

Kailash Nath Pandey and Another Vs State of U.P. and Another

Court: Allahabad High Court

Date of Decision: June 5, 2007

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 482

Penal Code, 1860 (IPC) â€” Section 323, 504, 506

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 â€” Section 3(1)(10)

Hon'ble Judges: R.K. Rastogi, J

Final Decision: Allowed

Judgement

R.K. Rastogi, J.

This is an application under Section 482 Cr.P.C. for quashing the summoning order dated 18122006 passed by the III

Additional Civil Judge (Jr. Division)/Judicial Magistrate Ist Class, Mirzapur in Criminal Case No. 1141 of 2006, Ramesh Kumar v. Pankaj Kumar

and Ors.

2. Heard the learned Counsel for the applicants as well as the learned A.G.A. for the State.

3. Since the order passed by the learned Magistrate suffers from patent defects, I am passing final order in this case at the admission stage without

notice to opposite party No. 2.

4. The facts relevant for disposal of this application are that the complainant opposite party No. 2 filed a complaint against the accused applicants

in the Court of Judicial Magistrate, Mirzapur under Sections 323, 504 and 506 I.P.C. and 3(1)(10) of S.C./S.T. Act with these allegations that on

1262006 Ramesh Kumar Chamar came out of his house at village Bandhawa, P.S. Kachhawan District Mirzapur at about 5 p.m. to graze his

cow. The accused Pankaj Kumar and Kailash Pandey met him in the way and said to him "Saley Chamar Ki Jati Tumhara Itna Man Bar Gaya

Hai Ki Gay Ko Khet Men Choor Kar Charatey Ho". When asked them not to abuse him, the accused beat him with Lathis, Dandas, fists and

legs and tied him with a tree and threatened to kill him. Upon noise Ram Lal and Babu Lal etc. reached there. They saw the incident and

intervened. Then he went to police station Kachhawan and submitted his report but the S.I. did not lodge his report and made a false promise that

he would arrest the accused. On the next day the complainant went to the P.H.C. and got the injuries medically examined. Since the police did not

take any action, he sent an application to the S.P. Mirzapur by registered post but even then no action was taken. The accused were threatening

him every now and then saying that "Sala Chamar Kisi Din Ekant Men Mil Jay To Isko Maja Chakhatey". Then he lodged this complaint.

5. The learned Magistrate recorded the statement of complainant under Section 200 Cr.P.C. and he also recorded the statements of Ram Lal and

Babu Lal under Section 202 Cr.P.C. Thereafter, he summoned the accused under Sections 323, 504 and 506 I.P.C. and 3(1)(10) SC/ST Act

vide order dated 18122006. Aggrieved with that order the accused applicants have filed this application under Section 482 Cr.P.C.

6. Learned Counsel for the applicants submitted before me that the offence under Sections 3(1)(10) SC/ST Act is triable by Special Judge

(SC/ST Act) and so the case is to be committed to the Court of Sessions by the Magistrate for trial. He submitted that since the case is triable by

the Court of Sessions, the Magistrate has to record statements of all the witnesses including formal witness like Doctor and other police witnesses

etc. under Section 202 Cr.P.C., but he did not do so in this case. The complainant had filed a copy of the injury report and he also stated that he

had got Xray of his injuries done on the advice of the Doctor but neither the Doctor, who medically examined the complainant, was examined

under Section 202 Cr.P.C., nor the Xray plate nor Xray report was summoned nor the Doctor, who got the Xray done, was summoned. He

further pointed out that in this case the complainant has claimed that he had sent report of the incident to the S.P. Mirzapur on 672007 by

registered post and in that report there are allegations regarding commission of the offence under Sections 3(1)(10) of SC/ST Act which is a

cognizable offence, and so it was essential for the Magistrate to have obtained report from the S.P. Mirzapur as to whether he had received

application dated 672006 from the complainant or not, and if he had received that application, what action was taken by him on that report, and

whether the matter has been got investigated or not, taking into consideration the provisions of SC/ST Act, and the documents regarding action, if

any, taken by the S.P. Mirzapur on that report should also have been summoned by the Magistrate, and after getting recorded statements of all the

prosecution witnesses and obtaining report of the police on the aforesaid application of the complainant dated 672006, he should have passed

order in the matter. Since the learned Magistrate has failed to comply with the above requirements, the impugned order passed by him cannot be

upheld and the same is liable to be set aside.

7. The application under Section 482, Cr.P.C. is, therefore, allowed. The summoning order dated 18122006 passed by the III Additional Civil

Judge (Jr. Division)/Judicial Magistrate 1st Class, Mirzapur in Criminal Case No. 1141 of 2006, Ramesh Kumar v. Pankaj Kumar and Ors., is set

aside and the case is remanded to the Court below for further proceeding with the case in the light of observations made above in the body of the

judgment, and then to pass an order in the matter in accordance with the provisions of law.

Application allowed.