
(2012) 11 AHC CK 0155
In the Allahabad High Court
Case No : Criminal R. No. 906 of 2003

Ashok and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 27-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173(2), 190(1)(a), 193, 200
Penal Code, 1860 (IPC) — Section 147, 148, 149, 193, 216A

Citation : (2013) 1 ACR 949

Hon'ble Judges : Het Singh Yadav, J

Bench : Single Bench

Advocate : I.K. Chaturvedi and C.P. Upadhyay, for the Appellant; S. Tripathi, A.G.A., for the Respondent

Judgement

Het Singh Yadav, J.—This Criminal Revision u/s 397/ 401, Criminal Procedure Code, 1973 (Code) is directed against the order dated 21.2.2003 passed by the Special Court at Mahoba, constituted under the Uttar Pradesh Dacoity Affected Areas Act, 1983 (hereinafter referred to as the D.A.A. Act) summoning the revisionists under Sections 307 and 504, I.P.C., after having rejected the final report u/s 173(2) submitted by the Investigating Officer (Investigating Officer) in Case Crime No. 122A/2002, Police Station Kharaila, District Mahoba. The facts leading to filing this revision briefly stated are that the complainant respondent No. 2 had moved an application before the Deputy Inspector General of Police (D.I.G.), Chitrakoot Dham, Banda on 23.6.2002 disclosing therein that on 19.6.2002 at 5 p.m. he was at the shop of Rameshwar Kalar of his village ; at the same movement Ashok Kumar Shukla with 315 bore riffle. Awadesh Shukla with the double barrel 12 bore gun. Gopal with the double barrel 12 bore gun and Shyam Babu with 12 bore single barrel gun arrived there. After a short altercation they started abusing the complainant and opened fires upon him with their respective fire arms with intention to commit his murder. The complainant, however, had a narrow escape as he was pushed aside by Bansi and Tejwa, who were standing beside him on the spot. The named assailants chased the

complainant when he rushed to his house to save himself. They made several fires with their fire arms at the door of the house of the complainant. The younger brother of the complainant present at his home sustained pellet injury and his spectacle was also broken. The motive behind the occurrence was previous enmity due to Pradhani Election. The D.I.G. vide his order dated 23.6.2002 directed the local police to lodge the F.I.R. and to investigate into the matter. Since the date, time and the place of occurrence as mentioned in the application of the complainant was the same as mentioned in the F.I.R. of Crime No. 122/2002 already got registered on 19.6.2002 at 21.05 O'Clock by the revisionist No. 1 and, therefore, the police registered the F.I.R. of the respondent No. 2 as cross version of the same at Crime No. 122A/2002. The Investigating Officer, however, after concluding the investigation submitted final report u/s 173(2) of the Code in Special Court D.A.A. empowered u/s 7 of the D.A.A. Act to take direct cognizance of any Scheduled Offence. The Special Court issued notice to the complainant on the final report. In pursuance of the notice the complainant filed protest petition. The Special Court treated the protest petition as a complaint under Chapter XV of the Code and after taking cognizance u/s 190(1)(a), proceeded in the manner as provided in Sections 200 and 202 of the Code. He examined the complainant and one witness. The learned Special Court also summoned the record of Case Crime No. 122 of 2002 under Sections 147, 148, 149, 307, 394 and 411, I.P.C.

2. The learned Special Court after having considered the complaint and after examining the summoned record of the cross version, rejected the final report submitted by the Investigating Officer and further issued process u/s 204 of the Code against the revisionists vide the impugned order. Feeling aggrieved the revisionists have preferred this revision.

3. Heard learned counsel for the revisionists, learned A.G.A. and learned counsel for the respondent No. 2 and also perused the record.

4. Learned counsel for the revisionists contended that in fact on 19.6.2002 at about 5.00 p.m. the revisionist Nos. 1 and 2 were present at the shop of Rameshwar Kalar of their village. At the same movement, brother of the respondent No. 2 alongwith 4 named persons all having fire arms with them arrived there. All of a sudden they all opened fires upon revisionist No. 1 with intention to commit his murder. The revisionist No. 1 and his cousin sister Archana, who was also present at the scene of occurrence both sustained fire arm injuries. The named assailants also looted away double barrel 12 bore licensed gun of the revisionist No. 2. The revisionist No. 1 lodged F.I.R. promptly on the same date at the local police station. The Investigating Officer after concluding investigation submitted charged-sheet against all the named accused persons in the Special Court, D.A.A. under Sections 147, 148, 149, 307, 394 and 411, I.P.C., having jurisdiction to take cognizance of Scheduled Offence. It appears that the accused persons of the aforementioned case in collusion with respondent No. 2 cooked up false story and managed to get lodged embellished

F.I.R. based on afterthought. The Investigating Officer conducted fair investigation, recorded the statements of the witnesses and after scrutiny of the statements recorded by him u/s 161 of the Code arrived at a conclusion that there is no evidence to support the cross version put-forth by the respondent No. 2. There is no iota of truth in the cross version and accordingly has submitted final report in the matter.

