



2025:AHC:228906

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 15996 of 2018

Meena Singh And Another

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Amit Kumar Singh, Manu Sharma,
Rajiv Kumar Mishra, Rajiv Lochan
Shukla, Satyendra Kumar Mishra

Counsel for Opposite Party(s) : G.A., Praveen Kumar Singh, Surya
Pratap Singh, Syed Imran Ibrahim

Court No. - 85

HON'BLE JAI PRAKASH TIWARI, J.

1. Heard learned counsel for the applicant, learned counsel for opposite party and learned AGA for the State.

2. The present 482 Cr.P.C. application has been filed by the applicant with the prayer to quash the summoning order dated 23.02.2018 passed in Complaint Case No.87 of 2016 by which the applicant no.1 was summoned under Sections- 419 & 420 IPC and applicant no.2 was summoned under Sections- 419,420, 504, 506 IPC Police Station- Kotwali, District Mau, pending in the Court of learned C.J.M. Mau.

3. It is submitted by the learned counsel for the applicants that the present application under Section 482 Cr.P.C. has been filed by the applicants challenging the impugned order dated 23.02.2018, whereby applicant no.1 was summoned under Sections 419 and 420 IPC, and applicant no.2 was summoned under Sections 419, 420, 504, and 506 IPC. It is further submitted that opposite party no.2, had filed an application under Section 156(3) Cr.P.C., alleging that the applicants had obtained a character certificate without disclosing the fact that they are residents of Village- Sidhauli, District- Ballia, and also without disclosing that a criminal case had been lodged against the husband of applicant no.1. It is further submitted that it appears from the perusal of the impugned summoning order that the

charges levelled against the applicant no.1 is that she did not disclose the parental address and criminal cases lodged against her husband and had obtained the character certificate. It is further submitted that the applicants are residents of District Mau, and a Domicile Certificate was issued in favour of the applicants by the Sub-Divisional Magistrate, Tehsil Sadar, District Mau on 22.09.2004. It is further submitted that Residential Certificates were also issued to the applicants by the Nagar Palika Parishad on 31.05.2007 and 04.03.2016. It is further submitted that the Aadhaar Card and PAN Card of applicant No. 1 were also issued reflecting the same residential address.

4. The aforesaid application filed by opposite party no.2 was treated as a complaint case vide order dated 12.01.2016, and the statement of the complainant under Section 200 Cr.P.C., was recorded on 15.02.2016. The statements of the witnesses under Section 202 Cr.P.C. were thereafter recorded on 02.03.2016 and 22.04.2016. It is further submitted that in the prescribed proforma of the character certificate, there is no column requiring disclosure of any criminal case pending against a family member of the applicant.

5. It is further submitted that due to business rivalry the opposite party no.2 has filed the aforesaid complaint. It is further submitted that the opposite party no.2 has also moved an application on 21.03.2018 before the Chief Executive Officer, U.P. Village Road Development Agency to cancel the Tender of Package No.5161 which was awarded to the firm of the applicant No.2 for construction and maintenance of Rural Roads. Hence, the applicants have preferred the present application.

6. On the other hand, it is submitted by learned AGA and learned counsel for the opposite party no.2 that the criminal case was lodged against the husband of the applicant no.1 but the same has not been disclosed by her in her character certificate which was submitted by her at the time of paper submission.

7. After having heard the arguments of learned counsel for the parties, before proceedings further, it is apposite to give reference of the judgment of this Court passed in case of ***Smt. Phoolmati and Others vs. State of U.P. and***

Another (2016) SCC Online All 2860, that for a summoning order under Section 420 IPC to be sustainable, the complainant must be the person who was actually deceived and induced to deliver property. A "stranger" to the transaction who has suffered no direct loss of property or legal right lacks the *locus standi* to set the criminal law in motion for cheating. Relevant portion of paragraph no.12 of the aforesaid judgment is quoted as under:-

