

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 9665 of 2023

Petitioner :- Bechan Shukla And 3 Others

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Rajesh Kumar Singh, Manoj Kumar Singh

Counsel for Respondent :- G.A., Ramesh Chand

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Rajesh Kumar Singh, learned counsel for the petitioners, Sri Ramesh Chand, learned counsel for opposite party no.2, learned AGA for the State and perused the papers on record.

2. This petition has been filed with the prayer to stay the effect and operation of impugned order dated 11.08.2023 passed by Sessions Judge, Bhadohi in Criminal Revision No.27 of 2023 (Bechan Shukla & others vs. State of UP & another) and impugned order dated 14.12.2022 passed by Judicial Magistrate-II, Gyanpur-Bhadohi in Complaint Case No.7974 of 2022 (Jagmal Pandey vs. Bechan Shukla & others), under Sections 323, 504, 352 IPC, Police Station - Koirauna, District - Bhadohi.

3. Submissions of the petitioners are that the Trial Court concerned passed the summoning order ignoring the fact that there was complete mismatch between the facts as alleged in the complaint and in the evidence given under Sections 200 and 202 CrPC. It is submitted that the complainant clearly stated in para no.4 of his complaint that on 14.06.2022 at 10:30 am the accused persons began forcibly digging the foundations of his house, which was under construction; therefore, the complainant, who was at the time residing at Bombay, was informed about the incident; there is no disclosure in the complaint or in the statements by which means and whence he was informed. The complaint case is that he came to his house at Bhadohi, UP and protested with the accused persons. Annoyed by his protest, the accused persons threw filthy abuses at him, threatened him; chased him carrying lathi, danda etc and physically assaulted him; neither the complaint nor the witnesses disclosed as to 'when' or how many days thereafter he came to his house. Further the complaint case is that the incident was witnessed by Suresh Pandey, Shyam Suder and several others; he became unconscious and his wrist watch and a silver chain was

removed by the accused persons. In the same complaint, another incident dated 18.06.2022 has also been mentioned which allegedly occurred when he was returning from the local court. The submission in nut-shell of the complainant is that the statements given by the complainant and his witnesses are too vague and unreliable. The evidence, prima facie, does not establish that any such incident as alleged by the complainant ever took place. As the story is false and cooked up, therefore, witnesses could not give any consistent statement in support of the same and this fact is too obvious on perusal of the papers.

4. I went through the statements under Sections 200 and 202 CrPC. The complainant has mentioned no time, date and place of occurrence in his statement under Section 200 CrPC. His witnesses PW1 Suresh and PW2 Laxmishankar have mentioned date as 14.06.2022 at 10:30 in the morning when the complainant was allegedly physically assaulted and beaten by using *lathi and danda* etc. This is next to impossible that complainant arrived at the scene of crime within no time from Bombay. There is no injury report. And there was a dispute as regard boundaries/demarcation.

5. The Allahabad High Court in the case of **Dr. Divya Nand Yadav and Another vs. State of UP and another** passed in Criminal Appeal No.9188 of 2022 vide order dated 20.04.2023 held as below :

"10. There cannot be two opinions on the settled legal position that the Magistrate has to decide whether prima facie any case is made out or not, before proceeding to summon the accused persons. The meaning of prima facie case must be understood in the right perspective. There may be cases where the Magistrate finds that in literal sense of the words occurring in the statements the ingredients of an offence are there but he feels not so satisfied with them. The Hon'ble Supreme Court in para-11 of the judgment passed in Fiona Shrikhande vs. State of Maharashtra and Another; (2013) 14 SCC 44, observed as below:-

"At the complaint stage, the Magistrate is merely concerned with the allegations made out in the complaint and has only to "prima facie satisfy" whether there are "sufficient grounds to proceed" against the accused and it is not the province of the Magistrate to enquire into a detailed discussion on the merits or demerits of the case. The scope of enquiry under Section 202 is extremely limited in the sense that the Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of the allegations made in the complaint."

The Supreme Court has used the phrase arriving at "prima facie satisfaction" whether there are "sufficient grounds to proceed"! Section 204 Cr.P.C. nowhere said that the Magistrate shall take cognizance and summon the accused if prima facie case is made out, instead Section 204 Cr.P.C. says that

the Magistrate may take cognizance if there is sufficient ground for proceeding, hence in my view the prima facie case must be construed to mean "prima facie satisfaction" arrived at by the Magistrate. In other words the Magistrate shall proceed only if he finds that there is sufficient ground for the same. This is not to say that the proposed accused shall have any right to be heard at that stage or that any evidence in defence can be considered. It merely means that the Magistrate shall assess all the material before it and apply its mind to find out whether time has come to proceed and take cognizance. In that view of the matter the Supreme Court in the case as aforesaid has instead of using the word "prima facie case" has found fit to use the phrase "prima facie satisfaction" and of course this satisfaction has to be arrived at while acting within the four corners of law i.e., by adopting the procedure as provided under Sections 200 and 202 Cr.P.C. In my view, the Magistrate is not powerless to examine the truth or falsehood of the case made in the complaint. And to fully utilize this power the Magistrate has to play its role of examining himself the complaint and his witnesses under Sections 200 Cr.P.C., and if required to further inquire into by calling more witnesses and examining them or even by ordering investigation. The steering wheel of the inquiry cannot be left at the hands of the complainant. For the reason that at that stage, the accused has no say in the matter and the court has no opportunity to hear the other side, therefore he ought to remain very cautious, circumspect and alert. The broad probabilities or improbabilities of the story of course may be seen at this stage."

6. The relative scope of Sections 203 and 204 Cr.P.C. were noted and considered by the Supreme Court in *Pepsi Food Limited and another vs. Special Judicial Magistrate and others*; (1998) 5 SCC 749, as below:-

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

The Supreme Court emphasized the need that the Magistrate should not sit like a silent spectator.

7. It appears that the Trial Court as well as the revisional court went about mechanically and did not apply its judicial mind while passing the impugned orders. The courts should be wary of misuse

of law. The courts cannot afford to be incautious and unmindful of the consequences of setting the legal machinery in motion in most casual and cursorial manner. In the instant case, the evidence given is too vague, inconsistent and unreliable. In my view, a case for interference in exercise of powers under Article 227 is made out.

8. Accordingly, this petition is allowed and impugned orders are quashed.

Order Date :- 6.12.2023

Priya