

Court No. - 90

Case :- APPLICATION U/S 482 No. - 39510 of 2023

Applicant :- Akhilesh Kumar Singh

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Prem Shankar Sharma, Avaneendra Kumar

Counsel for Opposite Party :- G.A., Vipin Chandra Pal

Hon'ble Dinesh Pathak, J.

1. Heard learned counsel for the parties and perused the record.
2. Applicant has assailed the summoning order dated 16.08.2023, passed by Civil Judge (J.D.)/Judicial Magistrate, Powayan, Shahjahanpur and entire Criminal proceedings in Criminal Misc. Case No.24 of 2023. Solitary submission raised by learned counsel for the applicant that summoning order dated 16.08.2023 has illegally been issued without taking any cognizance on the Charge Sheet No.659 of 2022, dated 08.09.2022.
3. Perusal of the documents on record reveals that respondent no.2 has lodged an FIR, being Case Crime No.0555 of 2022, dated 16.6.2022 against the present applicant levelling allegation of thrashing and criminal intimidation on the date of occurrence i.e. 15.6.2022. Investigating Officer, after due investigation, has submitted the charge sheet No.659 of 2022 dated 08.09.2022 arraigning the present applicant under Sections 323, 504, 506 I.P.C.. Learned court concerned, vide order dated 24.01.2023, has fixed the date i.e. 06.03.2023 for consideration on the charge sheet. At later stage, vide order dated 25.05.2023, case was ordered to be registered and next date was fixed for 30.05.2023. On said date i.e. 30.05.2023 summon has been ordered to be issued for appearance of the accused on 16.08.2023. On the next date i.e. 16.08.2023 again summon has been ordered to be issued to the accused fixing 08.09.2023.
4. The certified copy of the order sheet from dated 24.01.2023 to dated 16.08.2023 evince that no specific order has been passed by the Court concerned for taking cognizance in pursuance of the charge sheet dated 08.09.2022. Provisions relating to taking cognizance and issuing summons are enunciated under Sections 190 and 204 Cr.P.C. respectively. For ready reference, the

provisions of Section 190 and 204 Cr.P.C. are quoted herein below :

"190. Cognizance of offences by Magistrates

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

204. Issue of process.-

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be -

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87."

5. Bare perusal of provisions as enunciated under Section 190 Cr.P.C. reveals that any Magistrate of the First Class, and any Magistrate of the Second Class specifically empowered in this

behalf under sub Section (2), may take cognizance of an offence i.e. upon receiving a complaint, upon a police report and upon information received from any person other than a police Officer, or upon his own knowledge, with respect to offence committed. Taking a cognizance, at the part of the court, is the essential duty of the concerned Magistrate before framing of charges for the offence under which particular person (accused) has been arraigned in the charge sheet. By way of cognizance learned Magistrate takes judicial notice of an offence with a view to initiate criminal proceedings in respect of offence which is said to have been committed. The process of taking judicial notice of occurrence of offence as mentioned in the charge sheet is the special conotation acquired by the term "cognizance" which is entirely an act of Magistrate/court concerned. It also shows the application of mind of the Magistrate qua occurrence of offence as produced before him through any of the mode as embodied u/s 190 Cr.P.C. Therefore, the act of cognizance takes place at a point when Magistrate first takes judicial notice of an offence.

6. In the given circumstances of the present case police has submitted a report under Section 173(2) Cr.P.C. which was initially ordered to be considered by the court concerned. However, at later stage, summoning order has been issued without taking the judicial notice of the alleged offence through an act of cognizance by the court competent. Section 204 Cr.P.C. enunciates the provisions relating to issuance of process as a subsequent event to the act of taking a cognizance of offence. At this juncture, there is no need to discuss the scope and nature of issuance of process whereas present matter lies in a very narrow compass as to whether summoning order could be issued without taking the cognizance of the offence or not. Order sheet dated 24.01.2023 to dated 16.08.2023 manifestly demonstrate the lack of judicial mind at the part of court concerned who has issued process without taking cognizance of an offence.

7. It appears that learned court concerned has inadvertently issued the process directly without taking judicial notice of an offence, as mentioned in the charge sheet submitted by the Investigating Officer, by way of taking cognizance which is the first act before the start of the criminal proceedings. The factum of absence of judicial notice of an offence with a view to initiate criminal proceedings in respect of the offence which is said to have been committed has not been brought to the notice/knowledge of the court concerned which led procedural error in issuing process.

8. In this conspectus as above, this Court finds abuse of process

of court in passing the summoning order against the present applicant and, therefore, to secure the ends of justice present application is liable to be allowed and summoning order is liable to be quashed.

9. Resultantly, instant application is **allowed**. The Summoning order dated 30.5.2023/16.8.2023 passed by learned Chief Judicial Magistrate in Criminal Misc. Case No.24/2023 (State Vs. Akhilesh Kumar) is hereby quashed. The matter is remitted before the Court below to pass an appropriate order in accordance with law on the charge sheet no.659 of 2022, dated 08.09.2022, expeditiously preferably, within a month from the date of receiving the copy of this order.

10. Order of the date shall be transmitted to the Court concerned within one week from today.

Order Date :- 16.11.2023/vkg