

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.2092 of 2014

-
ORDER:

-
Challenging the order taking cognizance against five accused for the offences punishable under Sections 448, 354, 323, 506 and 452 read with 34 IPC, the present revision is filed under Sections 397 and 401 Cr.P.C.

The circumstances which lead to filing of the present revision are as under:

Originally a case in Crime No.39 of 2011 of Chilkalapudi Police Station, Krishna District, came to be registered against the accused for the above mentioned offences. The allegations in the said report are as under:

The informant had a sister by name Krishna Kumari, who died in the year 1982 after delivering a baby. Her son by name Madhava Babu was given in marriage to the daughter of accused Nos.1 and 2 by name Roshini in the year 2008. Both of them stayed in different places and later shifted to U.S.A. While things stood thus, accused Nos.1 and 2 played fraud upon the said Madhava Babu and are alleged to have encouraged him to purchase a house in Machilipatnam by making him spend an amount of Rs.13,50,000/-. It is alleged that though the actual cost of the house was only Rs.7.00 lakhs, accused Nos.1 and 2 took Rs.13,50,000/- from Madhava Babu and misappropriated the balance amount. It is alleged that accused No.2 being a bank employee misappropriated an amount of Rs.7,80,000/- from the bank account of Madhava Babu. Realising the fraud played by accused Nos.1 and 2, the said Madhava Babu

informed the same to the informant. On coming to know about the same, accused Nos.1 and 2 went to the house of informant, and requested the informant not to reveal about the same to others since accused No.2 is in service. Thereafter differences arose between Madhava Babu and accused Nos.1 and 2. Though the informant had nothing do with the said disputes, but for the reasons best known, the accused developed a grudge against the informant. On 09.04.2011 the informant having a casual talk with his wife Seetha Mahalakshmi and his daughter Godadevi (LWs.2 and 5) at his house, all the accused are alleged to have trespassed into the house of the informant, scolded him and then accused No.3 is alleged to have caught hold of the shirt of the informant, fell him down and beat him indiscriminately. Accused Nos.3 to 5 are alleged to have kicked the informant. On hearing the cries of the informant, the brother of the informant and his wife came there. When they tried to intervene, all the accused are alleged to have abused them in filthy language. Accused No.4 is alleged to have caught hold of LW.2 while accused No.5 caught hold of LW.5 and pulled the saree. When they fell down, the accused are alleged to have dragged them out of the house to a open space. There, the accused are also alleged to have assaulted LW.3 by pulling her hand. Accused Nos.1 to 3 are alleged to have dragged the informant to an open place, damaged all the articles in the house and threatened the inmates of the house with dire consequences while leaving the house. The mother of the informant, who was aged about 80 years, became unconscious on seeing the incident. Since the informant was attending on his mother, there was a delay of two days in lodging the report. Police investigated into the matter and filed a final report referring the case as "False". Thereafter, the informant filed a private complaint and the Court after recording the sworn statement took the case on file.

Learned counsel for the petitioners mainly submits that the order taking cognizance is bereft of reasons and the same needs to be set aside. He further submits that the statements of the witnesses recorded by the police under Section 161 Cr.P.C. do not refer to the act of outraging the modesty of women. Since the sworn statement recorded before the Court is an improved version of the case, he submits that the same cannot be made the basis to take cognizance for the offence punishable under Section 354 IPC. He also submits that if the offence under Section 354 IPC is excluded, all the other offences are triable by a Court of Magistrate.

On the other hand, the learned counsel for the second respondent opposed the application contending that no reasons are required to be given while taking the case on file and the sworn statement of the complaint alone is sufficient to find out whether the offences alleged are made out or not.

The question that arises for consideration is 1) whether the Court can appreciate the material on record by comparing the version of the witnesses recorded by the police during the course of investigation with the averments made in the complaint and the sworn statement recorded, while taking cognizance of the case and (2) Whether reasons are to be given while taking cognizance of the case.

In ***Moraboina Venkatesu and others v. State of Andhra Pradesh and another***^[1] this Court after referring to the Constitutional Bench Judgement of the Apex Court in ***Dharam Paul and others v. State of Haryana and another***^[2] held as under:

“It is clear that the learned Magistrate can ignore the conclusions arrived at by the Investigating agency and independently apply his mind to the facts emerging from the investigation and take cognizance of the case in

exercise of his power under Section 190(1)(b) CrPC. As observed earlier, the Constitutional Bench of the Apex Court has categorically held that the Magistrate shall proceed to try the said persons if a case is made out against the persons, who were not charge-sheeted and if the case is triable by the Court of Sessions he may commit the case to the Court of Session to proceed further with the matter.”

In **Uma Shankar Singh v. State of Bihar and another**^[3] the Apex Court held as under:

“The Magistrate is not bound to accept the final report filed by the Investigating agencies under Section 173(2) of the Code and is entitled to issue process against an accused even though exonerated by the said authorities without holding any separate enquiry on the basis of the police report itself. The learned Judges proceeded to state that even if the investigating authority is of the view that no case has been made out against an accused, the Magistrate can apply his mind independently to the materials contained in the police report and take cognizance thereupon in exercise of his powers under Section 190(1)(b) CrPC.”

From the judgments referred to above, it is clear that the Magistrate can independently apply his mind to the material on record and is not bound by the report of the Police.

