

Court No. - 84

Case :- CRIMINAL APPEAL No. - 8217 of 2023

Appellant :- Ram Prasad

Respondent :- State of U.P. and Another

Counsel for Appellant :- Pt. S.P. Sharma, Deepika Sharma

Counsel for Respondent :- G.A., Virendra Singh Patel

Hon'ble Mrs. Sadhna Rani (Thakur), J.

1. Heard learned counsel for the appellant, Sri Vibhav Anand Singh, learned A.G.A. for the State, learned counsel for the opposite party no.2 and perused the record.
2. This appeal has been filed against the judgment and order dated 31.07.2023 passed by Special Judge (SC/ST) Act, Jhansi summoning the appellant in Criminal Case No. 55 of 2023 CNR No. UPJS01-002845-2023 (Ram Prasad Vs Alok Shndilya and others), under Sections 420, 323, 504, 506 I.P.C. and Section 3(1) Da, Dha of SC/ST Act, Police Station Sipri Bazar, District Jhansi.
3. By the impugned order the complaint of complainant was dismissed under Section 203 Cr. P.C.
4. As per fact of the case, an application under Section 156(3) Cr. P.C. dated 08.05.2023 was moved by the appellant before the trial court with the allegation that he is the person belonging to SC/ST community. As the parties were known to each other. The opposite party no.1 lured him to arrange a job for him on contract basis and in this regard, the opposite party no.1 demanded Rs. 50,000/- from the appellant. On 15.07.2022, 01.02.2023 and 03.02.2023 the appellant withdrew Rs. 20,000/-. Rs. 20,000/- and Rs. 10,000/- respectively from the Account No. 3373315131 of his wife Poonam and handed over the same to opposite party no.1- Alok Shndilya in front of his wife namely Poonam. He was promised by the opposite party no.1 to arrange a job for him within one month. But neither the job was arranged for the appellant nor his amount was returned back. On 15.04.2023 at 12.00 hours in the Noon, the opposite party no.1 Alok Shndilya along with two other unknown persons met him, all of them hurled abuses and caste based words, they also thrashed him with kick, fist and the belt. He was further given threat of life if he demands his money back. Sudhir Purohit and Charan Singh witnessed the incident and saved the appellant. On the same day, he got himself medically examined at the District Hospital Male, Jhansi and went to the police station but his report was not written. On 17.04.2023 he sent a registered letter to the Senior Superintendent of Police, Jhansi along with copy of the pass book and injury report,

but no action was taken.

5. The application under Section 156 (3) Cr. P.C. of the appellant is said to have been registered as a complaint. The trial court after perusing the statements under Section 200 and 202 Cr. P.C. of the appellant/applicant and the witnesses respectively and other evidence on record dismissed the complaint of the appellant under Section 203 Cr. P.C.

6. It is argued by the learned counsel for the appellant that the version of the complaint is supported by the statements of complainant and the witnesses recorded under Sections 200 and 202 Cr. PC. respectively. The medical examination report of the appellant from the District Hospital, of the same day, is appended with the paper book, thus the version of the complaint fully discloses a cognizable offence against opposite party no.2. hence prayer is made accordingly.

7. Learned counsel for the appellant has placed reliance on judgement ***Ghanshyam Singh Versus State of U.P. and others 2007(3) JIC 599 (All) and NAGAWWA Versus Veeranna Shivalingappa Konjalgi 1976 Law Suit (SC) 189*** and argued that Court cannot evaluate the evidence at this stage of Section 203 Cr. P.C., as it was finally deciding the case, non consideration of the documents produced by the accused at this stage is proper procedure.

8. Attention of this court is again drawn towards the judgement is ***SW Palanitkar Versus State Bihar 2001 Law Suit (SC) 1408*** wherein the phrase "sufficient ground for proceeding" used in Section 203 Cr. P.C. has been explained that at the stage of issue of process against the accused the words sufficient ground for proceeding means only a prima facie satisfaction that, complaint is either false or vexatious or intended only to harass the accused. The court need not be satisfied that, whether trial court will result into conviction.

9. Judgment in ***Chandra Deo Singh Versus Prakash Chandra Bose alias Chabi Bosd other 1963 0 Supreme (SC) 11*** is also placed before the Court wherein the Apex Court held that for determining the question whether any process is to be issued or not, the Magistrate has to be satisfied whether there is "sufficient ground for proceedings" and not whether there is sufficient grounds for conviction.

10. Again judgment in ***Nirmaljit Singh Hoon Versus The State of West Bengal and another (1973)3 Supreme Court Cases 753*** is placed before the court wherein the Apex court held that for issue of process sufficient cause for proceeding must exist.

