

Court No. - 14

Case :- APPLICATION U/S 482 No. - 10377 of 2024

Applicant :- Suresh Chandra And 2 Others

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home U.P. Lko. And Another

Counsel for Applicant :- Ramesh Chandra,Pooja Devi,Sakshi Devi

Counsel for Opposite Party :- G.A.

Hon'ble Ajai Kumar Srivastava-I,J.

1. Heard Sri Ramesh Chandra, learned counsel for the applicants and learned A.G.A. for the State-opposite party No.1.

2. In view of the order, which is proposed to be passed today, notice to opposite party No.2 is hereby dispensed with.

3. The instant application under Section 482 Cr.P.C. (528 of BNSS 2023) has been filed by the applicants with a prayer to quash the judgment and order dated 01.10.2024 passed by learned Additional District and Sessions Judge, Court No.3, District Unnao in Criminal Revision No.61/2024 (Suresh Chandra & others vs. Ram Gopal and anothers), whereby the criminal revision filed by the applicants was rejected, as well as summoning order dated 03.07.2023 passed by learned Chief Judicial Magistrate, District Unnao in criminal complaint No.9541/2019 (Ram Gopal vs. Suresh Chandra and others), under Sections 323, 452, 504, 506 I.P.C., Police Station Kotwali Gagan Ghat, District Unnao.

4. Submission of learned counsel for the applicants is that applicants have been summoned by means of summoning order dated 03.07.2023, which has been passed by learned trial court without application of judicial mind. His further submission is that statement of complainant

recorded under Section 200 Cr.P.C. and witnesses recorded under Section 202 Cr.P.C. are in a similar and mechanical manner which reflects its untruthfulness. Despite that, learned trial court failed to appreciate this mechanical similarity in the statements of witnesses and proceeded to pass impugned order placing reliance upon the same which is patently illegal.

5. His further submission is that, in fact, the present case is a counter blast to the earlier case filed by applicant No.1- Suresh Chandra against opposite party No.2, a copy of application under Section 156(3) Cr.P.C. moved by applicant No.1 is annexed as Annexure No.3 to the instant application which was filed in the year 2012, in order to exert undue pressure and as a tool of vengeance, the false criminal case has been filed by the opposite party No.2 after seven years which is nothing but an abuse of process of the Court.

6. Learned counsel for the applicants has also relied upon the judgment of Hon'ble Delhi High Court in **Siddiqua vs. Narcotics Control Bureau reported in 2007 Cri. L. J. 1471 : 2007 (4) ABR (NOC) 610 (DEL)** and a judgment of a Co-ordinate Bench of this Court in **Mahboob and others vs. U.P. : 2017 (1) A.D.C.C. 305 (A.H.C. LB).**

7. His further submission is that the impugned orders dated 01.10.2024 and 03.07.2023 are not in conformity with the statement of the complainant recorded under Section 200 Cr.P.C. and statements of witnesses recorded under Section 202 Cr.P.C. The learned trial Court, while passing the impugned orders, has failed to appreciate the fact that the complainant's version of the incident, as stated in the complaint, is not substantiated by the statement of the complainant recorded under Section 200 Cr.P.C. and the statements of witnesses recorded under Section 202 Cr.P.C. Hence, the impugned orders are bereft

of any reason and, accordingly, deserve to be set aside.

8. Per contra learned A.G.A. has vehemently opposed the aforesaid submission by submitting that this is not a stage where minute and meticulous exercise with regard to the appreciation of evidence may be done and truthfulness of the allegations could only be tested in a criminal trial. At this initial stage, the fact of innocence of the applicants can also not be determined. Her further submission is that it is no more *res integra* that at the stage of passing summoning order no detailed reasoning is required. Her further submission is that what is required to be recorded by the trial court at this stage is only *prima facie* satisfaction for directing the applicants to be summoned to stand trial on the basis of material available before it.

9. Learned A.G.A. further submits that the sufficiency of the material and the test to be applied at the stage of issue of process has been considered in the case of **Nupur Talwar v. Central Bureau of Investigation and Another** reported in **(2012) 11 SCC 465**, wherein it has been reiterated that the test to be applied at the stage was whether the material placed before the Magistrate was "sufficient for proceeding against the accused" and not "sufficient to prove and establish the guilt".

10. Learned A.G.A. has also drawn attention of this Court to a recent judgment rendered by Hon'ble Supreme Court in **CBI v. Aryan Singh, 2023 SCC OnLine SC 379**, wherein it has been held that as per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, the Court is not required to conduct the mini trial.

11. On the basis of the aforesaid, she submits that no interference with the impugned summoning order and proceedings is warranted at this stage

and, therefore, the appeal being devoid of merit is liable to be dismissed.

