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Ramchander, Jagdesh and Ramesh Vs State of U.P. and Sri Narayan

Court: Allahabad High Court

Date of Decision: Oct. 17, 2008

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 161, 190, 200, 202, 397
Penal Code, 1860 (IPC) â€" Section 323, 325, 452, 504, 506

Hon'ble Judges: Vijay Kumar Verma, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Vijay Kumar Verma, J.
By means of this revison preferred u/s 397 of the Code of Criminal Procedure (in short the "Cr.P.C."), order

dated 04.12.2083, passed by the Judicial Magistrate-I Gorakhpur, in the criminal case arising out of Crime No. 333 of 2G02 (State v. Ramesh

and Ors.), under Sections 323 325 504 506 452 IPC, P.S. Sahjanwa, District Gorakhpur and the order dated 17.05.2004, passed by the

Additional Chief Judicial Magistrate, Court No. 13, Gorakhpur in the said case have been challenged.

2. By the impugned order dated 04.12.2003, the revisionists (hereinafter to be referred as "the accused") were summoned to face the trial under

Sections 323 504 506 325 452 IPC after rejecting the final report submitted by the police of P.S. Sahjanwa district Gorakhopur in Case Crime

No. 333 of 2002 and by the impugned order dated 17.05.2004, application dated 06.12.2003 moved by the revisionists to recall that summoning

order has been rejected.

3. Shorn of unnecessary details, the facts emerging from the record leading of the filing of this revision, in brief, are that the complainant Shri

Narayan s/o Ram Dev resident of village Gopapur, P.S. Sahjanwa, District Goraknpur (opposite party No. 2 herein) lodged an FIR on

17.07.2002 at P.S. Sahjanwa, where a case under Sections 323 325 504 452 506 IPC was registered at Crime No. 333 of 2002 against (1)

Ramesh s/o I Kailash (2) Ramchandra and (3) Jagdish both sons of Santosh Kumar (revisionists herein). After investigation, final report was

submitted by the police, against which the complainant filed protest petition.

4. The accused also filed objections against that protest petition. After hearing the Counsel of the parties, the learned judicial Magistrate-I

Goraknpur vide impugned order dated 04.12.2003 summoned the accused for trial after rejecting the final report. Thereafter, the accused moved

an application on 06.12.2003 to recall the said summoning order. That application has been rejected impugned order dated 17.05.2004 passed by

the Additional Chief Judicial Magistrate Court No. 13 Gorakhpur. Hence this revision.

5. When the case was taken up in the revised list, the Counsel for the opposite party No. 2 did not appear. Hence I have heard arguments of Sri

Manoj Kumar Advocate, holding brief of Sri B.K. Tripathi learned Counsel for the revisionists and learned AGA for the State.

The main submission made by the learned Counsel for the revisionists was that the accused have been summoned to face the trial vide impugned

order dated 04.12.2003 on the basis of the protest petition filed by the complainant against the final report without following the procedure laid

down in Chapter XV Cr.P.C. and hence, the impugned order being illegal was liable to be recalled, but the court below without sufficient reason

declined to recall the aforesaid summoning order and application dated 06.12.2003 moved by the accused for this purpose has been rejected vide

impugned order dated 17.05.2004 and hence both the impugned orders should be set-aside and the case be sent back to the lower court

concerned for passing fresh order after following the procedure laid down in Chapter XV Cr.P.C.

7. The contention of the learned Counsel for the revisionists was that the Magistrate concerned was under obligation to treat the protest petition of

the complainant against final report as complaint and to follow the , procedure laid down in Chapter XV Cr.P.C. before passing the impugned

summoning order.

8. The learned AGA on the other hand, submitted that both the courts below did not commit any illegality in passing the impugned orders, as it is

not obligatory for the magistrate to treat the protest petition against final report as complaint in all cases and if the material in the case diary is

sufficient to summon the accused to face the trial, then there is no legal bar for the magistrate to pass the summoning order after rejecting the final

report and in such case, the magistrate is not required to follow the procedure laid down in Chapter XV Cr.P.C.

9. It was further submitted by the learned AGA that tie magistrate is not empowered to review or recall its summoning order and hence no illegality

has been committed by the court below in passing the impugned order dated 17.05.2004 whereby the recall application dated 06.12.2003 to

recall the summoning order dated 04.12.2003 has been rejected.

