

(2006) 03 AHC CK 0157

Allahabad High Court

Case No: Criminal Miscellaneous Application No. 2817 of 2006

Mohammad Umar, Pappu @
(sic)ik and Guddu @ Amir Hasan

APPELLANT

Vs

State of U.P. and Gulam Navi

RESPONDENT

Date of Decision: March 10, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 200, 202, 202(2), 203
- Penal Code, 1860 (IPC) - Section 323, 364, 452, 504, 506

Citation: (2006) CriLJ 2263

Hon'ble Judges: Vinod Prasad, J

Bench: Single Bench

Advocate: Abhay Raj Singh, for the Appellant; A.G.A., for the Respondent

Final Decision: Allowed

Judgement

Vinod Prasad, J.

Heard learned Counsel for the applicants and learned AGA

2. As agreed between the parties, this application is finally disposed off at the admission stage itself.

3. A FIR was filed against the applicants as crime No. 587/03 Under-section 364, 452, 323, 504 and 506 IP.C, at P.S. Kotwali Pilibhit. After investigation of the case, the police submitted a F.R. The protest petition, filed by the informant was registered as a complaint and the Magistrate started proceedings with the case as a complaint case However, as has been stated in the present application, the Magistrate did not record the statements of all the witnesses of the prosecution as is mandated Under-section 202(2) Cr. PC. proviso. It is pointed out at this stage that Section 364 IPC is triable by the Court of Sessions The counsel for the applicants contended that in the absence of recording of statement of all the witnesses of the prosecution, the Magistrate committed an illegality in summoning the applicants Under-section 364

IPC.

4. Learned AGA also could not dispute the fact.

5. From the order dated 7 12.2004 it is clear that the Magistrate recorded the statement of the complainant Under-section 200 Cr.P.C. only and did not record any statement Under-section 202 Cr. P.C. at all.

6. In this view of the matter, the learned Magistrate did not follow the procedure laid down in the complaint case. The Magistrate was bound to follow the procedure laid down Under-section 202 Cr. P.C once he has treated the protest petition to be a complaint and has started proceeding with the case as a complaint case. Non-observance of Section 202 Cr. P.C. by the Magistrate renders his order of summoning of applicants dated 7.12.2004 illegal and therefore not sustainable under law. Consequently, this application is allowed.

7. The order of summoning of the applicant dated 7.12.2004 is hereby quashed. The case being case No. 79 M/2004 renumbered as case No. 8299/04 Gulalm Navi v. Mohammad Umar and Ors. Under-section 364, 452, 323, 504 and 506 IPC is remanded back to the CJM Pilibhit for proceeding with the case in accordance with law and pass a fresh order either Under-section 203 or 204 Cr. P.C..

8. With the aforesaid direction the application is allowed.