12. Having heard learned A.G.A. and upon perusal of the records including the impugned orders dated 01.10.2024 and 03.07.2023, it transpires that the allegations in the complaint have been found to be duly corroborated by the statement made on oath by the complainant during the course of examination under Section 200 Cr.P.C. as also the statements of witnesses recorded during inquiry made by the learned Magistrate under Section 202 Cr.P.C. The impugned order dated 03.07.2024 has been passed referring the aforesaid statements recorded under Section 200 Cr.P.C. and under Section 202 Cr.P.C. and only thereafter, impugned summoning order has been passed. The revisional court vide impugned judgment and order dated 01.10.2024 has also not found any illegality or irregularity in the summoning order dated 03.07.2023. Therefore, at this initial stage, no ground for quashing the impugned summoning order and the proceedings of aforesaid case is made out.

13. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is 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 inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. In this regard reference may be made to a judgment rendered by Hon'ble Supreme Court in **Dy. Chief Controller of Imports & Exports v. Roshanlal Agarwal, (2003) 4 SCC 139.**

14. Hon'ble Supreme Court in **U.P. Pollution Control Board v. Mohan Meakins Ltd., (2000) 3 SCC 745** has categorically held that while

issuing process, the Magistrate must not anticipate the decision whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of inquiry.

15. In **Chandra Deo Singh v. Prokash Chandra Bose, 1963 SCC OnLine SC 4** Hon'ble Supreme Court has held that whether evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of inquiry.

16. Having heard learned counsel for the parties and upon perusal of record, it transpires that a complaint came to be filed by the opposite party No.2 stating therein that on 11.09.2019 at about 1 p.m., one of the applicant Suresh Chandra was tried to illegally occupy the house of the opposite party No.2 by placing a tin-shed over the property in question. On being opposed for doing so, applicants hurled abuses and chased complainant and his family members to assault, ultimately the opposite party No.2 and his wife Shanti Devi, daughter Shindhu etc. were assaulted by kicks and fits at the hand of opposite party No.2. It further transpires that the complainant got himself examined under Section 200 Cr.P.C. and the witnesses were examined under Section 202 Cr.P.C. who supported the case of complainant in all material aspects, the learned trial court while placing reliance thereon proceeded to pass impugned orders dated 01.10.2024 and 03.07.2023.

17. So far as the law laid down by a Co-ordinate Bench of this Court in **Mehboob and another vs state of U.P. (supra)** is concerned, this case also adverted to the application of Section 202 Cr.P.C. which is not the case at hand. Relevant Para 11 and 12 reproduced as under :

" 11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process "in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" and thereafter to either inquire into the case by himself or direct an investigation

to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.

12. The words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction" were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23.6.2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far off places in order to harass them. The note for the amendment reads as follows.

"False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."

The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate."

18. A perusal of description of parties available at page 7 of this application u/s 482 reveals that the revisionist and the opposite party No.2 are resident of village Azad Nagar, P.S. Kotwali Ganga Ghat, District Unnao, therefore, in the facts of this case, enquiry as envisaged under Section 202(1) Cr.P.C. was not required to be undertaken by learned trial court before passing the impugned orders.

19. Thus, having regard to the aforesaid settled legal position, this Court is of the considered view that the grounds which have been taken to quash the impugned orders dated 01.10.2024 and 03.07.2023 call for adjudication on pure questions of fact which may be adequately adjudicated upon only by the trial court and while doing so even the submissions made on points of law can also be more appropriately gone into by the trial court in this case. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. A threadbare discussion of various facts and circumstances, as they emerge from the allegations made against the accused, is being purposely avoided by the Court for the reason, lest the same might cause any prejudice to either side during trial. Therefore, this Court does not find any justification to quash the proceedings against the applicants as the case does not fall in any of the categories recognized by Hon'ble the Supreme Court which may justify their quashing. The impugned orders does not suffer from any illegality and the same cannot be said to be perverse. Thus, the instant criminal appeal is devoid of merit.

20. Accordingly, prayer for quashing of the impugned orders dated 01.10.2024 and 03.07.2023 and proceedings emanating therefrom is hereby refused.

21. Even otherwise, the applicants shall have an opportunity at the appropriate stage to move an application for discharge before appropriate Court taking therein all the pleas factual and legal which may be available to them, in accordance with law. In case, such an application is moved before the learned trial Court, the learned trial Court shall dispose of the same by a speaking and reasoned order strictly, in accordance with law having regard to the entire facts and evidence available on

record.

22. However, it is needless to mention that in case the applicants No.1 to 3 apply for bail, the learned trial Court concerned shall consider and decide the same expeditiously, in accordance with law laid down by the **Hon'ble Supreme Court in Satender Kumar Antill Vs. Central Bureau of Investigation and others: MANU/ SC/ 1024/ 2021** and **Satender Kumar Antill Vs. Central Bureau of Investigation and another** reported in **2022 SCC Online SC 825**.

23. In view of the aforesaid observations, the instant appeal is finally **disposed of**.

(Ajai Kumar Srivastava-I, J.)

Order Date :- 19.11.2024

Shubhankar