"12. Sections 419 and 420 IPC—To constitute an offence under sections 419 and 420 IPC, the allegations must disclose ingredients of cheating as defined under section 415 IPC. Section 415 talks of fraudulent or dishonest inducement to the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces a person so deceived to do or omit to do anything which he would not do or omit if he was not so deceived. Meaning thereby that there must be not only cheating but accused should also have been dishonestly induced the person deceived to deliver any property to any person or to make alter or destroy wholly or in part a valuable security or anything signed or sealed which is capable of being converted into a valuable property. Valuable security is defined under section-30 IPC"

8. I find it difficult to hold that aforesaid allegations satisfy ingredients of Section 419 & 420 IPC so as to justify summoning of applicants. If the complainant does not show that the complainant suffered direct loss, or if the transaction was merely a civil breach of contract, the court may rule that the complainant lacks the *locus standi*. A bare perusal of aforesaid complaint clearly shows that ingredients of Section 419 & 420 IPC are not at all satisfied, for that purpose the Section 419 IPC is quoted as under:-

"419. Punishment for cheating by personation.

Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

10. Section 420 IPC is "cheating" which is defined in Section 415 IPC and both these provisions read as under:

"415. Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"

420. Cheating and dishonestly inducing delivery of property.

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

11. In the present matter, the certificate was issued by the State authority; if any deception occurred, the authority is the aggrieved party, not a private individual.

12. Furthermore, the charges under Sections 419 and 420 IPC fail on merits, as the essential ingredient of "dishonest inducement" is conspicuously absent. The applicant had filled up the prescribed official proforma, which, by its very design, did not require disclosure of any criminal history.

13. Under Section 204 of Cr.P.C., empowers the Magistrate to issue process, if in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding. The sufficient ground means there must be ingredients existing regarding the offence alleged therein, it does not mean only oral version of the complainant and his witnesses. Before passing an order under this Section, the concerned Magistrate must consider the fact and circumstances of the alleged offence and what evidence has been led by the complainant in support of his/her/their version.

14. The Hon'ble Supreme Court in the case of **Mehmood Ul Rehman v. Khazir Mohammad Tunda, (2015) 12 SCC 420** has explained the satisfaction required on the part of the Magistrate for formation of an opinion to issue process under Section 204 IPC on a complaint.

15. Paras 20, 22 and 23 of the aforesaid report are extracted herein below:-

"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. v. Special Judicial Magistrate, (1998) 5 SCC 749, to set in motion the process of criminal law against a person is a serious matter.

22. The steps taken by the Magistrate under Section 190(1)(a) CrPC followed by Section 204 CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that

the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204 CrPC, by issuing process for appearance. The application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 CrPC, the High Court under Section 482 CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before the criminal court as an accused is serious matter affecting one's dignity, self-respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.

23. Having gone through the order passed by the Magistrate, we are satisfied that there is no indication on the application of mind by the learned Magistrate in taking cognizance and issuing process to the appellants. The contention that the application of mind has to be inferred cannot be appreciated. The further contention that without application of mind, the process will not be issued cannot also be appreciated. Though no formal or speaking or reasoned orders are required at the stage of Sections 190/204 CrPC, there must be sufficient indication on the application of mind by the Magistrate to the facts constituting commission of an offence and the statements recorded under Section 200 CrPC so as to proceed against the offender. No doubt, the High Court is right in holding that the veracity of the allegations is a question of evidence. The question is not about veracity of the allegations, but whether the respondents are answerable at all before the criminal court. There is no indication in that regard in the order passed by the learned Magistrate."

16. 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. The 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.

17. From the above, discussion and the law laid down by the Hon'ble Apex Court, it transpires that the summoning order dated 23.02.2018 passed by learned Chief Judicial Magistrate, Mau in Complaint Case No.87 of 2016 by which the applicant no.1 was summoned under Sections- 419 & 420 IPC and applicant no.2 was summoned under Sections- 419,420, 504, 506 IPC Police Station- Kotwali, District Mau, is bad in law and the is liable to be set-aside.

18. Accordingly, the impugned order dated 23.02.2018 passed by learned Chief Judicial Magistrate, Mau is hereby set-aside.

19. The matter requires reconsideration. The case is remanded back to the learned Magistrate concerned to decide the matter afresh in accordance with law.

20. Accordingly, this petition is **allowed**.

December 18, 2025

S.K.

(Jai Prakash Tiwari,J.)