Vijai Tiwari and Others Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: June 4, 1998

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 190(1), 203, 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)

Citation: (1999) CriLJ 1037

Hon'ble Judges: J.C. Gupta, J

Bench: Single Bench

Advocate: B.D. Shukla, for the Appellant; G.A., for the Respondent

Final Decision: Dismissed

Judgement

J.C. Gupta, J.
Heard applicants'' counsel for the learned A.G.A.

It appears that the first information report lodged by respondent No. 3 was investigated and police submitted final report. On a protest petition

being presented by respondent No. 3, the learned Magistrate went through the case diary and took cognizance u/s 190(1)(b) of Code of Criminal

Procedure and summoned the applicants as accused persons.

2. This order of summoning was challenged by the applicants in criminal revision No. 80 of 1995 which was dismissed by II Additional District and

Sessions Judge, Kanpur Dehat, by the order dated 6-7-1996. On the basis of some observations made in the case of Kailash Chaudhari and Ors.

v. State of U. P. it appears that the applicants filed objections before the learned Magistrate concerned challenging the summoning order. By the

impugned order dated 4-5-1998 the said objections have been rejected by the District and Sessions Judge and he has held that after going through

the case diaries vis-a-vis injury reports a prima facie case under Sections 323/504/506, I.P.C. and Section 3(1)(x) S.C.S.T. Act 1989 has been

made out against the accused and they have been required to face their trial.

3. It is well established law that the words ""Sufficient ground"" used in Section 203 of Cr.P.C. have been construed to mean the satisfaction that a

prima facie case is made out against the person accused by the evidence of witnesses entitled to a reasonable degree to credit and not sufficient

ground for the purpose of conviction. (See Ramgopal Ganpatrai Ruia and Another Vs. The State of Bombay, .

4. It is also well settled law that at the stage of summoning the accused has no locus stand Where there is prima facie evidence, even though the

person charged of an offence might have a defence, the matter has to be left to be decided by the appropriate forum at the appropriate stage and

issue of process cannot be refused

5. In the present case the learned Magistrate, while considering the objections of the applicants filed against the summoning order, has taken into

consideration the material collected during the investigation as contained in the case diary and then formed an opinion that there is a prima facie

ease against the accused applicants. It is not one of those cases where this Court should make interference while exercising the powers u/s 482 of

the Code.

6. In the case of R.S. Khemka v. State of Bihar JT 1993(2) SC 523, it was held that the :High Court should not, while exercising the powers u/s

482 of the Code, usurp the jurisdiction of trial Court. Similar view was taken in the case of Minakshi Bala v. Sudhir Kumar JT 1994 (4) SC 158.

7. In another case State of Bihar Vs. Murad Ali Khan and Others, the Supreme Court has held that it is trite that jurisdiction u/s 482, Cr.P.C,

which saves the inherent powers of the High Court, to make such orders as may be necessary to prevent abuse of the process of any Court or

otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court should

not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial

Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that

jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding

at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations. Whether those allegations, set out in the

complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings would, in the circumstances,

amount to an abuse of the process of the Court or not is to be looked into.

8. The Apex Court in the case of State of Haryana and Others Vs. O.P. Gupta, etc., also referred to the decision of State of Haryana v. Bhajan

Lal JT 1990 (4) SC 650 and gave a note of caution in the following words :

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with

circumspection and that too in the rarest of rare cases, that the Court will not be justified in embarking upon an enquiry as to the reliability or

genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an

arbitrary jurisdiction on the Court to act according to its whim or caprice.

9. In the case of Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, the Apex Court held that great care should be taken

by the High Court before embarking to scrutinise the F.I.R./charge-sheet/com-plaint. In deciding whether the case is rarest of rare cases to scuttle

the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constituted the offence. At that stage it is not the

function of the Court to weigh pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are

considered mandatory and its effect of non-compliance. It was also observed that when the Investigating Officer spends considerable time to

collect evidence and places the charge-sheet before the Court, further action should not be short circuited by resorting to exercise of inherent

powers to quash the charge-sheet.

10. Learned counsel for the applicants argued that while rejecting objections of the applicants the Court below has not taken into consideration the

fact that there existed enmity between the parties. The Court below has rightly turned down this objection. The case dos not fall in the category of

malicious prosecution or frivolous litigation on the basis of the material placed before the Court.

11. For the above reasons, this Court refuses to make any interference in the impugned order of the Court below. The application, is, accordingly,

rejected.