



HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 8238 of 2025

Sameer Gupta And 2 Others

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s)	:	Krishna Kumar Shukla, Snehlata Mishra
Counsel for Respondent(s)	:	Chandra Narayan Mishra, G.A.

Court No. - 51

HON'BLE MADAN PAL SINGH, J.

1. Heard the learned counsel for the appellants, learned counsel for opposite party no.2 and the learned A.G.A. for the State.

2. The present criminal appeal under Section 14A (1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "S.C./S.T. Act") has been filed to quash/set aside the order dated 6th June, 2025 passed by the Special Judge (SC/ST Act), Kanpur Nagar in Special Complaint Case No. 659 of 2023 (Ritesh Sonkar Vs. Sameer Gupta & Others), under Section 323 I.P.C. and Section 3 (1) (d) of S.C./S.T. Act, Police Station-Mool Ganj, District-Kanpur Nagar, whereby the appellants have been summoned.

3. In the instant complaint case, it has been stated by the complainant/opposite party no.2 that on 16th November, 2022, at about 2:00-2:30 p.m., his house being House No. 40/83 situated at Chhappar Mohal, Moolganj, was informed about a fire. Upon arriving at the scene, the opposite party no.2 and his brother found the entire house engulfed in flames. The appellants operate a business dealing in plastic envelopes, plastic utensils, paper, and glass, and also pack candles and other electrical equipment in the said house. Due to a power outage, the above individuals, along with their employees, were packing plastic and paper items using candles. Due to the negligence of the above individuals, the fire engulfed the entire house, resulting in significant financial loss to opposite party no.2 and damage to the above house. When the opposite party no.2 complained to the appellants about the negligent work done by them, the complainant along with his brother were abused by using caste indicated words. They beat and threatened them to kill them. The report of the opposite party no.2 was not filed regarding the incident. On 27th March, 2023, at 2:00 p.m., near the Moolganj intersection, the appellants, while abusing the opposite party no.2 by using caste indicated words, ran to attack him, slapped and punched him, took twenty thousand

rupees from his pocket and threatened to kill him. After filing of the said complaint, the statement of opposite party no.2 has been recorded under Section 200 Cr.P.C. and statements of his witnesses, namely, Jitendra Mishra and Sanjay Agarwal have been recorded under Section 202 Cr.P.C. as P.W.-1 and P.W.-2 respectively. Whereafter the impugned summoning order has been passed. Hence the present criminal appeal.

4. By means of present criminal appeal, it has been stated by the appellants that they are innocent and have been falsely implicated in the present case with ulterior motive, as the present complaint case implicating the appellants is false and fabricated. The present complaint case filed by opposite party no.2 is nothing but a bundle of lie and the same has been lodged only for exploiting the appellants by indulging their names in a fake, false and frivolous case. The entire prosecution story as unfolded in the complaint case is absolutely a self-made story projected by opposite party no.2 in order to resolve his interest.

5. The contention of the learned counsel for the appellants is that the opposite party no.2 is a practicing lawyer who has purchased a building bearing Building No. 45/83 from some Kapoor, in which several tenants already carry on their business. He further submits that since he is the owner of that building, he keeps harassing all the tenants, who are carrying on their business in that building, in order to get the said building vacated from them. In connection with the same, Khova Bajar Vyapar Mandal has lodged a complaint before the Police Commissioner, Police Commissionerate, Kanpur Nagar on 25th November, 2022 for taking legal action against the opposite party no.2, which are at page nos. 41 to 43 of the paper book. In the said complaint, it has been alleged that on 18th November, 2022 at around 10:22, the opposite party no.2 came with his associates and threatened and abused all the tenant- businessmen, saying that he is a lawyer and he knows all the ways to get the house vacated and he will implicate each of them in a case under the provisions of S.C./S.T. Act.

6. It is further contended by the learned counsel for the appellants that due to scuffle took place between the appellants and the opposite party no.2, on the recommendation of the Station House Officer Police Station-Moolganj, District Kanpur dated 1st December, 2022, an order dated 25th December, 2022, for challan of the appellants was passed by Assistant Commissioner of Police, East Zone, Kanpur Nagar. In the said order also, it has been mentioned that there is dispute between the appellants and opposite party no.2 for eviction of the house no.45/83 and there is apprehension of threatening of law and order situation.

