

**Court No. - 75**

**Case :-** MATTERS UNDER ARTICLE 227 No. - 5460 of 2023

**Petitioner :-** Data Ram and 4 others

**Respondent :-** State of U.P. and Another

**Counsel for Petitioner :-** Arvind Srivastava-III

**Counsel for Respondent :-** G.A., Rakesh Kumar Rathore, Sanjeev Kumar

**Hon'ble Umesh Chandra Sharma, J.**

1. Heard Sri Pradeep Kumar, advocate holding brief of Sri Arvind Srivastava, learned counsel for the petitioners, learned AGA for the State and perused the record.
2. This petition under Article 227 of the Constitution has been moved to set aside the entire proceedings of Criminal Complaint Case No.138 of 2021 (Ram Sevak Vs. Data Ram and others) pending before the Additional Civil Judge (JD), Court No.5/Judicial Magistrate, Mainpuri.
3. The petitioners have taken ground that the impugned summoning order dated 05.03.2022 is *non est* and bad in law as the concerned court has passed the impugned order without there being any subjective satisfaction of committance of offence even without recording the *prima facie* case while no offence is made out against the petitioners. The court below has also overlooked that there are serious contradictions in the complaint and the statements of the witnesses. There is no medical examination and no injury was caused to the respondent no.2 resulting to as alleged incident which *prima facie*

creates doubt the allegations made in the complaint. Respondent no.2 has filed a frivolous complaint against the petitioners to pressurise them so that they do not resist his illegal possession. The plot no.81 is a very big land and the share of the petitioners is only to the extent of an area of 0.4050 hectare and the petitioners have no concern about the rest of the plot no.81. No incident had taken place on the spot that too in the morning at 04:00 a.m. which is quite impossible because in the month of February mostly the sun rises at around 06:00 am. It is very much surprising that the petitioners got awake at around 04:00 a.m. and gone to the house of the respondent. The story is totally concocted and which cannot be believed. The complaint was filed after more than two months. The police report dated 23.04.2016 did not disclose any such incident. The said report was totally ignored or disbelieved by both the courts below. There is a major contradiction in the statement of the complainant under Section 200 CrPC as he had only stated that the petitioners only slapped them and taken away the house hold articles alongwith Rs.2,000/- and put fire but nowhere stated that any injury was caused to him and his family members. On the other hand the witnesses namely PW-1 and PW-2 added some extra version in the their statements that the petitioners were armed with *lathi* and *danda* and the petitioners beaten brutally but nowhere stated that what injury has been caused to the complainant and his family members.

4. The Apex Court in **Lalan Kumar Singh and others Vs. State of Maharashtra, 2022 LiveLaw (SC) 833**, specially held that the issuance of process is not a mere formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceedings exist in the case or not and the formation of such opinion is required to be stated in the order itself. In absence of any right and title over the land in question under what authority the complainant claimed to be in possession over the land. The entire story is bogus and does not require issuance of process against the petitioners. Hence, the impugned order be set aside.

5. In brief, facts of the case are that the respondent no.2, complainant moved an application Section 156(3) CrPC on 12.04.2016 to lodge an FIR against the petitioners on the ground that he had kept a hut on his land khasra no.81 area 0.607 hectare and had also kept household articles therein. On 16.02.2016 at about 04:00 a.m, Dataram, Vijay Pal, Mohar Pal and Dharm Pal sons of Raj Kumar, Annu and their family members reached there, abused and directed to vacate the land. The respondent no.2 denied to vacate the land and when he said that the land is in his name where he was pulling on his life with his family, the accused persons started beating the applicants, his wife and his children. They took away the house hold articles alongwith box in which he had kept Rs.2,000/- and also two cots, two mattresses, two quilts, pots, one pair of silver anklet and other household materials and put the hut into fire. They also threatened

that if he again informed the police, he and his family members would be killed. He visited the police station twice but his report was not lodged. The accused persons are the musclemen who often restrain his way and the family members also and threaten to kill them if they did not vacate the land in question. The applicant has also mentioned name of the witnesses as Rajvir, Anil and his daughters Mamta, Pratima and other eye-witnesses. The complainant further averred that he had given a letter to SSP on 01.04.2016 through post but no action was taken. Hence, he has moved the aforesaid application.

