

Court No. - 16

Case :- MATTERS UNDER ARTICLE 227 No. - 2005 of 2024

Petitioner :- Dinesh Singh And 2 Others

Respondent :- State Of U.P. Thru. Prin. Secy. Home, Lucknow
And Another

Counsel for Petitioner :- Ramakar Shukla, Abhinav Singh

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. Heard learned counsel for the petitioners as well as learned AGA for the State and perused the record.

2. Having regard to the facts and circumstances of the case, in the considered opinion of this court, this petition under Article 227 of the Constitution of India may be disposed at the stage of admission without providing any opportunity of hearing to the respondent no.2 as the right of respondent no.2 is not being adversely affected by the passage of the intending order.

3. The instant petition has been filed by the petitioners/ accused persons with the following prayers:-

"i) To quash the impugned summoning order dated 22.01.2021 passed by learned Judicial Magistrate, Court No.1, Hardoi and Revisional Order dated 27.10.2023 passed by learned Session Judge, Hardoi as contained in Annexure Nos. 1 and 2 to the writ petition.

ii) Any other order or direction which this Hon'ble Court may deem, just and proper in the nature & circumstances of the case, be also passed.

iii) To award the cost of petition."

4. Learned counsel for the petitioners/ accused persons while drawing the attention of this Court towards the impugned orders dated 22.1.2021 passed by the Magistrate and of date 27.10.2023, whereby the petitioners / accused persons have been summoned to face trial under Sections 323, 452, 504 IPC and the order dated 27.10.2023 passed by the revisional court, whereby the revision filed by the petitioners has been dismissed, vehemently submits that both the courts below have committed material illegality in appreciating the facts and circumstances of the case while there was no prima facie case

was emerging against the accused persons nor there were sufficient ground, they have been summoned to face trial.

5. It is fuhrer submitted that with regard to the same incident an FIR was lodged by the petitioner no.1 against the respondent no.2 and her husband which was registered as a case Crime No. 219/2018 at Police Station Lonar, District Harodi, against the respondent no.2 and her husband -Jitendra Singh and in the incident the petitioner no.2, namely, Smt. Santosh Singh had sustained 4 injuries and one of such injury has also resulted in fracture of lower and of radius.

6. It is vehemently submitted that the trial court without appreciating the evidence in right perspective, has summoned the petitioners in a mechanical way and therefore, this aspect of the matter has not been considered by the revisional court. Thus the order, whereby the petitioners have been summoned to face trial and order pertaining to the revision preferred by them, whereby revision has been dismissed by the revisional court are entitled to be quashed/ set-aside.

7. Learned AGA on the other hand submits that at the stage of summoning only prima facie case and sufficient grounds are required to be seen and the evidence/ material which has been placed is not required to be appreciated meticulously and therefore no illegality appears to have been committed by the Magistrate in summoning the petitioners to face trial that too only under Sections 323, 452, 504 IPC.

8. Having heard learned counsel for the parties and having perused the record, for the reasons recorded earlier the issuance of notice of this case to respondent no.2 is hereby dispensed with. This Court is of the prima facie view that at the stage of summoning meticulous exercise of appreciating the evidence as is required to be done at the time of culmination of the trial is not required as only sufficient grounds and prima facie case is required to be seen.

9. The view of this Court is supported by the law laid down by the Hon'ble Supreme Court in MANU/SC/0297/2012 : AIR 2012 SUPREME COURT 1747, **Bhushan Kumar an Anr. v. State (NCT of Delhi) and Anr.** "the Apex Court has held that "10. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is

nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued."

10. In MANU/SC/0016/2015 : AIR 2015 SUPREME COURT 923, **Sunil Bharti Mittal v. Central Bureau of Investigation** (Three Judges Bench) Hon'ble Apex Court held as under:

"47. However, the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself....."

11. In the case of **Nupur Talwar vs. C.B.I.** reported in MANU/SC/0488/2012 : 2013 AIR SCW 369, the Hon'ble Supreme Court has held as under:-

"10. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued."

12. Hon'ble Supreme Court in **State of Gujrat vs. Afroz Mohammed Hasanfatta** reported in MANU/SC/0139/2019 opined as under:-

"14. The first and foremost contention of the respondent-accused is that summoning an accused is a serious matter and the summoning order must reflect that the Magistrate has applied his mind to the facts of the case and the law applicable thereto and in the present case, the order for issue of process without recording reasons was rightly set aside by the High Court. In support of their contention that the summoning order must record reasons showing application of mind, reliance was placed upon Pepsi Foods Ltd. The second limb of submission of the learned senior counsel appearing for the respondent-accused is that there has to be an order indicating the application of mind by the Magistrate as to the satisfaction that there are sufficient grounds to proceed against the accused irrespective of the fact that whether it is a charge sheet by the police or a private complaint."