7. It is then contended that for evicting the appellants from the said house, the opposite party no.2 is using all kinds of illegal tactics to oust the appellants from the said house and in connection with the same, opposite party no.2 has filed suit no. 8762 of 2024 against the appellant no.1 and his father, namely, Ram Niwas and Suit No. 8769 of 2024 against appellant no. 3 and Suit no. 8768 of 2024 against appellant no.2 which are still pending consideration before the Additional District Magistrate (Civil Supply), Kanpur Nagar.

8. It is lastly stated by the learned counsel for the appellants that the dispute between the parties relates civil in nature rather than criminal. The proper remedy available to the opposite party no.2 to pursue his case in his pending suits.

9. Learned counsel for the appellants, therefore, submitted that the present complaint proceedings initiated against the appellants are not only malicious but also amount to an abuse of the process of the Court. On the cumulative strength of the aforesaid submissions, it is submitted by learned counsel for the appellants that the proceedings of the above mentioned complaint case are liable to be quashed by this Court.

10. Learned A.G.A. and the learned counsel for opposite party no.2 have opposed the submissions made by the learned counsel for the appellants. They further submits that complainant/opposite party no.2 and his witnesses have also supported the versions as unfolded in the complaint filed by the opposite party no.2. They again submits that since prima faice case is made out against the accused-appellants, therefore, no interference at this stage is called for by this appellate Court. As such, the present criminal appeal is liable to be dismissed. However, learned counsel for opposite party no.2 and the learned A.G.A. could not dispute that fact that for eviction of the appellants from the house no. 45/83, there was scuffle took place between the appellants and opposite party no.2 due to which the appellants were challaned and also for evicting the appellants from the said house, the opposite party no.2 has filed three suits which are pending consideration.

11. I have considered facts and circumstances of the case, the submissions made by the learned counsel for the appellants and learned A.G.A. and perused the materiel available on record including the impugned order.

12. From the perusal of the version as unfolded in the statement recorded under Section 200 Cr.P.C., the opposite party no.2 has stated that the opposite party no.2 is a practitioner lawyer and goes to district court every day. It has not been disputed by the learned counsel for the opposite party no.2 and the learned A.G.A. that for the scuffle being taken place between the

appellants and opposite party no.2, the appellants were challenged under the order of the Assistant Commissioner of Police dated 25th December, 2022 and the opposite party no.2 has filed three separate suits against the appellants for their eviction from the house no. 45/83. It has also not been dispute that in the complaint and the statements recorded under Section 200 and 202 Cr.P.C. it has been stated by the complainant and his witnesses that appellants have abused the opposite party no.2 by using caste indicated words and they also beat him but no medical examination report i.e. injury report has been brought on record or mentioned in the instant complaint or statements recorded under Sections 200 of complainant and 202 Cr.P.C. of witnesses.

13. From the aforesaid facts, this Court finds that the dispute between the parties is going on due to tenancy of the house no.45/83, where the opposite party no.2 is owner and the appellants are tenants and the same appears to be a civil dispute and not a criminal dispute.

14. The Hon'ble Supreme Court in the case of **Mitesh Kumar Vs. State of Karnataka & Ors.** reported in 2021 AIR (Supreme Court) 5298 specifically in paragraph no. 47, has held as under:

"Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety."

15. Learned Magistrate has passed a very cryptic order simply by saying that the statement of complainant as well as witnesses recorded under Sections 200 and 202 CrPC are perused and accused are summoned such order per se itself illegal which could not stand the test of law.

16. Reliance is also placed upon the judgement of this Court in the case of **Smt. Shiv Kumar and others vs. State of U.P. and another**, reported in 2017 (2) JIC, 589, (All) (LB). Paragraph No. 10 of the aforesaid judgement is relevant for the controversy in hand. The same is as under:-

"Learned Magistrate was required to atleast mention in the order about the prima facie satisfaction for summoning the accused. The order must reflect that the learned Magistrate has exercised his jurisdiction in accordance with law after satisfying himself about the prima facie allegations made in the complaint. The accused cannot be summoned mechanically merely by writing that perused the statements under Sections 200 and 202 Cr. P. C."

17. A perusal of this impugned summoning order indicates that learned Magistrate had noted in the impugned order the contents of complaint and

evidences u/s 200 and 202 CrPC but had neither any discussion of evidence was made, nor was it considered as to what overt act had allegedly been committed by accused. This contention of learned counsel for the appellants cannot be ruled out that learned counsel have noted the contents of complaint and statements without considering its probability or prima facie case, and whether he had actually considered statements under Sections 200 and 202 CrPC or the documents of the original. At stage of summoning, the Magistrate is not required to meticulously examine or evaluate the evidence. He is not required to record detailed reasons. A brief order which indicate the application of mind is all that is expected of him at that stage.