6. A report was called for from the concerned police station which was submitted on 23.04.2016. The application was converted into complaint and the statement of the complainant Ram Sevak under Section 200 CrPC and the statements of PW-1, Anil Kumar and PW-2, Rajvir were recorded under Section 202 CrPC. After hearing the argument, the accused persons were summoned under Sections 323, 425, 504 and 506 IPC. Being aggrieved, the petitioners had preferred a Criminal Revision No.33 of 2022 which was dismissed by the learned Sessions Judge on 19.04.2023. Being aggrieved by both the orders, the petitioners have preferred this petition.

7. Learned counsel for the petitioners have argued that since the police report was not in favour of the complainant hence there was no occasion to summon the petitioners as accused.

According to this Court, a report summoned with regard to Section 156(3) CrPC is only to know as to whether any FIR has been lodged on the facts of the application or not. The police report cannot be basis to reject or allow an application under Section 156(3) CrPC.

8. So far as the non-rising and reaching on the place of occurrence at about 04:00 a.m. in the month of February is concerned, this Court is not in consonance with the opinion of the learned counsel for the petitioners. Even in winter season villagers awake by 04:00 a.m. and start agricultural works, ploughing the fields and irrigating the crops. It is also noteworthy that an accused would choose the time when there would be least resistance.

9. So far as the delay in filing the complaint is concerned, from the records it reveals that the applicant had approached the police station twice after the incident but his FIR was not lodged. It is very much clear from the police report that after the alleged occurrence the police had not visited the place of occurrence. It is nowhere mentioned in the police report that before sending the report to the concerned Magistrate, the concerned police had inspected the place of occurrence. If the petitioners rely on the police report, it is not absolutely in favour of the petitioners. In the very report it has also been mentioned that the property in question belongs to both the parties i.e. the applicant-respondent no.2 and the petitioner no.1, Data Ram. It is also noteworthy that the petitioners are claiming only an area of 0.4050 hectare of

khasra no.81. It has been mentioned by the petitioners in their criminal revision No.33 of 2022 that the area of khasra no.81 is about 26 bigha and in which in addition to the complainant (respondent no.2), revisionist and other villagers are also in possession. It has also been mentioned by the petitioners that the survey of the aforesaid khasra number has been completed and he was in possession since 2008. He has filed extract of khatauni and khasra which shows that petitioner no.1 is the bhumidhar with non-transferable rights of khasra plot no.81/4 area 0.405 hectare in which mustard had been sown in 1427 fasli. The petitioners did not file the khatauni and khasra with regard to the area which belongs to the respondent no.2. No map has been filed by the petitioners to ascertain the situation of their land. The petitioners have accepted in their revision that the respondent no.2 is also in possession over khasra no.81. It has not been said by the petitioners either in the revision or before this Court that on the alleged place of occurrence, they had sown mustard and the same has also not been mentioned in the police report.

10. It has been averred by the petitioners that there are variations in the statements and the version of the complaint. This Court has gone through the records and has not found any material variation in it.

11. So far as the lack of injury report is concerned, since it is not a case of any grievous hurt and the learned Magistrate has found it to be a case under Section 323

IPC with regard to the injury for which injury report is not very much required. Even if a person is beaten by legs and fists and some complaint of pain arises, the person responsible may be summoned under Section 323 IPC.

12. Section 425 IPC is about mischief. Section 504 IPC is about intentional insult with an intention to provoke breach of peace and Section 506 IPC defines criminal intimidation and threat to cause death or grievous hurt, etc. For these sections injury report is not required and only oral evidence is sufficient if the same is trustworthy.