The next question that falls for consideration is whether reasons are to be given while taking cognizance of the case.

The learned counsel for the second respondent relied upon the judgments of the Apex Court in **Jagdish Ram v. State of Rajasthan**^[4] and also the judgment of the Apex Court in **Deputy Chief Controller of Imports and Exports v. Roshanlal Agarwal**^[5] in support of the plea that no reasons be given while taking cognizance of the case. In the judgments relied upon by the counsel for the respondent, the Apex Court held that in determining

the question whether any process has to be issued or not, what the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there are sufficient grounds 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. The Court held that at the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

In ***U.P. Pollution Control Board v. M/s. Mohan Meakins Limited and others***^[6] the Apex Court after referring to the judgment in ***Kanti Bhadra Shah v. State of West Bengal***^[7] concluded that the provisions of the Cr.P.C. mandate, that at the time of passing an order of discharge in favour of an accused, the provisions referred to above necessitate recording of reasons. It was, however, noticed that there was no such prescribed mandate to record reasons, at the time of framing charges against an accused. The Apex Court further held as under:

“If there is no legal requirement that the trial Court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all road blocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snailpaced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to

custody, framing of charges, passing over to next stages in the trial.”

Later, in ***Bhushan Kumar and another v. State (NCT of Delhi) and another***^[8] the Apex Court had an occasion to consider the said aspect. Dealing with the expression “cognizance” and also the word “summons” the Apex Court observed as under:

“Under Section 190 of the Cr.P.C., 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 Cr.P.C.”

“A summon 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.

“Section 204 of Cr.P.C. 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 pre-requisite for deciding

the validity of the summons issued.”

“Time and again it has been stated by this Court that the summoning order under Section 204 of Cr.P.C. requires no explicit reasons to be stated because it is imperative that the Magistrate must have taken notice of the accusations and applied his mind to the allegations made in the police report and the materials filed therewith.”

The judgments referred to above show that the version of satisfaction is not a pre-requisite for deciding the validity of issuing summons. No reasons need be given while issuing summons. The said view was reiterated by the Apex Court in ***Nupur Talwar v. Central Bureau of Investigation and another***^[9].

But in ***GHCL Employees Stock Option Trust v. India Infoline Limited***^[10] the Apex Court while issuing summons in a case arising out of a private complaint filed for the offences punishable under Sections 415, 409 read with 34 and 120-B IPC, observed as under:

“Be that as it may, as held by this Court, summoning of accused in a criminal case is a serious matter. Hence, criminal law cannot be set into motion as a matter of course. 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. The Magistrate has to record his satisfaction with regard to the existence of a *prima facie* case on the basis of specific allegations made in the complaint supported by satisfactory evidence and other material on record.”

Similarly a three Judge Bench of the Apex Court in ***Sunil Bharti Mittal v. Central Bureau of Investigation***^[11] while dealing with the Sections 200 to 204, 190, 173 (2) and 319 Cr.P.C. held that the words “sufficient ground for proceeding” appearing in Section 204 Cr.P.C. is of immense importance. The Court held that

all these words would 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. The Court further held that the order is liable to be set aside if no reason is given therein while coming to the conclusion that there is *prima facie* case against the accused, though the order need not contain detailed reasons.

From the two judgments referred to above, it is clear that showing application of mind is a pre-requisite at the time of taking cognizance.

Keeping in view the three Judge bench judgment of the Apex Court in Sunil Bharti Mittal case (12 supra) and also the judgment of the Apex Court in GHCL Employees Stock Option Trust case (11 supra), the Court has to see whether, in a given case, there was proper application of mind showing sufficient basis for proceeding against the accused. The order under challenge came to be passed on 19.07.2014 after perusing the record and hearing the complainant, but the order lacks reasons for coming to a conclusion as to the existence of *prima facie* case against the accused. Therefore, it cannot be said that the Magistrate has totally applied his mind while issuing summons to the accused, as the order under challenge is bereft of even basic reasons for taking a view different from what has been stated by the investigating agency. It may be true that there is enough material against the accused for proceeding further but the same, in some form or the other, should *prima facie* reflect in the order.

Hence, the order under challenge is set aside and the matter is remanded back to the trial Court, directing the Magistrate to pass an order in terms of the judgments of the Apex Court referred to

above. With the above direction, the Criminal Revision Case is disposed of.

As a sequel thereto, Miscellaneous Petitions pending if any in this criminal revision, shall stand closed.

C. PRAVEEN KUMAR, J

30.06.2015
gkv

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.2092 of 2014

Date: .06.2015

-

-

-

gkv

[\[1\]](#) 2014 (2) ALD (CrI.) 297

[\[2\]](#) Laws (SC) 2013 (7) 107

[\[3\]](#) (2010)9 SCC 479

[\[4\]](#) Laws (SC) 2004-3-125

[\[5\]](#) AIR 2003 (SC) 1900

[\[6\]](#) AIR 2000 (SC) 1456

[\[7\]](#) AIR 2000 (SC) 522

[\[8\]](#) 2012 (5) SCC 424

[\[9\]](#) AIR 2012 SC 1921

[\[10\]](#) 2013 (4) SCC 505

[\[11\]](#) 2015 (4) SCC 609