18. However, in impugned order there is nothing which may indicate that learned Magistrate had even considered facts of the case in hand before passing the summoning order. Impugned order clearly lacks the reflection of application of judicial discretion or mind. Nothing is there which may show that learned Magistrate, before passing of the order under challenge had considered facts of the case and evidence or law. Therefore it appears that, in fact, no judicial mind was applied before the passing of impugned order of summoning. Such order cannot be accepted as a proper legal judicial order passed after following due procedure of law.

19. In ruling "**M/s. Pepsi Food Ltd. & another vs. Special Judicial Magistrate & others**, reported in 1998 *UPCrR 118*" Hon'ble Supreme Court held :-

"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 the accused. Magistrate had to carefully scrutinize 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."

20. In "**Paul George vs. State**, reported in 2002 *Cri.L.J. 996*" Hon'ble Supreme Court held:

"we feel that whatever be the outcome of the pleas raised by the appellant on merit, the order disposing of the matter must indicate application of mind to the case and some reasons be assigned for negating or accepting such pleas. - - - It is true that it may depend upon the nature of the matter which is being dealt with by the Court and the nature of the jurisdiction being exercised as to

in what manner the reasons may be recorded e.g. in an order of affirmance detailed reasons or discussion may not be necessary but some brief indication by the application of mind may be traceable to affirm an order would certainly be required. Mere ritual of repeating the words or language used in the provisions, saying that no illegality, impropriety or jurisdictional error is found in the judgment under challenge without even a whisper of the merits of the matter or nature of pleas raised does not meet the requirement of decision of a case judicially."

21. In **S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla**, reported in (2005) 8 SCC 89 the Apex Court had held as under:

"Section 203 of the Code empowers a Magistrate to dismiss a complaint without even issuing a process. It uses the words "after considering" and "the Magistrate is of opinion that there is no sufficient ground for proceeding". These words suggest that the Magistrate has to apply his mind to a complaint at the initial stage itself and see whether a case is made out against the accused persons before issuing process to them on the basis of the complaint. For applying his mind and forming an opinion as to whether there is sufficient ground for proceeding, a complaint must make out a prima facie case to proceed. This, in other words, means that a complaint must contain material to enable the Magistrate to make up his mind for issuing process. If this were not the requirement, consequences could be far-reaching. If a Magistrate had to issue process in every case, the burden of work before the Magistrate as well as the harassment caused to the respondents to whom process is issued would be tremendous. Even Section 204 of the Code starts with the words "if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding". The words "sufficient ground for proceeding" again suggest that ground should be made out in the complaint for proceeding against the respondent. It is settled law that at the time of issuing of the process the Magistrate is required to see only the allegations in the complaint and where allegations in the complaint or the charge-sheet do not constitute an offence against a person, the complaint is liable to be dismissed."

22. The Apex Court in the case of **M.N. Ojha & Others Vs. Alok Kumar Srivastava & Another** reported in 2009 (13) SCC 623 has opined that it is settled and needs no restatement that the saving of inherent powers of the High Court in criminal matters is intended to achieve a salutary public purpose.

23. From the perusal of the complaint as well as the statements of complainant and her witnesses, it appears that the allegation made by the opposite party no.2 against the appellants is purely a pressure tactics. The opposite party no.2 is owner of house no. 45/83 and the appellants are tenants in the said house. For eviction of the appellants, opposite party no.2 has already filed separate suits against the appellants for their eviction which are still pending consideration. As such the proper remedy available to the opposite party no.2 to pursue his pending suits

24. On the basis of the aforesaid facts, this Court finds that no prima facie case is made out against the appellant. As such the impugned order as well

as the entire criminal proceedings cannot be legally sustained and is liable to be quashed.

25. Consequently, the summoning order dated 6th June, 2025 passed by the Special Judge (SC/ST Act), Kanpur Nagar in Special Complaint Case No. 659 of 2023 (Ritesh Sonkar Vs. Sameer Gupta & Others), under Section 323 I.P.C. and Section 3 (1) (da) of S.C./S.T. Act, Police Station-Mool Ganj, District-Kanpur Nagar is quashed.

26. The present criminal appeal is **allowed**.

May 6, 2026
Sushil/-

(Madan Pal Singh,J.)