15. It is well-settled that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and the Magistrate is only to be satisfied that there are sufficient grounds for proceeding against the accused. It is fairly well-settled that when issuing summons, the Magistrate need not explicitly state the reasons for his satisfaction that there are sufficient grounds for proceeding against the accused. Reliance was placed upon *Bhushan Kumar and another v. State (NCT of Delhi)* and another MANU/SC/0297/2012 : (2012) 5 SCC 424 wherein it was held as under:-

"11. In *Chief Enforcement Officer v. Videocon International Ltd.* MANU/SC/7011/2008 : (2008) 2 SCC 492 (SCC p. 499, para 19) the expression "cognizance" was explained by this Court as "it merely means 'become aware of' and when used with reference to a court or a Judge, it connotes 'to take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone." It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.

12. A "summons" is a process issued by a court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in court. A person who is summoned is legally bound to appear before the court on the given date and time. Wilful disobedience is liable to be punished under Section 174 IPC. It is a ground for contempt of court.

13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly

states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued."

16. After referring to Bhushan Kumar, Videocon International Limited and other decisions, in *Mehmood Ul Rehman v. Khazir Mohammad Tunda and others* MANU/SC 0374/2015 : (2015) 12 SCC 420, it was held as under:-

*"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in *Pepsi Foods Ltd. And another v. Special Judicial Magistrate and others* MANU/SC/1090/1998 : (1998) 5 SCC 749 to set in motion the process of criminal law against a person is a serious matter."*

The above observations made in para (20) is in the context of taking cognizance of a complaint. As per definition under Section 2(d) Cr.P.C., complaint does not include a police report.

17. The learned senior counsel appearing for the respondent accused relied upon various judgments to contend that while taking cognizance, the court has to record the reasons that prima facie case is made out and that there are sufficient grounds for proceeding against the accused for that offence. The learned senior counsel appearing on behalf of the respondent-accused relied upon judgments in the case of *Pepsi Foods Ltd. And Mehmood Ul Rehman* to contend that while taking cognizance, the Court has to record reasons that prima facie case is made out and that there are sufficient grounds for proceeding against the 12 accused for that offence. On the facts and circumstances of those cases, this Court held that 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. However, what needs to be understood is that those cases relate to issuance of process taking cognizance

of offences based on the complaint. Be it noted that as per the definition under Section 2(d) Cr.P.C., 'complaint' does not include a police report. Those cases do not relate to taking of cognizance upolist on 19.10.2022 in the list of the fresh cases, n a police report under Section 190(1)(b) Cr.P.C. Those cases relate to taking cognizance of offences based on the complaint. In fact, it was also observed in the case of Mehmood Ul Rehman that "under Section 190(1)(b) Cr.P.C., the Magistrate has the advantage of a police report; but under Section 190(1) (a) Cr.P.C., he has only a complaint before him. Hence, the code specifies that "a complaint of facts which constitutes an offence".

18. Section 190(1)(a) Cr.P.C. provides for cognizance of complaint. Section 190(1)(b) Cr.P.C. deals with taking cognizance of any offence on the basis of police report under Section 173(2) Cr.P.C. Complaint is defined in Section 2(d) Cr.P.C. which reads as under:-

"2. Definitions. (d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has 13 committed an offenlist on 19.10.2022 in the list of the fresh cases, ce, but does not include a police report." The procedure for taking cognizance upon complaint has been provided under Chapter XV - Complaints to Magistrates under Sections 200 to 203 Cr.P.C. A complaint filed before the Magistrate may be dismissed under Section 203 Cr.P.C. if the Magistrate is of the opinion that there is no sufficient ground for proceeding and in every such case, he shall briefly record his reasons for so doing. If a complaint is not dismissed under Section 203 Cr.P.C., the Magistrate issues process under Section 204 Cr.P.C. Section 204 Cr.P.C. is in a separate chapter i.e. Chapter XVI - Commencement of Proceedings before Magistrates. A combined reading of Section 203 and Section 204 Cr.P.C. shows that for dismissal of a complaint, reasons should be recorded. The procedure for trial of warrant cases is provided in Chapter XIX - Trial of Warrant Cases by the Magistrates. Chapter XIX deals with two types of cases - A - Cases instituted on a police report and B - Cases instituted otherwise than on police report. In the present case, cognizance has been taken on the basis of police report.