5. Learned counsel stressed much that the complainant has got examined himself and one Tejwa as an eye-witness of the alleged occurrence under Sections 200 and 202 of the Code. The complainant in his cross version has clearly stated that his brother namely Govind sustained pellet injury and his spectacle was also broken in the occurrence. Govind is the main accused in the Case Crime No. 122/2002 of which the revisionist No. 1 is the informant. Govind being the injured witness is the most important witness of the occurrence. He was not examined nor his injury report was produced in the Court. This shows that the cross version as put forth by the respondent No. 2 is not only incorrect and mischievous but there is no prima facie evidence also in support thereof so as to form opinion u/s 204 of the Code for issuing process against the revisionists.

6. Learned counsel further pointed out that the offence of attempt to murder punishable u/s 307, I.P.C. though mentioned in the Schedule with the D.A.A. Act but the offence u/s 307, I.P.C. is only within the category of "scheduled offence" when it is either committed by a "schedule offender" or was being so connected with the "scheduled offence" as to form part of the same transaction. In this case neither there is allegations that the alleged offence of attempt to commit murder was committed during committing dacoity or robbery or being so connected with the scheduled offence as to form the part of the same transaction. The complainant and the witnesses in their respective statements have disclosed nothing about the facts that it was committed during committing dacoity or robbery or being so connected with the "scheduled offence" as to form the part of the same transaction. Therefore, the offence alleged to have been committed by the revisionists is not within the category of "scheduled offence". The Special Court as such has no jurisdiction to take cognizance in the matter under its extraordinary powers conferred by Section 7 of the D.A.A. Act. The jurisdiction of the Special Court, which is essentially a Court of Sessions is barred by Section 193 of the Code. The impugned order being illegal and also without jurisdiction is liable to be quashed.

7. The learned A.G.A. and learned counsel for the respondent No. 2 in their respective submission have categorically stated that at the stage of Section 203/204 of the Code, the Magistrate has to see whether the statements of the complainant and the witnesses recorded under Sections 200 and 202 of the Code a prima facie case is made out against the accused. At this stage the Magistrate is not required to analyse the evidence so recorded under Sections 200 and 202 of the Code in the manner as required at the stage of framing of the charge. The

Magistrate is also not supposed to go in deep so as to ascertain the truthfulness and correctness of the contents of the complaint and the prima facie evidence recorded under Sections 200 and 202 of the Code. The complainant's version finds support from the cross version itself as the date, time and place of occurrence are the same in both the cases. Besides, the complainant and one of the witnesses viz. Tejwa, both are the eye-witnesses of the occurrence in their respective statements recorded under Sections 200 and 202 of the Code have categorically supported the cross version put by the complainant. Therefore, the prima facie case of having committed offence under Sections 307 and 504, I.P.C. by the revisionists has clearly established, which needs trial.

8. Learned A.G.A. further contended that licensed gun of revisionist No. 2 was also looted as disclosed in the cross version and, therefore, the Special Court under the D.A.A. Act has jurisdiction to try the offence under Sections 307 and 504, I.P.C. as enacted u/s 6(2) of the D.A.A. Act. The arguments made on behalf of the revisionists in this regard as such are not tenable. The learned Special Court has committed no error or illegality or any jurisdictional error while passing the impugned order and, therefore, the revision deserves to be set aside.

9. In view of the rival submissions at the bar the first question that arises for consideration is - whether the learned Special Court issuing process u/s 204 of the Code can consider the record of cross version or he has to confine only on the preliminary evidence recorded by him u/s 200 and the enquiry, if any, conducted by him u/s 202 of the Code.

10. At the outset, it may be mentioned that Special Court, D.A.A. is essentially a Court of Session. Section 193 of the Code enacts that Session Court is not a court of original jurisdiction and as such shall not take cognizance of any offence directly except otherwise expressly provided by the Code or by any other law.

The Section 7(1) of D.A.A. Act reads thus:

7. Procedure and power of Special Courts--

(1) A Special Court may take cognizance of any scheduled offence--

(a) upon receiving a complaint of facts which constitute such offence ;

(b) upon a police report of such facts ;

(c) upon information received from any person other than a police officer, or upon its own knowledge that such offence has been committed:

Provided that all cases triable by a Special Court under this Act, pending before any court immediately before the date of the commencement of this Act in a dacoity affected area, shall stand transferred to the Special Court having jurisdiction over such cases and shall be dealt with and disposed of in accordance with the provisions of this Act.

