

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

(Sl. No.2)

Court No. - 78

Case :- APPLICATION U/S 482 No. - 42881 of 2024

Applicant :- Jaylal

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

Counsel for Applicant :- Deepak Kumar Srivastava, Dharnidhar Pandey, Ganesh Shanker Srivastava, Kamal Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Kamal Kumar Singh, learned counsel for the applicant and Sri S.K.Ojha, learned AGA-I for the state.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the summoning order dated 13.09.2024 as well as the entire proceeding of Criminal Complaint No. 425 of 2015 (Dinesh Chandra Tripathi vs. Kanhaiya and others), under Sections 323, 504, 506, 452, 427 IPC, P.S. Dumariaganj, District Siddharth Nagar, pending in the court of Chief Judicial Magistrate, Siddharth Nagar.

3. Learned counsel for the applicant submits that the applicant herein has been summoned by the impugned order dated 13.09.2024, which is a cryptic order and has not considered in detail the statement of witnesses under Section 202 Cr.P.C. Therefore, he seeks quashing of the said order and the entire proceeding of the instant complaint case. Learned counsel for the applicant has also placed reliance upon Section 204(2) Cr.P.C. and submits that it is mandatory for the Magistrate before issuing process and summoning the accused persons, the Magistrate is duty bound to analyze each and every statement recorded under Section 200 and 202 Cr.P.C. He has also placed reliance upon the judgment passed by this Court in **Smt. Haneefa and 4 others vs. State of U.P. and another, 2024: AHC:112422**. Learned counsel for the applicant further relying upon the statements of witnesses under Section 161 Cr.P.C, whose statements were also recorded under Section 202 Cr.P.C. in the instant complaint case, submits that there are several contradictions in their statements. Earlier, in 161 Cr.P.C. statement, they have not supported the prosecution case.

4. Per contra, learned AGA submits that so far as the summoning of the accused persons is concerned, the basic requirement for the Magistrate is to consider the entire material available on record and record its satisfaction that a prima facie case is made out for summoning the accused persons. Once such satisfaction is

recorded by the Magistrate, there can be no illegality in the summoning order against the accused persons. So far as the contradictions in the statement under Section 161 and 202 Cr.P.C. is concerned, it is submitted that since the police has not recorded the statements of those witnesses in a proper manner due to which the protest petition was filed by opposite party no.2 seeking a fair investigation, which was treated as a complaint case and since in the statement before the Court under Section 202 Cr.P.C., the witnesses have categorically supported the allegations as made in the complaint that itself supports the allegations of the complainant that the police has not properly investigated the case. Once it has been treated as a complaint, the material to be considered is the complaint, statements under Section 200 and 202 Cr.P.C. and any other documents filed along with the complaint. Therefore, learned AGA submits that there is no illegality in the summoning order passed against the applicants herein which has considered in detail that the allegations made in the complaint and also recorded its categorical satisfaction that a prima facie case is made out against the applicant.

5. Having heard the rival submission made by the learned counsel for the parties, this Court has carefully gone through the record of the case. For an incident dated 31.07.2008, an application under Section 156(3) Cr.P.C. was filed by the opposite party no.2 on 02.09.2008. It was allowed and the FIR was directed to be registered. Accordingly on 17.10.2008 an FIR being Case Crime no. 158 of 2008 was registered at P.S. Dumariyaganj, District Siddharth Nagar against the applicant herein. The matter was investigated by the police and a final report was submitted by recording the statement of various witnesses. In the statement recorded under Section 161 Cr.P.C., the police has recorded that the witness Rajiv son of Sankata Prasad Tiwari did not support the allegation and Kailash Chandra has also stated that he has not seen the incident. On the basis of the aforesaid statement recorded by the police, a final report was submitted, which was duly contested by the opposite party no.2 by filing a protest petition. The said protest petition was treated as a complaint case. In the complaint case, in support of his allegations, the complainant has examined the said witnesses Rajiv and Kailash Chandra, who have duly supported the allegations as made in the complaint. Thus, it is apparent that the police has not properly investigated the case and wrongly recorded the statement of witnesses namely Rajiv and Kailash. The trial court after considering the entire material available on record, vide impugned order dated 13.09.2024, has summoned the applicant. The said order reads as under:

