
(1991) 03 AHC CK 0066

Allahabad High Court

Case No: Criminal Revision No.1810 of "1990

Ashok Kumar and Ors.

APPELLANT

Vs

State of U.P. & Anr

RESPONDENT

Date of Decision: March 6, 1991

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 202(2), 204, 289, 397, 401
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 504, 507

Hon'ble Judges: S.R.Bhargava, J

Final Decision: Disposed Of

Judgement

S R Bhargava, J.

Report is that opposite party Mo. 2 has died. Now this revision has to be disposed of with the aid of learned A.G.A.

2. I have perused the impugned summoning order, what appears is that there was a cross report registered as Crime No. 16A of 1989 under Section 147/148/149/504/387 I P C. After investigation Final Report was submitted. Complainant deceased Hari Naraiu filed protest petition. Learned Magistrate did not treat it as complaint. He did not follow the procedure laid down in Sections 200 and 202, Cr.P.C. We perused the Case Diary and relying upon that statements contained in the Case Diary he rejected the Final Report and summoned the revisionists. Every protest petition need not be treated as complaint and so long as protest petition is not treated as complaint, mandatory provisions of the provhion of Section 202 (2) are not attracted. A Magistrate has jurisdiction to disagree with the opinion of the Investigating Officer and if he finds from the evidence collected by the Investigating Officer that there is prima facie case, he can proceed to summon the accused under Section 204, Cr.P.C. hold that there is no force in the present revision and it is liable to be dismissed.

3. But at the same time it is evident that 18 persons have been summoned on" protest petition. They should not be allowed to be harassed unnecessarily.

4. Hence, disposing of this revision finally, I permit revisionists Ashok Kumar Vinod Kumar, Ayodhya Prasad, Saryu Prasad, Ram Lakhau, Dashrath Lal, Devi Prasad Chunna, Keshav Prasad, Jagdish Prasad alias Sadhu Shri Prasad, Jugal Prasad, Gaujan, Ram Bahori, Mithilesh Prasad, Nyamat alias Shiv Prasad, Ram Prakash and Indra Deo to voluntarily appear before the Magistrate concerned, if they do so, they shall not be taken into iudicial custody until they are committed to sessions under Section 209 Cr.P.C. for ensuring their future attendance the Magistrate co ncerned shall require them only to furnish bonds with or without sureties as laid down in Section 209 Cr P C. The Magistrate concerned shall take care to commit their case to the court" of sessions in the early part of the day, say at i i a.m. so that they may apply for bail to the Sessions Judge on the same day. " If on commitment they apply for bail, the Sessions Judge concerned shall dispose of their bill application on the same day.Copy of the order be issued to the learned counsel for the revisionists on payment of usual charges.