(1997) 05 AHC CK 0211

Allahabad High Court

Case No: Criminal Revision No. 1461 of 1996

Ram Saran Bansal and Others		APPELLANT
	Vs	
State of U.P. and Another		RESPONDENT

Date of Decision: May 15, 1997

Acts Referred:

- Copyright Act, 1957 - Section 63, 64
- Criminal Procedure Code, 1973 (CrPC) - Section 161, 173, 190, 190(1), 190(2)
- Penal Code, 1860 (IPC) - Section 302, 419, 420

Citation: (1997) 21 ACR 726

Hon'ble Judges: D.C. Srivastava, J

Bench: Single Bench

Advocate: V. Singh and G.S. Chatwvedi, for the Appellant; A.G.A., A.R.B. Kher and S.S. Tiwari, for the Respondent

Final Decision: Dismissed

Judgement

D.C. Srivastava, J.

This revision has been filed against the order dated 20th August, 1996 passed by Chief Judicial Magistrate, Agra, taking cognizance of the case against the revisionists under Sections 419 and 420, I.P.C. and Sections 63 and 64 of Copy-right Act.

2. The brief facts are that opposite party No. 2 Kanhaiyalal Bansal lodged a first information report against the revisionists under the aforesaid sections vide Annexure 1. On the basis of this first information report, investigation proceeded. After completing the investigation, charge-sheet was submitted against the revisionists by the police under the aforesaid sections. The charge-sheet was received by the Chief Judicial Magistrate, Agra on 20th August, 1996. It was registered and order was passed for preparation of copies. After the copies were prepared, summonses were issued to the revisionists. The revisionists instead of appearing before the Chief Judicial Magistrate, Agra, have rushed to this Court by

filing the present revision.

3. Sri G. S. Chaturvedi, learned Counsel for the revisionists and Sri. S. S. Tiwari for opposite party No. 2 were heard. Learned A.G.A. was also heard. The case diary and the record of the lower court was also summoned and it has been perused.

4. Learned Counsel for the revisionists contended that from the material on the record including the Annexures along with the counter-affidavit, it appears that the summoning order by the learned Magistrate has been passed without application of mind and that the documents on record indicate that the first information report was lodged only with a view to harass the revisionists.

5. In order to appreciate the above contention, the papers on record were examined. Legal position has to be seen in the instant case. As is evident from the record, it was not a case instituted on a complaint but on the report submitted by the police which is called as Police Challanl Case. The offences punishable under Sections 419 and 420, I.P.C. are to be tried as warrant case. Warrant case has been defined u/s 2(x) of the Code of Criminal Procedure which means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. Offence u/s 419, I.P.C. is punishable with imprisonment for three years or fine or both. Offence u/s 420, I.P.C. is punishable with imprisonment for seven years and fine. Consequently the offences complained of have to be tried by the learned Magistrate as warrant case.

6. Section 190 of the Code of Criminal Procedure provides that subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under Sub-section (2), may take cognizance of any offence:

(a) upon receiving a complaint of facts which constitute such offence:

(b) upon a police report of such facts;

(c) upon information received from any person other than a Police Officer, or upon his own knowledge, that such offence has been committed. it is clear from the record that cognizance was taken by the learned Chief Judicial Magistrate u/s 190(1)(b) of the Code of Criminal Procedure.

7. For taking cognizance under this section, the learned Magistrate was required to consider the provisions of Section 204 of the Code of Criminal Procedure. I do not find force in the contention of the learned Counsel for the Respondent that Section 204 of the Code of Criminal Procedure is applicable only to complaint cases. Section 204 finds place in Chapter XVI of the Code whereas Sections 200 to 203 find place in Chapter XVI of the Code. Section 204 of the Code of Criminal Procedure provides that If in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding and the case appears to be -- (a) a summons case, he shall issue summons for the attendance of the accused, or (b) a warrant case, he

may Issue a warrant, or, If he thinks fit, a summons, for causing the accused to be brought or to appear before him. The record shows that the learned Magistrate considered the material on record and thereafter directed summonses to be issued to the revisionists.

8. Section 207 of the Code of Criminal Procedure provides that where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, copy of documents. That stage has not yet arisen because the revisionists did not appear before the learned Magistrate. Upon their appearance before the learned Magistrate, they are entitled to receive copies as contemplated u/s 207 of the Code of Criminal Procedure.

9. Chapter XIX of the Code deals with trial of warrant cases by Magistrate. Section 238 of the Code of Criminal Procedure provides that when in any warrant case instituted on a police report, the accused appears or is brought before a Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provisions of Section 207.

10. Section 239 of the Code provides that if upon considering the police report and the documents sent with It u/s 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

11. Framing of charge is provided u/s 240 of the Code.

12. In tills case Section 239 of the Code of Criminal Procedure is material and stage is available to the revisionists after they appear before the Magistrate for receiving copies of documents and after their examination by the learned Magistrate they will be heard on charge and then appropriate order for framing charge or discharge of the revisionists is to be passed. That stage has not yet arisen. The point for consideration is whether at this stage, revisional interference is required and whether the defence of the revisionists can be seen at tills stage by the revisional court. When the Code itself provides an opportunity to the accused to raise his objections and make his submissions before the Magistrate before framing of charge, there is no reason why the merits or demerits of the case and the defence of the revisionists should be considered at tills stage.

13. In Hareram Satpathy Vs. Tikaram Agarwala and Others, , the Supreme Court observed that as the Magistrate is restricted to finding out whether there is a prima facie case or not for proceeding against the accused and cannot enter into a detailed discussion of the merits or demerits of the case and the scope of the revisional Jurisdiction is very limited, the High Court cannot launch on a detailed and meticulous examination of the case on merits and set-aside the order of Magistrate directing issue of process against certain persons. In this case also, first information

report was lodged and investigation was carried and ultimately final report was submitted. Feeling dissatisfied, a complaint was tiled by the informant. After going through the statement u/s 161 of the Code of Criminal Procedure, the Magistrate found prima facie case u/s 302, I.P.C. The accused were summoned. Even though the process was issued on a complaint, yet the procedure will equally apply to police challani case where also the power of the Magistrate or the revisional court to assess the merits and demerits of the case at the initial stage is very much restricted. The Magistrate has to see whether there is sufficient ground and prima facie case for proceeding against the accused and if it so exists, interference at the revisional stage upon assessing the defence evidence is hardly permissible. In view of this pronouncement, it is difficult to appreciate the defence version and defence evidence at this stage. Alter considering the entire material on record, it prima facie appears that order summoning the accused was not unjustified. The proper stage for the revisionists is to raise these objections after they appear before the learned Magistrate and are examined and questioned by the learned Magistrate and thereafter when they are heard by the learned Magistrate before framing of charge. At that stage, they can prima facie show their stand to establish that the charge against them appears to be groundless as contemplated u/s 239 of the Code of Criminal Procedure.

14. A glance Into the case diary and the material collected during investigation Indicates that it was not a case where the police acted arbitrarily and submitted charge-sheet without any evidence. If there is some evidence against the accused, the summoning order cannot be disturbed. At that stage, the Magistrate was not required to record his finding that the evidence collected during investigation was unreliable or unworthy of credence. Consequently, revisional interference in the instant case is not called for. There is no merit in this revision which is hereby dismissed. Stay order dated 30th October, 1996 is vacated.