"पत्रावली पेश हुई है।

संक्षेप में परिवाद का कथानक यह है कि दिनांक-31.07.2008 को समय करीब 11.00 बजे रात में विपक्षीगण ने पुरानी रंजिश को लेकर एक राय गोलबन्द होकर परवादी के मकान खलंगे पर नाजायज कब्जा करने लूट पाट करने के उद्देश्य से हथियारों से लैस होकर चढ़ आए और एक दूसरे को ललकारते हुए माँ बहन की भद्दी-भद्दी गालियाँ देते हुये जान से मार डालने की धमकी देने लगे, और

घर खलंगे से निकलने को कहने लगे जब परिवादी डरवश नहीं निकला तो उक्त विपक्षीगण मकान में घुसकर तोड़फोड़ करने लगे तथा कीमती सामानों को लूट पाट करने लगे। परिवादी ने जब आपत्ति किया तो उक्त लोग परिवादी को लात मूका घूसा से मारते हुए पटककर घसीटकर घर से बाहर आकर मूर्छित अवस्था में मरा जानकर छोड़ गये, और परिवादी के के मकान में रखे सभी सामान को लूट ले गये और तोड़-तोड़ कर करीब 12,000/-रुपये का नुकसान किए। आवेदक ने घटना की सूचना थाने पर दी परन्तु कोई कार्यवाही नहीं तब आवेदक ने जरिये रजिस्ट्री पुलिस अधीक्षक सिद्धार्थनगर को प्रार्थना पत्र दिया, वहाँ से भी कोई कार्यवाही न होने पर न्यायालय में यह प्रार्थना पत्र प्रस्तुत किया है।

परिवादी द्वारा धारा-200 दं०प्र०सं० के अन्तर्गत सशपथ बयान किया, जिसमें परिवादी द्वारा अपने परिवाद के कथानक का समर्थन किया गया है तथा धारा -202 दं०प्र०सं० के अन्तर्गत अपने कथानक के समर्थन में साक्षीगण पी०डब्लू०-1 कैलाश चन्द्र व पी०डब्लू०-2 राजू को प्रस्तुत किया गया है।

परिवादी द्वारा अभिलेखीय साक्ष्य में पुलिस अधीक्षक सिद्धार्थनगर को दिये गये प्रार्थना पत्र की छायाप्रति, रजिस्ट्री, राष्ट्रीय ग्रामीण स्वास्थ्य मिशन प्राथमिक स्वास्थ्य केन्द्र डुमरियागंज, नक्शा नजरी, खाता विवरण, रसीद मकान परिवार गणना, आधार कार्ड व अन्य की छायाप्रति दाखिल की गयी है।