10. Having taken the submissions made by the parties Counsel into consideration, I find no illegality in both the impugned orders. The Division

Bench of this Court in the case of Pakhando and Ors. v. State of U.P. and Anr. XLIV 2001 ACC 1096 had the occasion to consider the matter

regarding the procedure to be adopted by the Magistrate/Court on submission of the final report by the police. Having taken various authorities

into consideration, the following observations have been made by the Division Bench in para 15 of the judgement at page 1100 of the report:

From the aforesaid decisions, it is thus clear that where the Magistrate receives final report, the following four courses are open to him and he may

adopt any one of them as the facts and circumstances of the case may require:

(I). He may agreeing with the conclusions arrived at by the police, accept the report and drop the proceedings. But before so doing, he shall give

an opportunity of hearing to the complainant'' or

(II) He may take cognizance u/s 190(1)(b) and issue process straightway to the accused without being bound by the conclusions of the

investigating agency, where he is satisfied that upon the facts discovered or unearthed by the police, there is sufficient ground to proceed; or

(III) he may order further investigation, if he is satisfied that the investigation was made in a perfunctory manner; or

(IV) he may, without issuing process or dropping the proceedings decide to take cognizance u/s 190(1)(a) upon the original complaint or protest

petition treating the same as complaint and proceed to act under Sections 200 and 202 Cr.P.C. and thereafter decide whether complaint should be

dismissed or process should be issued.

11. As would appear from the observations made by the Division Bench in the case of Pakhando v. State (supra), the magistrate can take

cognizance u/s 190(1)(b) and issue process straightway to the accused without being bound by the conclusions of the investigating agency, where

he is satisfied that upon the facts discovered or unearthed by the police, there is sufficient ground to proceed. The impugned summoning order

dated 04.12.2003 shows that the learned Judicial Magistrate has only referred in the said order the fact of filing the protest petition by the

complainant against the final report and he has not based the summoning order on the said protest petition.

12. The summoning order further shows that the FIR version was fully supported by the complainant in his statement recorded by the investigating

officer u/s 161 Cr.P.C. during the course of investigation. The injury report and medical report of the injured were also annexed in the case diary

submitted by the police with the final report. The impugned summoning order has been passed on the basis of the statement of the complainant

recorded u/s 161 Cr.P.C. and other material including the injury report and X-ray report available in the case diary of Crime No. 333 of 2002. It

is well settled principle of law that at the time of passing the summoning order, the magistrate is required to see only that there is prima-facie case

to proceed against the accused and at that stage, the magistrate is not required to see that the evidence is sufficient to base the conviction.

13. Therefore, the learned magistrate did not commit any illegality in passing the impugned summoning order dated 04.12.2003, which is based on

the material available in the case diary and not on the protest petition filed by the complainant against the final report. The Magistrate was fully

competent to look into the case diary for the purpose of taking cognizance and passing summoning order and it was not obligatory for this purposo

to treat the protest petition as complaint an J to follow the procedure laid down in Chapter XV Cr.P.C.

14. However, if the material in the case diary is not sufficient, then in that case, the magistrate without issuing process or dropping the proceedings

can decide to take cognizance u/s 190(1)(a) Cr.P.C. upon the original complaint or protest petition treating the same as complaint and proceed to

act u/s 200 and 202 Cr.P.C. and thereafter decide whether the complaint should be dismissed or process should be issued.

15. Therefore, there is no scope to make any interference in the impugned summoning order dated 04.12.2003, as the said order does not suffer

from any legal infirmity.

16. So far as the impugned order dated 17.05.2004 is concerned, no interference is warranted in that order also. By that order recall application

dated 06.12.2003 for recalling the summoning order dated 04.12.2003 has been rejected.

17. The Hon''ble Apex Court has held in the case of Adalat Prasad v. Rooplal Jindal and Ors. L 2004 ACC 924 that the magistrate is not

empowered to recall the summoning order and the accused has no right to file objections in the court of magistrate against such order.

18. Similar view has been expressed by Hon''ble Apex Court in the case of Subramanium Sethuraman v. State of Maharashtra and Anr. LI 2005

ACC 684. Therefore, in view of the specific law laid down by the Hon''ble Apex Court in these rulings, the application dated, 06,12.2003 of the

revisionists-accused to recall the summoning order dated 04.12.2003 was not legally maintainable and the said application has been rightly

rejected by the learned court below vide impugned order dated 17.05.2004.

19. For the reasons mentioned herein-above, both the impugned orders do not suffer from any legal infirmity and hence there is no scope to make

any interference by this court in the said orders.

20. Consequently, the revision, being devoid of any merit, is hereby dismissed. The interim order dated 05.07 2004 stands vacated.

21. The Office is directed to send a copy of this order of the court below for further necessary action in the Criminal Case arising out of Crime No.

333 of 2002 of P.S. Sahjanwa, District Gorakhpur.