It is thus expressly provided in the D.A.A. Act that Special Court may take

cognizance of any "scheduled offence" defined u/s 2 (b) of the Act. The Special Court is also competent to take cognizance of any offence triable upon receiving a complaint of facts which constitute such offence as obvious from perusal of Section 7(1) (a) of the Act. Sub-sections (2) and (3) of the said Section contemplate that, whenever, necessary the Special Court may perform the functions of a Magistrate and the powers of the Code shall in so far as they are not inconsistent with the provisions of the D.A.A. Act apply to the proceedings before a Special Court.

11. This Court in *Deo Singh and Others Vs. State of U.P. and Another*, held thus:

It is true that that Special Court has power u/s 7(1) of the Act to take cognizance of a scheduled offence even upon a complainant. In that eventuality he has to observe the procedure prescribed under Chapter XV of the Code, and before passing a summoning order, to examine the complainant and witnesses, if any, u/s 200 of the Code and if considered necessary, may also hold an inquiry u/s 202 of the Code. On the basis of the materials so collected, the Special Court has power, to summon the accused, and, if no case is made out, to dismiss the complaint.

Thus, obviously, the Special Court is also enshrined with the powers as conferred upon the Magistrate u/s 190(1)(a) and Chapter XV of the Code relating to the schedule offences.

12. On combined reading of Chapter XV and Section 204 of the Code, at the stage of Section 203/ 204 of the Code the Magistrate has to do, is to see whether at a cursory perusal of the complaint and evidence recorded during preliminary enquiry under Sections 200 and 202 of the Code is there any prima facie evidence, in support of accusation made against the accused. All that he has to see is whether or not there is sufficient ground for proceeding against accused at this stage. The Magistrate is not supposed to scrutinise evidence recorded under Sections 200 and 202 of the Code meticulously as in the trial. The standard of scrutinising evidence is also not the same as required at the stage of framing of charge, while passing order u/s 204 of the Code ; it is to be seen that there is prima facie evidence in support of allegation made in the complaint. Therefore, the condition precedent for issuing process u/s 204 of the Code is the satisfaction of the Magistrate whether by examination of the complainant and the witnesses u/s 200 and/or by enquiry contemplated u/s 202 of the Code that there is sufficient ground for proceeding with the complaint. It is thus crystal clear that at the stage of issuing process u/s 204 of the Code against the accused the Magistrate should confine himself upon the statements recorded u/s 200 of the Code of the complainant and the enquiry contemplated u/s 202 of the Code. Section 203 of the Code says that after considering the statements on oath of the complainant and of the witnesses u/s 200 of the Code and the result of inquiry or investigation, if any, made u/s 202 of the Code if the Magistrate is of the opinion that there is no sufficient ground for proceeding he shall dismiss the complaint and he shall briefly record his reasons for so doing. Thus, from the

provisions of Chapter XV and Section 204 of the Code undoubtedly it is clear that after recording statements u/s 200 of the Code, if in the opinion of the Magistrate there is no sufficient ground for proceeding he may dismiss the complaint u/s 203 of the Code. On the other hand if there is sufficient ground for proceeding, he may issue process u/s 204 of the Code.

13. In *Shivjee Singh Vs. Nagendra Tiwary and Others*, , it has been held by the Apex Court:

The object of examining the complainant and the witnesses is to ascertain the truth or falsehood of the complaint and determine whether there is a prima facie case against the person who, according to the complainant has committed an offence. If upon examination of the complainant and/or witnesses, the Magistrate is prima facie satisfied that a case is made out against the person accused of committing an offence then he is required to issue process. Section 202 empowers the Magistrate to postpone the issue of process and either inquire into the case himself or direct an investigation to be made by a police officer or such other person as he may think fit for the purpose of deciding whether or not there is sufficient ground for proceeding. u/s 203, the Magistrate can dismiss the complaint if, after taking into consideration the statements of the complainant and his witnesses and the result of the inquiry/investigation, if any, done u/s 202, he is of the view that there does not exist sufficient ground for proceeding. On the other hand, Section 204 provides for issue of process if the Magistrate is satisfied that there is sufficient ground for doing so. The expression "sufficient ground" used in Sections 203, 204 and 209 means the satisfaction that a prima facie case is made out against the person accused of committing an offence and not sufficient ground for the purpose of conviction. This interpretation of the provisions contained in Chapters XV and XVI of Cr. P.C. find adequate support from the judgments of this Court in *Ramgopal Ganpatrai Ruia and Another Vs. The State of Bombay*, ; *Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another*, ; *Chandra Deo Singh Vs. Prokash Chandra Bose and Another*, ; *Nirmaljit Singh Hoon Vs. The State of West Bengal and Another*, ; *Piara Singh v. State of Punjab*, (1980) 2 SCC 401; *Mohinder Singh Vs. Gulwant Singh and others*, and *S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. and Others*, .

