

Sahu Ram and others Vs State of Uttar Pradesh

Court: Allahabad High Court

Date of Decision: Jan. 30, 1978

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 202, 204(4)
Penal Code, 1860 (IPC) â€” Section 436

Hon'ble Judges: V.N.Verma, J

Final Decision: Partly Allowed

Judgement

V. N. Verma, J.

This revision is directed against an order dated 29476 passed by Additional Sessions Judge, T Bulandshahr in a case arising out of complainant

fixed against the applicants under sections 436, 504 and 506 I. P. C.

O. P. No. 1 (Prem Pal) filed a complaint against the applicants under sections 436, 504 and 506 I. P. C. on 4 81975 the Magistrate took

evidence under section 202 Cr. P. C. and summoned the applicants for trial under section 46 I P. C. fixing 11175 for their appearance on 11175

O. P. No. 1 did not appear in Court. It was also brought to the notice of the Court by the office that O. P. No. 1 had not taken steps for

summoning the accused applicants. The Magistrate, therefore, dismissed the complaint under section 204 Cr. P. C. O. P. No. 1 went up in

revision and his revision was allowed by Additional Sessions Judge, Bulandshahr, vide order dated 29476 through this order, order dated 11175

passed by the Magistrate dismissing the complaint was set aside and the Magistrate was directed to proceed with the case from the stage on which

order dated 481976 was passed. The applicants felt aggrieved with this order and have now come up in revision to this Court.

I have heard the learned counsel for the parties at sufficient length and have also gone through the orders passed by the Court below. The order

passed by the Magistrate shows that he had dismissed the complaint under section 204 (4) Cr. P. C. on the ground that O. P. No. 1 had not

appeared in court on the date fixed and also on the ground that O. P. No. 1 had not taken steps for summoning the applicants. Section 204 (4)

provides that where any process fee is payable under any law, no process shall be issued until the fees are paid and if such fees are run paid within

a reasonable time, the Magistrate may dismiss the complaint. In this case, as stated above the applicants had been summoned for trial under

section 436 I.P.C. Offence under section 436 I. P. C. is a cognizable offence. In a case under section 436 I.P.C. the law does not provide that the

complainant has to pay any process fees for summoning the accused. It was, therefore, not at all necessary for O. P. No. 1 to have paid any

process fees for summoning the applicants in the case. The Magistrate was therefore, not authorized under law to dismiss the complaint for

nondeposit of any process fees by

O. P. No. 1. The Magistrate could not also have dismissed the complainant for nonappearance of O. P. No. 1 on 11/11/75. No provision of law

has been shown under which the learned Magistrate could have dismissed the complainant because of the nonappearance of O. P. No. 1 in this

case, which was a case under section 436 I. P. C. The learned Additional Sessions Judge was, therefore, absolutely correct when he set aside the

Magistrate's order dated 11/1/75 dismissing the complaint under section 204 Cr. P. C. I, however, find that while restoring the complaint the

learned Additional Sessions Judge directed the Magistrate to proceed with the case from the stage subsequent to the passing of the order dated

11/1/75. This direction of the learned Additional Sessions Judge, to my mind, was neither proper nor in accordance with law. On 11/1/75 some

witnesses produced by O. P. No. 1 were examined and then an order was passed summoning the applicants for trial under section 436 I. P. C. If a

case triable exclusively by the Court of Sessions is instituted on a complaint, the law as contained in section 202 Cr. P. C. or joins that the accused

should be summoned only when the Magistrate has called upon the complainant to produce all his witnesses and examined them on oath. The case

before us was undoubtedly a case triable exclusively by the Court of Session. It was, therefore, not at all proper on the part of the Magistrate to

have examined some witnesses of the complainant only and then summoned the accused. I find that the Magistrate had examined some witnesses

as Court witnesses also. This was not in accordance with law at the stage on which they were examined. The complainant should have been called

upon to produce all his witnesses and then the Court should have found out whether a prima facie case against the accused was made out or not. If

the Magistrate felt that a prima facie case was made out against the accused, then and then only he should have summoned the accused. The

summoning of the accused applicant in this case was not proper as full compliance of the provisions of section 202 Cr. P. C. had not been done. In

view of this the order passed by the Additional Sessions Judge that the Magistrate should proceed with the case from the stage subsequent to the

passing of the order dated 4875 was not proper. Instead the Magistrate should have been asked to examine all the witnesses produced by the

complainant and thereafter if he felt satisfied that a prima facie was made out against the applicants, then he should have summoned them. The

summoning of the applicants without full compliance of the provisions of section 202 Cr. P. C. was not at all, proper.

In the result, I allow the revision in part and maintain the order of the Court below setting aside the Magistrate's order dated 11175. The other

part of the order is set aside and the Magistrate is ordered to proceed with the case after complying with the provisions of section 202 Cr. P. C. as

mentioned above. He should first examine all the witnesses produced by O. P. No. 1 and if he feels satisfied that a prima facie case is made out

against the applicants then he should summon them, Stay order dated 15776 is vacated.