परिवादी के विद्वान अधिवक्ता को सुना तथा पत्रावली का अवलोकन किया।

परिवादी द्वारा धारा -200 दं०प्र०सं० के अन्तर्गत कथन किया गया है कि घटना दिनांक 31.07.2008 को समय करीब 11.00 बजे रात ग्राम जगदीश पुर जहाँ मेरा खलंगा है को घटना है। विपक्षीगण ने पुरानी रंजिश को लेकर एकराय गोलबन्द होकर खलंगे वाले मकान पर नाजायाज रूप से कब्जा करने के उद्देश्य लाठी डण्डा फरसा बलन कड़ा लेकर चढ़ आये व एक दूसरे को ललकारते हुये मुझे माँ बहन की भद्दी-भद्दी गालियाँ देते हुये व जान से मार डालने कर धमकी देते हुये घर से निकलने को ललकारने लगे जब मैं डर वश नहीं निकला तो उक्त लेख घर के अन्दर घुसघर तोड़ फोड़ करने लगे व कीमती सामान का लूट पाट करने लगे जब मैंने मना किया तो मुझे मारते हुये घसीटते हुये घर के बाहर लाया जब मैं मार खाकर बेहोश हो गया। तो मुझे मारा जानकर छोड़कर चले गये लूट हुआ सामान लेकर चले गये। तोड़ फोड़ में बारह हजार रुपये का नुकसान हुआ शोर पर श्रीकान्त, प्रवीन कुमार, सर्वजीत यादव, राजू, कैलाश चन्द आदि बहुत से लोग घटना को देखे व बीच बचाव किये। विपक्षीगण ने जबरन मेरे मकान पर अपना ताला बन्द कर दिया तथा धमकी दिये। कि यदि ताला तोड़ोगे तो जान से खत्म कर देंगे। साक्षीगण पी०डब्लू०-1, पी०डब्लू०-2 ने परिवादी के कथनों का समर्थन किया गया है।

प्रस्तुत मामले के तथ्यों परीवादी तथा उसकी ओर से प्रस्तुत साक्षियों के सशपथ कथनों के सम्यक अवलोकन के आधार पर विपक्षीय कन्हैया, जयलाल, हीरालाल, राजेश, बजरंगी, अकरम, राजाराम उर्फ रामफेर पाण्डेय, झिनकन, अजय कुमार, रामदास, भगवानदास, रामज्जागिर, रामवृक्ष, राधेश्याम, बृजेश कुमार, अजय कुमार, जीतेन्द्र, दिलीप व अरुण कुमार के विरुद्ध धारा-323, 504, 506, 452, 427 भा०दं०सं० के अन्तर्गत आपराधिक कार्यवाही प्रारम्भ करने का आधार पर्याप्त प्रतीत हो रहा है। शेष धाराओं के सम्बन्ध में पत्रावली पर कोई साक्ष्य उपलब्ध नहीं है।

आदेश

अभियुक्तगण कन्हैया, जयलाल, हीरालाल, राजेश, बजरंगी, अकरम, राजाराम उर्फ रामफेर पाण्डेय, झिनकन, अजय कुमार, रामदास, भगवानदास, रामज्जागिर, रामवृक्ष, राधेश्याम, बृजेश कुमार, अजय कुमार, जीतेन्द्र, दिलीप व अरुण कुमार के विरुद्ध धारा-323, 504, 506, 452, 427 भा०दं०सं० के अन्तर्गत विचारण हेतु जरिए समन दिनांक-31.10.2024 के लिए तलब किया जाय। परीवादी आवश्यक पैरवी अन्दर सात दिन करे।"

6. From perusal of the entire order, it cannot be said that the said order is a cryptic order as is being submitted by learned counsel for the applicant and the Magistrate has discussed the entire case of the complaint, statements of witnesses and it has been categorically recorded that P.W.1 and P.W.2 have also supported the allegations as made in the complaint. Thereafter the trial court has recorded its satisfaction and prima facie case is made out against the applicant, thereupon the applicant has been summoned.

7. So far as the submission of learned counsel for the applicant that the provisions of Section 204 (2) Cr.P.C. have not been complied with, it would be relevant to take note of the provisions of Section 204 (2) Cr.P.C., which reads as under:

"204(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."

8. From the plain reading of the said provision, it is apparent that if the Magistrate is of the opinion that there is sufficient ground for proceeding against the accused and taking cognizance in the matter, he shall summon the accused persons. The

only requirement under Section 204 (2) that no summons or warrants can be issued unless a list of prosecution witnesses is filed.

9. It is not a case of the applicant that no such list was produced by the complainant or no witness was examined in the complaint. It is apparent even from the impugned order that the witnesses were examined, who supported the prosecution case.

10. Accordingly, this Court do not find any good ground to entertain the instant application.

11. In view thereof, the instant application lacks merit and is hereby **dismissed**.

Order Date :- 15.7.2025

Ashish Pd.

(Anish Kumar Gupta,J.)