

(2004) 11 AHC CK 0276

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 7218 of 2004

Arvind Kumar Tewari and Another

APPELLANT

Vs

The State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 05-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 397, 397(2)

Penal Code, 1860 (IPC) — Section 323, 506

Citation : (2005) CriLJ 1952 : (2005) 3 RCR(Criminal) 800

Hon'ble Judges : K.N. Sinha, J

Bench : Single Bench

Advocate : H.C. Dwivedi and Sadhu Saran, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

K.N. Sinha, J.—Heard the learned counsel for the petitioners and the learned A.G.A.

2. The present writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ of certiorari quashing the order dated 27-8-2004 passed by Sessions Judge, Ghazipur in Criminal Revision No. 332 of 2004 and order dated 5-4-2004 passed by the C.J.M. Ghazipur in Criminal Case No. 1412/2004 which are Annexure Nos. 9 and 10 to the writ petition.

3. The brief facts, giving rise to this writ petition, are that on an application u/s 156(3) Cr. P.C. a report was lodged at police station Zamania who investigated the case and submitted a charge-sheet under Sections 323/506, IPC and in the said charge-sheet the Chief Judicial Magistrate considered police papers and found that there was sufficient evidence for taking the cognizance, consequently issued summons to the accused-petitioners vide its order dated 5-4-2004. The petitioners filed a Criminal Revision No. 332 of 2004 before the Sessions Judge, who, after hearing, dismissed the same at the admission stage itself, holding that

the order summoning the accused is not a case decided and is an interlocutory order. He also observed that revision was not maintainable and there was no need for summoning the lower Court record.

4. The above judgment dated 27-8-2004 passed in above Criminal Revision made the petitioner to approach this Court under Article 226 of the Constitution of India.

5. I have heard the learned counsel for the petitioners and the learned A.G.A. and perused the impugned orders. The revision was dismissed by the Sessions Judge, Ghazipur without entering into merit of the case as to whether there existed sufficient ground to proceed against the accused petitioner or not. The relevant portion of the order passed by the Sessions Judge, Ghazipur is quoted as below :--

(Vernacular matter omitted..... Ed.)

6. It appears that the Sessions Judge was not at all conversant with the legal position and has hardly cared to go through the pronouncement of the Apex Court wherein order summoning was termed as an intermediary order and revision against the same was held maintainable.

7. In Amar Nath and Others Vs. State of Haryana and Another, the interlocutory order was defined. The Apex Court held that the orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction. The facts of the case were that Magistrate had issued summons to accused and it was held that the order was not an interlocutory order and can be revised u/s 397 Cr. P.C.

8. In the case of Madhu Limaye v. State of Maharashtra, 1978 SCC (Cri) 10 : (1978 CrLJ 165), the word "interlocutory" was further defined and the reference of the case of Amar Nath (supra) was also made therein. The proposition of law that the summoning order was not an interlocutory order (as laid down in the case of Amar Nath and Others Vs. State of Haryana and Another, , was affirmed in this judgment also. The Apex Court held that such type of order (order issuing summon to accused) is surely not interlocutory so as to attract the bar of Sub-section (2) of Section 397, Cr. P.C. but it was an intermediary order.

9. In Rajendra Kumar Sitaram Pande and Etc. Vs. Uttam and Another, the reference of the case of Amar Nath and Others Vs. State of Haryana and Another, and Madhu Limaye Vs. The State of Maharashtra, and V.C. Shukla Vs. State through C.B.I., was also made and the Apex Court came to the conclusion that order issuing summons to accused must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction u/s 397, Cr. P.C. could be exercised against the same.

10. These are the few judgments, which are cited above laying down this law

since 1977 that order issuing summons is revisable u/s 397 Cr. P.C. It is really a very sorry state of affair that a Sessions Judge who is heading the district judiciary, is in utter ignorance of the basic principle of the law so elaborately pronounced by the Hon"ble Apex Court. Now the judicial officers in this State are provided with residential library and necessary grant is also placed at the disposal of the Sessions Judge to contribute a number of journals but probably the Sessions Judges has hardly any time to look into such journal to apprise themselves with such an established principle of law. If this is the standard of knowledge at this level, what guidance can be expected by the Sessions Judge to his subordinate officers and especially the officers who join the services afresh.

11. Thus, the finding recorded by the Sessions Judge is wholly perverse being contrary to settled law. The writ petition is hereby allowed. The order dated 27-8-2004 passed by the Sessions Judge is quashed. The matter is remanded back to the Sessions Judge, Ghazipur, who shall admit the revision and decide the same on merit.

12. The impugned judgment was delivered by Shri S. K. Bhatt, the then Sessions Judge, Ghazipur. The Registry of this Court has reported that Shri S. K. Bhatt is posted now as Sessions Judge, Baghpat, hence copy of the order be sent to the Sessions Judge, Baghpat also.

13. The Registry of this Court shall place the copy of this order along with record of the case before the Administrative Judge Baghpat who may evaluate the legal knowledge of the Sessions Judge concerned.