14. It is worth mentioning here that as per scheme of Chapter XV and Section 204 of the Code. Sections 203 and 204 should be read and construed together and not in isolation. Because to form opinion that whether there is a sufficient ground for proceeding in the matter or not he has to consider the statements on oath of the complainant and the witnesses recorded u/s 200 and the result of enquiry or investigation, if any, u/s 202 of the Code. The Magistrate, thus, cannot take external aid to form his opinion in this regard.

15. In this case as appears from a bare reading of the impugned order the Special Court has formed his opinion that there is sufficient ground for proceeding against the accused person upon consideration of record of cross

version Special Case No. 80/2002, State v. Govind Tiwari and others under Sections 147, 148, 149, 307, 394 and 411, I.P.C. In the impugned order the Special Court simply discussed the version of the complainant and there is not even a whisper about consideration of the statements of the complainant and the witness u/s 200 of the Code. There is nothing about the result of the enquiry or investigation, if any. The Special Court at the time of taking cognizance of the offence and issuing process simply mentioned that the facts placed before him by the complainant and the facts as shown in the cross case, it appears to him that some occurrence had taken place on the spot in respect whereof the complainant is also putting his version. On the basis of this observations he rejected the final report submitted by the Investigating Officer and further summoned the revisionists under Sections 307 and 504, I.P.C. Thus, undoubtedly, the Special Court while formed his opinion to issue process u/s 204 of the Code against the revisionists has not considered the statements of the complainant and witnesses under Sections 200 and 202 of the Code. On the contrary the Court was of the view that since on the F.I.R. of the revisionist No. 1 the police has already registered Case Crime No. 122/2002 and the Investigating Officer has filed charge-sheet against the named accused persons in the said case and the respondent No. 2 wants to put his version therefore, it is the sufficient ground for proceeding against the revisionists is absolutely illegal and outside the purview of the Chapter XV and 204 of the Code.

I am not at least convinced with the arguments of the learned counsel for the respondent No. 2 that the cross version, to ascertain as to who was the aggressor, trial of both the cases is essential to do the justice in the matter. In this case, the Special Court has not applied his mind as per scheme of Chapter XV of the Code and substituted his own procedure to form his opinion that there is sufficient ground for proceeding against revisionists.

16. In Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, , the Apex Court held thus:

Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as 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 of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to be 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.

17. Thus, having analysed the provisions of Chapter XV and Section 204 of the Code and case laws as above, now, it is settled that the statements under Sections 200 and 202 of complainant and witnesses and result of inquiry or investigation, if any, directed u/s 202 of the Code can only be taken into consideration by the Magistrate at the stage of u/s 203/ 204 of the Code. In this case obviously the Special Court which passed the Impugned order transgressed his power as he has considered the record of cross-case and not the statements u/s 200/ 202 of the Code accordingly committed serious illegality by substituting his own procedure ignoring the provisions of the Code.

18. Next question arises for consideration is whether the offence alleged to have committed by the revisionists is within the purview of "Scheduled Offence" as defined under the D.A.A. Act.

Section 2(b) which defines the "Scheduled Offence" reproduces below:

"scheduled offence" in relation to a dacoity affected area means an offence, specified in the schedule to this Act, being an offence committed by a scheduled offender.

Sub-section (c) of the above Section further defines "scheduled offender" as under:

"scheduled offender" means a person who commits or has committed or is accused of committing or attempt to commit dacoity or robbery as such or being so connected with scheduled offence as to form part of the same transaction, whether such offence has occurred at the same time and place or at different times and places.

