

**(2007) 08 AHC CK 0235**

**Allahabad High Court**

**Case No:** None

Suraj Singh, Ram Manohar and  
Amit Kumar

APPELLANT

Vs

State of U.P. and Gopi Singh

RESPONDENT

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**Date of Decision:** Aug. 20, 2007

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 190, 200, 202, 482
- Penal Code, 1860 (IPC) - Section 307, 323, 506

**Citation:** (2007) 2 UPLBEC 60

**Hon'ble Judges:** Saroj Bala, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

Saroj Bala, J.

By means of this application under 482 Cr.P.C. the applicants seek the quashing of orders dated 8.8.2002 and 18.10.2002 passed by the Judicial Magistrate court No. 1, Mainpuri and order dated 26.3.2003 passed by the Sessions Judge, Mainpuri in Criminal Case No. 3659 of 2002 Gopi Singh v. Suraj Singh and Ors. under Sections 307, 323 and 506 I.P.C, Police station Aliau, District Mainpuri and Criminal revision No. 336 of 2002.

2. The facts giving rise to these proceedings are:

An application under 156(3) Code of Criminal Procedure (hereinafter referred to as Code) was moved by the Opposite Party. In compliance of the order for registration and investigation the First Information Report was registered under Sections 307, 323 and 506 of the India Penal Code. After investigation, final report was submitted. The opposite party filed protest petition against the final report which was treated as complaint and four witnesses were examined. Rejecting the final report the order dated 8.3.2002 was passed summoning the applicants for the offences under

Sections 307, 323 and 506 I.P.C. The summoning order was challenged in a Criminal revision No. 336 of 2002. The Criminal revision was dismissed on 26.3.2000.

3. The impugned orders have been challenged on the grounds that the Judicial Magistrate adopted the procedure of complaint case as well as police case. After recording the statements of complainant and witnesses, the Magistrate perused the injury report and final report. The Sessions Judge without application of mind had dismissed the revision against the summoning order. The First Information Report was lodged for manufacturing a false case against the applicants. The procedure of complaint case as well as police case cannot be adopted simultaneously. The Injured was medically examined seven days after the incident but the statement of doctor was not recorded by the Magistrate.

4. Heard Sri Akhilesh Singh, learned Counsel for the applicants, Sri Arun Kumar, learned Counsel for the complainant, learned A.G.A. and have perused the record.

5. The learned Counsel for the applicants submitted that the protest petition having been treated as complaint the Magistrate committed illegality in going through the final report, injury reports and case diary.

6. The learned A.G.A. and the learned Counsel for the complainant submitted that the Magistrate upon protest petition having proceeded to act u/s 190(1)(a) of Code of Criminal Procedure and recorded statements under Sections 200 and 202 Cr.P.C, the impugned order is not vitiated. It was argued that while taking cognizance u/s 190(1)(a) of the Code there is no bar to look into the case diary and other documents available therein.

7. On receiving the final report the following four courses are open to the Magistrate and he may adopt any one of them:

(I) He may agree 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.

8. In the instant case the Magistrate took cognizance on protest petition treating the same as complaint and recorded the statements of the complainant and witnesses under Sections 200 and 202 of Code. Where the Magistrate decides to take cognizance u/s 190(1)(b) Cr.P.C. ignoring the conclusions reached at by the Investigating Officer, he can act only upon the statements of the witnesses recorded u/s 161 of Code in the Case-diary and material collected during investigation. At that stage it is not permissible to consider any material other than that collected by the Investigating Officer. There is no such restriction when cognizance is taken u/s 190(1)(a) Cr.P.C. The Magistrate adopted procedure of the complaint case under Chapter XV of the Code of Criminal Procedure and recorded the statements of the complainant the witnesses and look cognizance for the offences under Sections 307, 323 and 506 I.P.C. against the applicant by the order dated 8.8.2002. There is no restriction on the powers of the Magistrate to look into the case-diary and material collected by the Investigating Officer while taking cognizance u/s 190(1)(a) of the Code. In view of the above discussion the impugned orders do not suffer from any illegality. Consequently, this application lacks merit and deserves dismissal.

9. The application is dismissed accordingly.

10. The applicants are directed to surrender before the court concern within three weeks from the date of this order and apply for bail. Their bail prayer shall be considered and decided expeditiously by both the courts below in accordance with law.