

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 11965 of 2022

Petitioner :- Neeraj Jadaun

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- M.P.S. Chauhan

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri M.P.S. Chauhan, learned counsel for the petitioner and learned A.G.A. for the State. None responds for respondent nos. 3 and 4 despite service of notice.

2. As per the office report, respondent no.2 is reported dead.

3. By means of this petition, the petitioner has challenged an order passed by C.J.M. Aligarh in Complaint Case No. 801 of 2018 under sections 420, 406, 409, 323, 504 I.P.C. as well as the order dated 09.05.2022 passed by Additional Sessions Judge, Court No. 6, affirming the order of the trial court by which the complaint in case Neeraj Jadaun Vs. Satveer Singh and others, was dismissed under section 203 Cr.P.C.

4. It is submitted on behalf of petitioner that the complainant's story was proved by the evidence given under section 200 and 202 Cr.P.C. The learned trial court ignored the evidence available on record and refused to summon the accused persons. The fact is that the accused persons, who are employees of a finance company, forcibly took away a motorcycle belonging to his friend Amit Kumar, when the complainant along with his aforesaid friend went to the office of the company to express his inability to repay the installments. The complainant had obtained a tractor on the basis of a loan agreement with the finance company, but he could not pay the installments in time. In the above backdrop, on 11.02.2018 at about 11.30 when the complainant was going to get his cultivator repaired, the accused persons, the salesman and other employees of the finance company, came along with 4 to 5 unknown persons, abused him and forcibly wrested the tractor and also obtained his signatures on some stamp papers. The accused persons did not return the motorcycle of his friend and his tractor, instead, was given a notice dated 09.05.2018 regarding payment of loan amount.

5. It is submitted by the learned A.G.A. that the impugned orders have been passed after appreciation of evidence produced under section 200 and 202 Cr.P.C. The learned Magistrate applied his judicial discretion and found that the complaint is bereft of substance. My attention has been drawn to the observations made by trial court in para-4 of the impugned orders which is as below:

" परिवाद पत्र के अवलोकन से विदित होता है कि परिवादी व उसके रिश्तेदार ने फाईनेंस कम्पनी से ट्रैक्टर एवं मोटर साइकिल फाईनेंस कराया। जिसका वह समय पर भुगतान नहीं कर पाये इसलिए मोटर साइकिल को जबरदस्ती खींच कर ले गये। परिवादी ने अपने साक्ष्य अन्तर्गत धारा - 202 द०प्र०स० के अन्तर्गत ऐसा कोई भी अभिलिखित साक्ष्य पत्रावली पर दाखिल नहीं किया है, जिससे यह साबित हो कि परिवादी व उसका रिश्तेदार ट्रैक्टर व मोटर साइकिल की किस्त नियमानुसार समय से भर रहे थे। ऐसी स्थिति में यह स्पष्ट नहीं होता है सकता कि विपक्षीयण उसका ट्रैक्टर या मोटर साइकिल धोखा धड़ी से छीनकर ले गये हो। उपरोक्त मामला विपक्षीयण पर दबाव बनाये जाने के आशय से प्रस्तुत किया जाना प्रतीत होता है। "

6. From perusal of the order, it appears that the trial court took note of the judgment of the Supreme Court given in **Pepsi Food Vs. Judicial Magistrate, 1998 SCC (Cri) Page-1400, Buravilli Siva Madhuri Vs. Buravilli Satya Venkata Laxmana Rao 2013 C.R.L.J. 4653**

Supreme Court and Maqsood Sayad Vs. State of Gujarat 2008 (2) SCC Page-749.

7. I went through the judgment of the revisional court wherein the revisional court agreed with the order passed by the trial court and again referred to the principles as laid down by the Supreme Court in **Pepsi Food Ltd. Vs. Special Judicial Magistrate (1998) 5 SCC 749** and by the High Court in **Malti Vs. State of U.P. 2000 C.R.L.J. 4170 (Allahabad)**.

8. I went through the statements given by the witnesses under sections 200 and 202 Cr.P.C. Incidentally, this fact catches attention of this Court that the man whose motorcycle was allegedly snatched by the accused persons has not been examined. Moreover that the story as given in the complaint is slightly different from the statement given by the complainant under section 200 Cr.P.C.

9. Section 204 (1) Cr.P.C. says that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground to proceed. He may issue summons or warrants as the case may be. On the other hand under section 203 Cr.P.C., if after considering statement on oath, if any, of the complainant and of the witnesses and the result of the inquiry or investigation, if any, done under section 202, the Magistrate forms an opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint. The phrase "sufficient ground for proceeding" finds place in sections 203 and 204 both. This stage is the threshold from where a complaint case either takes off or nipped in the bud.

10. This High Court in **Criminal Appeal No. 9188 of 2022 (Dr. Divya Nanda Yadav and Another Vs. State of U.P. and Another)**, elaborated the meaning of sufficient ground to proceed occurring in section 203 and 204 (1) of Cr.P.C. The High Court said that the "*prima facie* case must be construed to mean *prima facie* satisfaction" and in other words, the Magistrate is obliged to proceed only if he finds that there is sufficient ground for doing the same.

11. The power under Article 227 of the Constitution of India is definitely supervisory in nature, but it should be exercised sparingly and in appropriate cases, only to prevent miscarriage of justice or flagrant violation of law. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. This Court in exercise of its supervisory jurisdiction, is not expected to go deep and reappraise the evidence unless there is some perversity or glaring error.

12. I went through both the orders. The courts concerned applied their judicial mind, considered the evidence and did not find sufficient ground to proceed. The orders are based on material on record. I do not find any good ground to interfere in the impugned orders in exercise of power under Article 227 of Constitution of India, the petition lacks merit and is therefore **dismissed**.

Order Date :- 3.11.2023

Sumit Kumar