The Schedule to the D.A.A. Act is being reproduced below:

(i) Offences punishable under Sections 216A, 302, 304, 307, 308, 325, 326, 327, 329, 331, 333, 363, 364, 365, 368, 369, 386, 387, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402 and 511 of the Indian Penal Code:

(i) kidnapping or abducting any person for ransom ;

(ii) assembling or making preparation or attempt for kidnapping or abducting a person for ransom ;

(iii) making or mending or performing any part of the process of making or mending, buying, selling, possessing, disposing of, supplying or carrying arms or ammunition or explosives for the commission of dacoity ;

(iv) voluntarily supplying food materials, clothing, means of communication, transport and other articles to the persons making preparation for dacoity or assembled for the purpose of committing dacoity or to the dacoits assembled after the commission of dacoity ;

(v) mediating in the settlement or standing surety for, the payment of ransom to an adductor or kidnapper ;

(vi) spying for the persons making preparation for dacoity or assembled for the purpose of committing dacoity or for the dacoits assembled after the commission of dacoity ;

(vii) receiving benefits from the persons committing all or any of the above mentioned offences.

Section 6 of the D.A.A. Act confers exclusive jurisdiction upon Special Court reads thus:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force, a scheduled offence shall be triable only by a Special Court.

(2) In trying any scheduled offences a Special Court may also try any offence other than such offence with which a scheduled offender may be charged at the same trial under any law for the time being in force.

19. On combined reading of the above provisions of the Act the situation emerges that:

(i) the offences specified in the Schedule to the Act are Scheduled offences in relation to a dacoity affected area being committed by a scheduled, offender ;

(ii) scheduled offender means a person, who commits or has committed or is accused of committing or attempt to commit dacoity or robbery ;

(iii) other offences being so connected to the scheduled offence as to form part of the same transaction are also triable by Special Court.

A bare perusal of F.I.R. of Case Crime No. 122A/2002 which is treated as complaint, shows that there is even not a whisper about committing or attempting to commit any dacoity or robbery as such by the revisionists. This is also not the case of the complainant that alleged offence of attempt to commit murder is connected with any Scheduled Offence as to form the part of the same transaction.

20. This Court in *Dori and Another Vs. State of U.P.*, held thus:

There is no doubt that Shri Tejpa in arguing that Section 302, I.P.C. is a scheduled offence, but the other limb of his argument that because it happened to be a scheduled offence, the trial u/s 302, I.P.C. could be held by a Special Court is misconceived. A close scrutiny of the definition of "scheduled offence" and "scheduled offender" indicates that if the scheduled offence was committed by a scheduled offender then only the Special Court will have exclusive Jurisdiction to try a case which may primarily involve offence of dacoity or robbery as one of the transactional ingredients.

21. This Court in *Ram Autar son of Moti Lal v. State of U.P. and others*, decided on 6.7.2007, held thus:

As a scheduled offender means a person who has committed or is accused of committing dacoity or robbery and his act is so connected with a scheduled offence so as to form part of the same transaction, only then will it be an offence by a scheduled offender. Unless the court is satisfied that an offence u/s 325 was committed when the accused was committing or attempting to commit dacoity or robbery only then the offence could be treated as a scheduled offence under the D.A.A. Act and only then the requirement of Section 2(b) would be satisfied and there would be bar of any other court to try the offence other than the Special Courts constituted u/s 7. As the said satisfaction has not been reached upto this stage, I find no illegality in the order of the concerned trial court framing the charge and proceeding with the trial.

22. No doubt in "the schedule" to the D.A.A. Act. Section 307, I.P.C. has been shown in the list of scheduled offence but it is nowhere mentioned in the complaint or in the statements of the complainant and the witnesses u/s 200 of the Code that the accused persons are the "scheduled offenders" or they commit or have committed or are accused of committing or attempting to commit dacoity or robbery. It is also not there in the complaint or in the statements u/s 200 of the Code that the offence of Sections 307 and 504, I.P.C. alleged to have been committed by the accused persons are being so connected with the "scheduled offence" as to form a part of the same transaction. Thus, from the allegations contained in the complaint as well as from the statements of the complainant and the witnesses u/s 200 of the Code the offence alleged to have been committed by the accused persons/revisionists are not within the category of "Scheduled Offenders".

23. Section 6(2) of the D.A.A. Act confers jurisdiction upon the Special Court also to try any offence other than "scheduled offence" with which a scheduled offender has been charged at the same trial under any law. But again this jurisdiction is conferred upon the Special Court when a "scheduled offender" is charged with any other offence. Therefore, the learned Special Court has no jurisdiction to take cognizance in the matter directly. Section 193 of the Code bars the Special Court, who is essentially a Sessions Judge from taking direct cognizance in the matter unless committed by a Magistrate u/s 209 of the Code having jurisdiction to take cognizance.

24. For reasons discussed as above, the impugned order of the learned Special Court, D.A.A. cannot be sustained. The revision is allowed. The impugned order dated 21.2.2003 passed by the Special Court D.D.A., Mahoba in Case No. 38/2003, State v. Ashok Kumar and others of issuance of process u/s 204 of the Code is quashed.