

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 9559 of 2023

Petitioner :- Sonwati

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Akhilanand Mishra

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Shri Akhilanand Mishra, learned counsel for the petitioner and learned AGA for the State and perused the record.

2. This petition has been filed for following relief -

"(I) Issue an order or direction to set-aside impugned judgement dated 11.08.2023 passed by learned Session Judge, Hathras in Criminal Revision No.11 of 2023, under Section 397(1) Cr.P.C. (Sonwati Versus State of U.P. and others) and order dated 05.12.2022 passed by learned Judicial Magistrate, Sadabad, District Hathras in Complaint Case No.360 of 2021."

3. Relevant facts are as below:-

- Smt. Sonwati (the petitioner herein) moved an application under Section 156(3) Cr.P.C. with allegations in nutshell, that at about 11.30 a.m. on 24.08.2021, when the complainant and her daughter were having lunch inside their house, her relatives, namely, Pramod, Rakesh, Santosh sons of Bhagwati Prasad and Bhagwati Prasad intruded in her house, using abusive language and thrashed her and her daughter with lathi, danda, kick and fist; the complainant protested; the accused persons declared that the land belongs to them only and she should hand over the papers of the land to them; thereafter they broke open the lock of her box and took away, the sale deed, which was in the name of her husband. They also removed gold jewellery kept in that box. They fled away extending threats to their life. This incident was witnessed by the people of the locality, namely, Nanhe Khan and Talewar.
- The trial Court obtained a report from the concerned police. The application under Section 156(3) Cr.P.C. was not allowed and instead was treated as a complaint. The procedure for complaint case was adopted and the statements were recorded. The learned Judicial Magistrate passed an order declining to summon the accused persons and dismissed the complaint under Section 203 Cr.P.C..
- The complainant preferred a revision. The revisional Court agreed with the view taken by the learned Magistrate and affirmed the order of rejection.
- Now the complainant, petitioner is before this Court assailing both the orders.

4. The main contention of the petitioner is that, she, by producing evidence under Sections 200 and 202 Cr.P.C. substantiated the allegations. However, her complaint stands dismissed in a mechanical manner. A prima facie case was made out but the Court passed an arbitrary order and completely ignored the evidence on record.

5. I went through the impugned orders. The learned trial Court observed that some of the allegations, which were contained in the complaint were not even reiterated by the complaint's own daughter, though, she was produced as an eye witness. Learned trial Court took into consideration, the facts that admittedly there has been a dispute regarding property between the

two sides.

- Very importantly it is admitted by learned counsel for the petitioner before this Court that, the respondents are sons of Bhagwati Prasad and the aforesaid Bhagwati Prasad is the real Jeth of the complainant, petitioner, Sonwati and rest of the respondents are his sons and there is a property dispute between them i.e. the petitioner and the accused side.

6. The Magistrate found the story not worth credence and gave reasons for the same.

7. The learned revisional Court, while agreeing with the view taken by the learned Magistrate referred to judgements of the Supreme Court in **Pepsi Food Vs. Special Judicial Magistrate, 1998 (5) SCC 749**. The revisional Court also referred two judgements of the Allahabad High Court in **A.S. Nayal Vs. Khem Chandra, 1983 ACC 264 (Alld)** and **Lal Chandra Bhai Khatri Vs. Smt. Charanjeet Kaur, 1998 (37) ACC 8 (Alld)**.

8. The revisional Court took a view that tendency to convert civil dispute into criminal case must be thwarted and that the Magistrate should be careful enough to not to fall in the trap, while passing a summoning order on a complaint, which is devoid of substance.

9. This fact cannot be ignored that the procedure provided under section 200 and 202 Cr.P.C. was followed by the court concerned however admittedly, no medical evidence was produced by the complainant to substantiate her allegations.

10. This position of law requires no elaboration that at the time of summoning, the Magistrate has to find out whether any, if so, what prima facie case is made out from the evidence produced by the complainant, before proceeding to summon the accused persons. The meaning of 'prima facie case' has been very well explained in the judgment given by this Court in **Criminal Appeal No. 9188 of 2022, Dr. Divya Nanda Yadav and another vs. State of U.P. and Another**. In that case before the High Court, the application moved under section 156 (3) had been treated as complaint. The Magistrate went on to proceed under sections 200 and 202 Cr.P.C. and thereafter summoned the accused persons. Examining the scope of inquiry as envisaged under section 200 and 202 Cr.P.C., this High Court referred to judgment given by the Supreme Court in **Fiona Shrikhande Vs. State of Maharashtra and another (2013) 14 SCC 44**, in which the Supreme Court insisted that the complainant has to satisfy the court that there are sufficient grounds to proceed. On the basis of these observations of the Supreme Court, the Allahabad High Court took a view that prima facie case must be construed to mean prima facie satisfaction"

11. In the instant case the complainant could not give such credible evidence so as to satisfy the Court. I do not find any infirmity, illegality or arbitrariness of such nature so as to justify the exercise of powers under Article 227 of the Constitution of India in the instant case. The trial court and the revisional court have given reasons for having been not satisfied with the complainant story.

12. This writ petition is devoid of merits and is **dismissed**.

Order Date :- 12.10.2023

RKM