19. In a case instituted on a police report, in warrant cases, under S ection 239 Cr.P.C., upon considering the police report and the documents filed along with it under Section 173 Cr.P.C., the Magistrate after affording opportunity of hearing to both the accused and the prosecution, shall discharge the accused, if the Magistrate considers the charge against the

accused to be groundless and record his reasons for so doing. Then comes Chapter XIX-C - Conclusion of trial-the Magistrate to rendering final judgment under Section 248 Cr.P.C. considering the various provisions and pointing out three stages of the case. Observing that there is no requirement of recording reasons for issuance of process under Section 204 Cr.P.C., in *Raj Kumar Agarwal v. State of U.P.* and another MANU/UP/1095/1999 : 1999 Cr. LJ 4101, Justice B.K. Rathi, the learned Single Judge of the Allahabad High Court held as under:-

".....As such there are three stages of a case. The first is under Section 204 Cr. P.C. at the time of issue of process, the second is under Section 239 Cr. P.C. before framing of the charge and the third is after recording the entire evidence of the prosecution and the defence. The question is whether the Magistrate is required to scrutinise the evidence at all the three stages and record reasons of his satisfaction. If this view is taken, it will make speedy disposal a dream. In my opinion the consideration of merits and evidence at all the three stages is different. At the stage of issue of process under Section 204 Cr. P.C. detailed enquiry regarding the merit and demerit of the cases is not required. The fact that after investigation of the case, the police has submitted the charge sheet, may be considered as sufficient ground for proceeding at the stage of issue of process under Section 204 Cr. P.C., however subject to the condition that at this stage the Magistrate should examine whether the complaint is barred under any law, ... At the stage of Section 204 Cr. P.C. if the complaint is not found barred under any law, the evidence is not required to be considered nor the reasons are required to be recorded. At the stage of charge under Section 239 or 240 Cr. P.C. the evidence may be considered very briefly, though at that stage also, the Magistrate is not required to meticulously examine and to evaluate the evidence and to record detailed reasons.

8. A bare reading of Sections 203 and 204 Cr.P.C. shows that Section 203 Cr.P.C. enquires that reasons should be recorded for the dismissal of the complaint. Contrary to it, there is no such requirement under Section 204 Cr.P.C. Therefore, the order for issue of process in this case without recording reasons, does not suffer from any illegality."

We fully endorse the above view taken by the learned Judge.

20. In para (21) of *Mehmood Ali Rehman*, this Court has made a fine distinction between taking cognizance based upon charge sheet filed by the police under Section 190(1)(b) Cr.P.C. and a private complaint under Section 190(1)(a) Cr.P.C. and held as

under:-

"21. Under Section 190(1)(b) CrPC, the Magistrate has the advantage of a police report and under Section 190(1)(c) CrPC, he has the information or knowledge of commission of an offence. But under Section 190(1)(a) CrPC, he has only a complaint before him. The Code hence specifies that "a complaint of facts which constitute such offence". Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) CrPC. The complaint is simply to be rejected."

21. In summoning the accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. The court is not required to evaluate the evidence and its merits. The standard to be adopted for summoning the accused under Section 204 Cr.P.C. is not the same at the time of framing the charge. For issuance of summons under Section 204 Cr.P.C., the expression used is "there is sufficient ground for proceeding....."; whereas for framing the charges, the expression used in Sections 240 and 246 IPC is "there is ground for presuming 16 that the accused has committed an offence.....". At the stage of taking cognizance of the offence based upon a police report and for issuance of summons under Section 204 Cr.P.C., detailed enquiry regarding the merits and demerits of the case is not required. The fact that after investigation of the case, the police has filed charge sheet along with the materials thereon may be considered as sufficient ground for proceeding for issuance of summons under Section 204 Cr.P.C. "

12. Thus, in view of above placed factual and legal matrix, I do not find any illegality or to say any irregularity in the impugned order and another aspect of the matter which is persuading this Court not to interfere in the impugned summoning order is that after adducing of evidence under Section 244 Cr.P.C., the accused persons/ petitioners will get another opportunity of being heard at the stage of framing of charges/ discharge and they can move an application at an appropriate stage under Section 245 Cr.P.C. with regard to their 'discharge' and the trial court in that scenario, would also have to consider the material/ evidence placed before it and a decision is to be taken with regard to discharge or framing of charge.

13. Thus, having regard to all the facts and circumstances of the case, the instant petition is finally **disposed of** in terms that if at an appropriate stage, after obtaining regular bail and after

recording of the evidence of the complainant under Section 244 Cr.P.C. an application for discharge is moved by the petitioners under Section 245 of the Cr.P.C., the trial court would be under an obligation to dispose of the same by passing a reasoned and speaking order after providing an opportunity of being heard the parties, strictly in accordance with law, having regard to the material/ evidence which may be produced before it.

14. A copy of this order be immediately sent to trial court through Sessions Judge concerned for strict compliance.

Order Date :- 29.4.2024

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