

**(2014) 08 AHC CK 0205**

**Allahabad High Court**

**Case No:** Crl.M.W.P. No. 12671 of 2014

Kedar Nath Shukla

APPELLANT

Vs

State of U.P.

RESPONDENT

**Date of Decision:** Aug. 7, 2014

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 200, 202, 203, 204

**Citation:** (2014) 3 ACR 3248

**Hon'ble Judges:** Ranjana Pandya, J

**Bench:** Single Bench

**Advocate:** Rama Shankar Shukla, Advocate for the Appellant

### **Judgement**

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Ranjana Pandya, J.

This writ petition has been preferred with a prayer to quash the order dated 3.5.2014 passed by the Additional Sessions Judge, Court No. 8, Allahabad in Criminal Revision No. 452 of 2011 and order dated 4.10.2011 passed by the A.C.J.M., Court No. 7, in Case No. 1156 of 2011, Prem Chandra v. Satya Prakash and others, summoning the applicants.

2. Brief facts are that the opposite party No. 2 filed an application under Section 156(3), Cr.P.C. against the applicants and three others, which was treated as complaint. The opposite party No. 2 is a poor man and his mother Autari Devi is an aged lady. The opposite party No. 2 is pairokar of his mother to whom the State granted lease of certain land, which was earmarked by the Halka Lekhpal on 12.7.2009, 26.7.2009 and 3.9.2009. But, in spite of the land being earmarked, the accused are not permitting the mother of the opposite party No. 2 to make "medh" on the land. Later on the Tehsildar was ordered to record First Information Report

on the application of the opposite party No. 2 or his mother. This order has not been complied with by the opposite party-Tehsildar till date although many applications have been moved in this behalf and further on this the Tehsildar abused the opposite party No. 2 and asked him not to come again. On 7.10.2009 when the opposite party No. 2 and his mother Autari Devi went to work on the fields, the applicants started abusing the opposite party No. 2 and his mother and assaulted them with lathi and dandas upon which they saved their lives by running into the house. Thus, application under Section 156(3) was filed which was ordered to be treated as an complaint case.

3. It has been argued that on behalf of the applicants that although the possession was handed over on the lease land to Autari Devi but this lease was later on cancelled by the Assistant Collector, Allahabad and, thus, Autari Devi was not in possession of the land at all. It has been further argued that this is counterblast done by the opposite party No. 2 to save himself. It has been further argued that if twelve persons had assaulted the opposite party No. 2 and his mother, there is no reason why they did not sustain any injuries as there is no injury report on record.

4. The learned Magistrate ordered that the application under Section 156(3) be treated as complaint. The statement of the complainant (P.W. 1) was recorded under Section 200, Cr.P.C. and in inquiry the statement of P.W. 2 Sukhram Singh was recorded under Section 202, Cr.P.C. The Magistrate, after perusal of the evidence on record, passed the summoning order dated 4.10.2011. Feeling aggrieved the petitioners filed Criminal Revision No. 452 of 2011 which was also dismissed, vide order dated 3.5.2014. At the time of passing summoning order, the only thing which the court has to see is whether there is any ground to proceed or not.

5. The counsel for the petitioners has argued that the present application has been filed as a counterblast against the petitioners and three others out of which two have died and one has not been summoned.

6. As far as on the point of summoning is concerned in [Mohinder Singh Vs. Gulwant Singh and others,](#) the Hon"ble Apex Court has held that the scope of enquiry under Section 202 is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But the enquiry at that stage does not partake the character of full dress trial which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section 202 of the Code. To say in other words,

during the course of the enquiry under Section 202 of the Code, the Enquiry Officer has to satisfy himself simply on the evidence adduced by the prosecution whether *prima facie* case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry.

7. Thus, the learned lower court and the revisional court found that there were sufficient grounds to proceed against the petitioners, and, therefore, the orders passed by the courts below do not call for interference in writ jurisdiction. The writ petition has no force and is dismissed accordingly.