
(2014) 2 ACR 2342 : (2014) 4 ALJ 655

Allahabad High Court

Case No: Application No. 21608 of 2014

Nishant Tiwari

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: June 24, 2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 2(g), 200, 201, 202, 319#Dowry Prohibition Act, 1961 â€” Section 3, 4#Penal Code, 1860 (IPC) â€” Section 323, 498-A, 506

Citation: (2014) 2 ACR 2342 : (2014) 4 ALJ 655

Hon'ble Judges: Manoj Misra, J

Bench: Single Bench

Advocate: Ram Surat Patel, Advocate for the Appellant

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

Manoj Misra, J.

Heard learned counsel for the applicants and the learned A.G.A. for the State. By the present application, the applicants,

who are husband, father-in-law and mother-in-law of the complainant (opposite party No. 2), have sought quashing of the proceedings of

Complaint Case No. 48 of 2013 pending in the Court of Judicial Magistrate, Orai, District Jalaun, under Sections 498-A, 323, 506, I.P.C. and

Section 3/4 of D.P. Act, P.S. Kotra, District Jalaun.

2. A perusal of the complaint, and paragraph 4 in particular, disclose the involvement of the applicants in commission of the offences for which they

have been summoned. There is an injury report also to support the allegations. The learned Magistrate after taking cognizance on the complaint

proceeded to hold an inquiry by recording statement of the complainant u/s 200 and of the witnesses u/s 202, Cr.P.C. to ascertain whether or not

there is sufficient ground to proceed against the accused. After considering the allegations, the injury report and the statements recorded under

sections 200 and 202, Cr.P.C., the learned Magistrate recorded satisfaction with regards to existence of a prima facie case to proceed against the

applicants and, accordingly, summoned the applicants for offences punishable under Sections 498-A, 323, 506, I.P.C. and Section 3/4 of D.P.

Act.

3. Challenging the proceedings, the learned counsel for the applicants submitted that as the applicants, who are the accused, reside outside the

jurisdiction of the Court, where cognizance has been taken, therefore, before issuing process the learned Magistrate ought to have himself inquired

or to have directed an investigation for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused. It has

been submitted that by virtue of amendment of sub-section (1) of section 202, by Act No. 25 of 2005, with effect from 23.06.2006, in the Code

of Criminal Procedure, such an inquiry is mandatory and in absence thereof, the order issuing process stands vitiated. In support of the said

submission, reliance has been placed on decisions of the Apex Court in the case of National Bank of Oman Vs. Barakara Abdul Aziz and

Another, and K.T. Joseph Vs. State of Kerala and Another, The second submission of the learned counsel for the appellant is that in absence of

clear and specific allegation against the father-in-law and the mother-in-law they ought not to have been summoned by the learned Magistrate in

view of the decision of the Apex Court in the case of Geeta Mehrotra and Another Vs. State of U.P. and Another,

4. I have considered the submissions of the learned counsel for the applicants and perused the record.

5. The first submission of the learned counsel for the applicants is completely misconceived, inasmuch as, the learned Magistrate has himself held

an inquiry by recording statement on oath of the complainant and her witnesses Vinay Mishra and Gaya Prasad, under sections 200 and 202,

Cr.P.C. respectively, which are on record as Annexure Nos. 3, 4 and 5. It is only after recording the statements, and consideration of the same

along with injury report, the learned Magistrate drew satisfaction with regards to existence of a prima facie case for proceeding against the

applicants and has summoned them accordingly.

6. The term inquiry as contemplated by sub-section (1) of Section 202 is a pre-trial inquiry, as would be clear from Section 2(g) of the Code of

Criminal Procedure, which defines inquiry as every inquiry, other than trial, conducted under the Code by a Magistrate or Court. In Hardeep Singh

Vs. State of Punjab and Others etc. etc., , in para 117.2 of the report, the Constitutional Bench of the Apex Court observed that inquiries under

Sections 200, 201, 202, Cr.P.C., and u/s 398, Cr.P.C. are species of the inquiry contemplated by Section 319, Cr.P.C. It was observed that

materials coming before the court in course of such inquiries can be used for corroboration of the evidence recorded in the court after the trial

commences, for the exercise of power u/s 319, Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the charge-

sheet. In Vasanti Dubey Vs. State of Madhya Pradesh, the Apex Court, in paragraph 29 of the report, observed that while in a case based on

police report, the court while taking cognizance will straightaway examine whether a prima facie case is made out or not and will not enter into the

correctness of the allegation levelled in the FIR, whereas a complaint case requires an enquiry by the Magistrate u/s 200, Cr.P.C. if he takes

cognizance of the complaint. In case he refuses to take cognizance he may either dismiss the complaint or direct the investigating agency to enter

into further investigation. In case he does not exercise either of these two options, he will have to proceed with the enquiry himself as envisaged

and enumerated u/s 200, Cr.P.C. From above, it is clear that recording of statement u/s 200, Cr.P.C. or u/s 202, Cr.P.C., is nothing but a part of

the pre-trial inquiry. Accordingly, where the Magistrate records the statement of the complainant u/s 200, Cr.P.C. and, if required, of the witnesses

u/s 202, Cr.P.C. and proceeds to consider them, along with other material, if produced, for ascertaining whether a prima facie case is made out to

proceed against the accused, and records a satisfaction to that effect, there is sufficient compliance of the amended provisions of sub-section (1) of

Section 202 of the Code. Process issued to an accused residing out of the territorial jurisdiction of the Magistrate, after following the aforesaid

procedure is not vitiated in any manner.

7. As in the instant case, the process has been issued after recording the statement of the complainant as well as the witnesses as also after

recording satisfaction with regards to existence of a prima facie case against the accused, upon consideration of the statements so recorded as also

the material brought on record, it cannot be said that there was no compliance of the amended provisions of sub-section (1) of Section 202 of the

Code of Criminal Procedure.

8. So far as the second submission of the learned counsel for the applicants is concerned, the same cannot be accepted as there are allegations

against all the accused who are husband, father-in-law and mother-in-law of the complainant. As the complaint allegations and the statements

made in support thereof as also the injury report do make out a prima facie case to proceed against the applicants neither the summoning order nor

the consequential proceedings can be quashed. The prayer of the applicant to that extent is therefore rejected.

9. At this stage, the learned counsel for the applicants submitted that a simple matrimonial discord between husband and wife has been given color

of a dowry case. It has been submitted that subsequent to filing of the complaint, the husband (the applicant No. 1) filed a petition for restitution of

conjugal rights, which was decreed ex parte, thereby disclosing that the complainant had no justifiable cause to live separate. It has been submitted

that the complaint allegations are nothing but false.

10. Be that as it may, the veracity of the allegations cannot be tested at this stage, inasmuch as, at this stage, the allegations are to be taken at their

given face value. And since from the complaint allegations and the material in support thereof a prima facie case to proceed against the applicants is

made out the proceedings cannot be quashed at the threshold. However, considering the facts and circumstances of the case, it is hereby provided

that if the applicants appear/surrender before the court concerned and apply for bail, within a period of four weeks from today, their bail

application shall be considered in accordance with law laid down in the case of Amarawati and Another (Smt.) Vs. State of U.P., decided by a

Full Bench of this Court, which has been approved by the Apex Court in the case of Lal Kamendra Pratap Singh Vs. State of U.P. and Others,

Lal Kamendra Pratap Singh Vs. State of U.P. and Others, With the aforesaid observations/directions, the application stands disposed of.