13. From the above discussion, it has also been proved that the petitioners and the respondent no.2, both the parties have interest in khasra no.81. It is a matter of evidence as to whether the alleged occurrence had been caused by the petitioners or not. The law is this that even a trespasser cannot be evicted and no force can be applied against him without adopting the due course of law. As per the version of the complaint and the statement under Sections 200 and 202 CrPC, a *prima facie* case to summon the petitioners as accused is certainly made out.

14. In the facts and circumstances of the case there should be grievance to the respondent no.2 that firstly his FIR had not been lodged, his application to the SSP was not considered and when he moved an application under Section 156(3) CrPC to lodge the FIR, the same was also not accepted but it was treated to be a complaint. It is also noteworthy that the application/complaint bears the

ingredients of Section 436 IPC and other sections regarding loot of the household articles and money but the same was also not considered by the concerned Magistrate and the petitioners were simply summoned under the aforesaid sections. The respondent no.2 could not approach the district court for the aforesaid grievances but the petitioners started a long legal battle and are utilising the hierarchy of the courts of their choice. In this case the respondent no.2 had engaged counsel Sri Rakesh Kumar Rathor and Sri Sanjiv Kumar Rathor but they neither filed any objection/counter affidavit nor attended the Court when the case was taken up. It proves that the respondent no.2 is unable to contest/protest the petitioners.

15. According to this Court at the time of passing of summoning order there is no need to pass a detailed order. The impugned order is based on the evidence and the contents of the complaint. The impugned order cannot be said to be a non-speaking order.

16. Learned counsel for the petitioners relied on **Lalan Kumar Singh** (supra) in which the Apex Court has held that while passing the summoning order under Section 204 CrPC, the Magistrate is required to apply his mind as to whether sufficient ground for proceeding with the case exists or not.

In paragraphs-28 to 30 of the aforesaid judgment the principles in this regard have been laid down in the fact

and circumstances of the aforesaid case where no formal summoning order was passed and the process were issued. The aforesaid proceeding relates about the summoning of a director and the matter was with regard to company law and an offence with regard to the Drug and Cosmetics Act, 1940 where no formal summoning order was passed. The order passed by the learned Magistrate is being reproduced in paragraph-26 of the judgment which is as under:

***“Take entry in register of criminal cases and issue summons against accused to ask them to appear in the court.”***

17. Here the case is quite different and is mostly based on the oral and ocular evidence where a proper speaking summoning order has been passed. Therefore, this Court is of the view that the principles laid down in the aforesaid case cannot be applied blindly in favour of the petitioners.

18. In **Anil Saran Vs. State of Bihar, (1995) 6 SCC 142**, it has been held that at the stage of issue of process, it is not for consideration as to whether the offence has been made out and what defences are open to the accused after the issue of process.

19. In **Kanti Bhadra Shah Vs. State of West Bengal, AIR 2000 SC 522**, it has been held that it is quite unnecessary to write a detailed order at the time of issuing process.

20. Though in **M/s Pepsi Foods Ltd. Vs. Special Judicial Magistrate, AIR 1998 SC 128**, it has been held that the Magistrate has to carefully scrutinize the evidence to find out the truthfulness or otherwise of the allegations and then examine if there is *prima facie* evidence about commission of the offence before issuing summons to the accused persons. In this case the learned Magistrate had already examined the averments of the complaint and evidence thereon and thereafter has summoned the petitioners to face the trial.

21. According to this Court, the petition is devoid of merit and has been filed with ulterior motive only to deny the justice to the respondent no.2 and not to take legal recourse provided to him under the law. The remedy is very much open for the petitioners to move an application for discharge at the time of framing of charge or at the time of recording of statement as the case may be. Thus, the petition is liable to be dismissed accordingly.

### **ORDER**

22. The petition is **dismissed** accordingly. The summoning order and the order passed by the revisional court are affirmed.

**Order Date :- 13.10.2023**

Shahroz

(Umesh Chandra Sharma,J.)