
(1991) 07 AHC CK 0093
In the Allahabad High Court
Case No : Criminal Revision No. 936 of 1989

Ambika Prasad Singh and Others

APPELLANT

Vs

State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 17-07-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202
Penal Code, 1860 (IPC) — Section 344, 347, 348, 365, 368

Citation : (1991) 15 ACR 717

Hon'ble Judges : Surya Prasad, J

Bench : Single Bench

Advocate : H.N. Singh, for the Appellant; Ali Hasan, for the Respondent

Final Decision : Dismissed

Judgement

Surya Prasad, J.—This is a criminal revision against the order dated 15-3-1989 passed by the Judicial Magistrate I, Jaunpur in Criminal Case No. 333 of 1987 summoning the revisionists under Sections 344/347/348/365/368/467 and 466 IPC on the basis of the complaint filed by the opposite party No. 2 Vijay Kumar Singh.

2. I have heard the learned Counsel for the Parties and have gone through the record.

3. The facts of the case have been vividly mentioned in the impugned order. There does not appear any necessity to repeat the same.

4. The learned Counsel for the revisionists has argued that the learned Magistrate has not passed any order on the final report submitted by the police. His contention is not sustainable because the final report has been submitted by the police not in the instant complaint case, but in a different court in a different case initiated on the basis of the first information report lodged by a different person.

5. The learned Counsel for the revisionists has further argued that the learned Magistrate has not complied with the provisions of Section 202 Code of Criminal Procedure. This contention has no substance. The learned Magistrate has perused the complaint and the statements of the witnesses examined. He has applied his mind to find out whether a prima facie case is made out against the revisionists or not.

6. The learned Counsel for the revisionists has also argued that a civil suit is pending for the cancellation of the impugned sale-deed itself and therefore, it is the civil court not the criminal court which can decide the controversy involved in the case. It is needless to mention that the fate of a case depends upon the facts and circumstances involved therein. If the contention of the learned Counsel for the revisionists is found by the Magistrate to be correct, the revisionists will be discharged or ultimately acquitted, as the case may be, in the event of no evidence being found in support of the complaint. It is for the learned Magistrate to pass such order and not for this Court and that too in a revision the scope of which is very limited.

7. The learned Counsel for the opposite parties has relied upon Hareram Satpathy Vs. Tikaram Agarwala and Others, , wherein it has been inter-alia held as under:

As the Magistrate is restricted to finding out whether there is a prima facie case or not for proceeding against the accused and cannot enter into a detailed discussion of the merits or demerits of the case and the scope of the revisional jurisdiction is very limited the High Court cannot launch on a detailed and meticulous examination of the case on merits and set aside the order of Magistrate directing issue of process against certain persons.

8. In Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, has been referred to. In Smt. Nagawwa's case the Hon"ble High Court has made the following observations:

It is true that in coming to a decision as to whether process would be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court or even this Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry u/s 202 of the Code of Criminal Procedure.

9. The learned Counsel for the opposite parties has also relied upon Roshanali

Burhanali Syed Vs. State of Gujarat, wherein it has been observed as under:

We do not see any justification, though we are not expressing any opinion on the merits of the case, for the order passed by the learned Additional Sessions Judge, Meerut in Criminal Revision No. 83 of 1979, which was affirmed by the High Court of Allahabad by its order dated 7-5-80. All that the learned Magistrate had done was to issue a summons to Respondent No. 2 Satyavir Singh. If eventually, the learned Magistrate comes to a conclusion that no offence was made out against Satyavir Singh, it will be open to him to discharge or acquit him, as the case may be. But it is difficult to appreciate why the order issuing "summons" to the accused should be quashed. We, therefore, set aside the orders passed by the Sessions Court and the High Court, restore that of the learned Special Judicial Magistrate, First Class, Meerut, dated February 2, 1979 and remit the matter to the trial court for disposal in accordance with law.

10. In view of the above observations, the revision has no substance and is dismissed.