for State.

4. The grouse of the applicants is that the Magistrate should have taken recourse to the procedure prescribed for dealing with complaints from Section 200 Cr.P.C. because in view of Section 2 Cr.P.C, the police report of a non-cognizable offence is to be treated as a complaint and the investigating officer as a complainant. Section 2(d) Cr.P.C. is as follows:

"complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation:- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.

5. The contention of the counsel for the applicants is that the Magistrate has taken cognizance of the case as a police case and not treated the case as a complaint case and that has prejudiced the accused.

6. There is nothing on record as yet, on the basis whereof, it may be said that the Magistrate is proceeding with the case as a police case and not as a complaint case. He has only ordered the issuance of summons so far. The contention of the applicants' counsel is that before issuing summons, the Magistrate should have examined the complainant and his witnesses as provided u/s 200 Cr.P.C. and only then he could issue the summons.

7. This contention is unacceptable in view of Clause-a of the proviso of Section 200 Cr.P.C, which is as follows:

200. Examination of complainant:- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate;

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses:

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint;....

(b) ...

Provided....

8. If, therefore, the Magistrate has issued summons without examining the complainant and witnesses, it cannot be said for the present, that he has not adopted the procedure prescribed for complaint case as given in the Cr.P.C. and the contention is therefore, unacceptable.

9. It is expected that hereafter the Magistrate will proceed with the case as a complaint case.

10. It was argued by the counsel for the applicant that since the Magistrate has taken cognizance of the case on basis of a charge-sheet it should be assumed that he has decided to proceed with case as a police case.

11. The mere fact that cognizance has been taken on the basis of a charge-sheet will not determine that the Magistrate has decided to proceed with the case as a police case. The police, after investigation has to submit a report in the form of a charge-sheet and there is no other mode prescribed for the police for submission of a report. The only thing is that report has to be deemed as a complaint. There is nothing to show for the present that the Magistrate has not deemed the charge-sheet as a complaint. The mere fact that he has not specifically mentioned in his order hitherto that the charge-sheet will be deemed as a complaint, will not suffice to establish that he does not propose to treat the charge-sheet as a complaint.

12. The counsel has referred to a judgment of this Court in Criminal Misc. Application No. 8632 of 2002, Sri Lalit Madhav Das and Anr. v. State of U.P. and Anr. decided on 4.10.2002, but the issue involved here was not there what is in this case. There the question was whether Section 506 I.P.C. is a cognizable offence or a non-cognizable offence and it was held as a non-cognizable offence and directions were given that the police report will be treated as a complaint. This case is, therefore, not relevant for the purposes of the present case.

13. The matter may be considered from another angle and that is that Section 465 I.P.C. provides for non-reversal of any order because of any error or irregularity unless it has occurred in failure of justice. Section 465 Cr.P.C. is as follows:

465. Finding or sentence when reversible by reason of error, omission or irregularity:- (1) Subject to the provisions hereinbefore contained, no finding, sentence or other passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

14. Even assuming for the sake of argument that there has been an error on the part of the Magistrate in not specifying immediately in his order that the charge-sheet shall be treated as a complaint, it will not vitiate the proceedings because no failure of justice has taken place by the mere non-mention of the fact that the charge-sheet will be treated as a complaint. The view that such an error would be covered by Section 465 Cr.P.C. is fortified by the inclusion of Clause -K to Section 461 Cr.P.C. Section 461 Cr.P.C. is as follows:

461. Irregularities which vitiate proceedings:- If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:

- (a) attaches and sells property u/s 83;
- (b) issues a search-warrant for a document, parcel or other thing in the custody of a postal or telegraph authority.
- (c) Demands security to keep the peace;
- (d) Demands security for good behaviour;
- (e) Discharges a person lawfully bound to be of good behaviour;
- (f) Cancels a bond to keep the peace;
- (g) Makes an order for maintenance;
- (h) Makes an order u/s 133 as to a local nuisance;
- (i) Prohibits, u/s 143, the repetition or continuance of a public nuisance;
- (j) Makes an order under Part -C or Part-D of Chapter-X;
- (k) Takes cognizance of an offence under Clause (c) of Sub-section (1) of Section 190;
- (l) Tries an offender;
- (m) Tries an offender summarily;
- (n) Passes a sentence, u/s 325, on proceedings recorded by another Magistrate;
- (o) Decides an appeal;
- (p) cells, u/s 397, for proceedings; or
- (q) revises an order passed u/s 446, his proceedings shall be void.

15. It will be seen that only Clause-C of Section 190 Cr.P.C. is covered by Section 461 Cr.P.C. while Clauses (a) and (b) are not included hereunder, which are the relevant provision in this case for taking cognizance.

16. As such, even if there is any error or irregularity, it shall stand cured by Section 465 Cr.P.C.

17. Petition dismissed.