11. In case of ***Dilip Kumr Versus Brajraj Srivastava and another decided on 26.07.2023 in Criminal Appeal No. 561 of 2012*** the Apex Court held that before dismissing the complaint under Section 203 Cr. P.C., the Magistrate has to consider the statement of the complainant and his witnesses.

12. On the basis of the above judgements, the learned counsel for the appellant submitted that for issuing process the evidence of witnesses and complainant must not be evaluated as the case was being decided finally. On the basis of the statement of the complainant and statements of the witnesses and medical report on record, learned counsel for the appellant further prayed for his application under Section 156(3) Cr. P.C. to be allowed.

13. Learned counsel for the opposite party no.2, however, opposed the prayer and submitted that medical report filed by the appellant is not readable. It is also argued that the trial court has specifically recorded its finding in para no. 9 of the order. This order does not need any interference, hence prayer is made accordingly.

14. To decide the matter it is apposite to mention **Section 203 of Cr. P.C.** which reads as under:-

"If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the enquiry of investigation (if any) under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

15. Thus as per this section, sufficient ground for proceeding further must be there. It is clearly mentioned in the order that after considering the statement on oath of the complainant and other witnesses and the result of the enquiry or investigation under Section 203 Cr. P.C., if the Magistrate is of the opinion that there is no sufficient ground for proceeding he shall dismiss the complaint, and in every such case he shall record the brief reason for doing so.

16. If we go through the impugned order, the trial court has clearly opined therein that appellant himself is a person of 42 years of age who has given illegal gratification for securing job for him. No receipt of payment to the opposite party no.2 was placed. The trial court also found that how the witnesses who belonged to other place arrived at the spot is also not made clear by the complainant. If three persons intentionally thrashed the appellant, in the opinion of the trial court, the first informant would have certainly suffered grievance injuries, while injuries sustained by the appellant are simple in nature. Hence the trial court did not find any sufficient ground to summon the accused person, hence the complaint of the complainant was dismissed under Section 203 Cr. P.C.

17. If we further go through the judgement in the case of **Ghanshyam Singh (supra)**, the Apex Court found therein that the Magistrate has to satisfy himself that there is sufficient evidence to proceed against the accused. In the present case trial court did not find any sufficient evidence to proceed against the accused, hence the appellant cannot take benefit of the aforesaid judgements.

18. In the case of **NAGAWWA Versus Veeranna Shivalingappa Konjalgi (supra)** it

has been clearly opined by the Apex Court that Magistrate has been given undoubted discretion in the matter and this discretion has to be judicially exercised by him. Apex Court further opined that once the Magistrate has exercised its discretion, it is not for the High Court or the Apex Court, to substitute its own discretion for that of Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused.

19. In the present case the Magistrate concerned by using its discretion did not find sufficient ground to proceed with the complaint.

20. In the case of **Chandra Deo Singh (supra)**, Apex Court has given the same finding that there must be sufficient ground for proceeding and not sufficient ground for conviction.

21. Thus in both these judgements **SW Palanikar and Chandra Deo Singh**, the Apex Court has pressed upon sufficient ground for proceeding i.e. prima facie satisfaction that complaint is neither false or vexatious nor intended only to harass the accused.

22. In case of **Nirmaljit Singh Hoon (supra)** the Apex Court held that there must be sufficient cause for proceeding and the trial court vide order dated 31.07.2023 did not find any sufficient ground for proceeding further.

23. So far as judgement in the case of **Dilip Kumar (supra)** is concerned, the facts of that case are different from the facts of the present case, in that case the Magistrate did not consider the statement of the complainant and his witnesses, as the witnesses were not examined in that case but the case in hand the position is different. The statements of the witnesses have been recorded and considered by the trial court, hence the appellant cannot take benefit of this judgement also.

24. From the perusal of the complaint, it is clear that appellant is said to have paid Rs. 50,000/- as illegal gratification to the opposite party no.2 for securing a job for him. On one hand he has done a job which is against the law, at the same time, he has not placed before the Court any statement of account or evidence that this amount was ever withdrawn by the appellant from the bank and was paid by him to the opposite party no.2. A person of 42 years of age does not fulfill the criteria for getting a job on contract basis, as services on contract basis are given in the Government Department to a person upto, a certain age. A person being 42 years of age, cannot be given a government job on contract basis also. Thus the basis of allegation that the amount was paid to the opposite party no.2 as illegal gratification for arranging a job for him, is neither proved nor it can be considered lawful.

25. In the opinion of the Court neither the facts mentioned in the complaint can be said to be the sufficient cause of action for proceeding further nor this Court has

any sufficient ground to interfere with the discretion exercised by the Magistrate to substitute its own discretion. The appeal is liable to be dismissed.

26. The appeal is thus ***dismissed***.

Order Date 20.11.2023

T.S.