

(2014) 05 AHC CK 0090
In the Allahabad High Court
Case No : Criminal Revision No. 768 of 2006

Ashok Kumar Rana

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 14-05-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 173(2), 190, 190(1)
(a)

Penal Code, 1860 (IPC) — Section 120-B, 420, 471

Citation : (2014) 6 ADJ 374

Hon'ble Judges : Kalimullah Khan, J

Bench : Single Bench

Advocate : Rakesh Kumar Singh Chauhan, Manoj Kumar Srivastava and Neelam Singh Chauhan, Advocate for the Appellant; R.D. Singh, Advocate for the Respondent

Judgement

Kalimullah Khan, J.—This criminal revision u/s 397/401 Cr.P.C. has been preferred by Ashok Kumar Rana & Pramod Kumar Singh accused against the State of U.P. and complainant Than Singh opposite party No. 2 challenging the summoning order dated 2.12.2005 passed by Xth Additional Chief Judicial Magistrate, Court No. 36, Agra in criminal complaint case No. 1016 of 2005 "Than Singh v. Ashok Kumar Rana and others" under Sections 420, 471, 120-B of I.P.C., P.S. Khandauli, District Agra whereby learned Magistrate has issued processes against the accused revisionists u/s 204 Cr.P.C. to face trial under Sections 420, 471, 120-B of I.P.C. In nutshell the prosecution case is that the complainant Than Singh had gone to the accused revisionists Pramod Kumar Singh, Branch Manager and Ashok Kumar Singh, Field Officer, Gram Vikas Bank Limited, Khandauli to take a loan of Rs. 28,000/- for purchasing buffalo. In the name of processing the loan he was asked to sign a number of papers which were misused by them. They hatched the criminal conspiracy and two loans of the same amount were purported to be sanctioned. One loan of Rs. 28,000/- was provided to the complainant but the other loan of Rs. 28,000/- which was

sanctioned on forged papers was never handed-over to the complainant nor he purchased buffalo in lieu thereof although according to accused revisionists in pursuance of the second loan one Murari Lal sold the buffalo to the complainant Than Singh for a consideration of Rs. 28,000/- paid to him.

2. When the report of the complainant was not registered by the police he made an application u/s 156(3) Cr.P.C. before the learned Court of Magistrate which was rejected. Thereafter, he filed a criminal complaint, as it appears. He examined himself u/s 200 Cr.P.C. and his witnesses including Murari Lal, alleged seller, P.W. 3 u/s 202 Cr.P.C. who deposed that neither he sold his buffalo to complainant Than Singh nor he was paid any consideration amount viz. Rs. 28,000/- as alleged by accused. Apart from him Anwar Singh, P.W. 1, Harbir Singh, P.W. 2 were also examined u/s 202 Cr.P.C. Complainant has filed documentary evidence through a list viz. postal receipt, notice, acknowledgment, registry receipts, notice to branch manager, acknowledgment receipt, notice to Ashok Kumar and Mahesh Kumar, Branch Manager receipt, copy of the application made to S.P. concerned etc.

3. After applying the judicial mind on the materials available on record learned Magistrate was of the opinion that there are sufficient ground for proceeding took cognizance and issued processes against the accused revisionists under Sections 420, 471, 120-B of I.P.C. vide impugned order dated 2.12.2005.

4. It is this order which has been challenged in this revision on the ground that after rejection of the application made u/s 156(3) Cr.P.C. by the learned Magistrate a criminal complaint on similar fact could not have been entertained.

5. The revision has already been admitted and opposite party No. 2 was issued notice which was served upon him but none has appeared for him even in the revised list being called upon.

Lower Court record is available.

6. Heard Sri Rakesh Kumar Singh Chauhan, learned counsel for the revisionists, learned A.G.A. and perused the record.

There is no bar for the Magistrate to entertain criminal complaint u/s 190(1)(a) of Cr.P.C. even after the application of the complainant made u/s 156(3) Cr.P.C. was rejected. The aforesaid two Sections have their independent existence.

Section 156(3) Cr.P.C. empowers the Magistrate to pass order to any officer in charge of a police station to investigate a cognizable case whereas Section 190(1) (a) Cr.P.C. deals with power of the Magistrate to take cognizance of any offence in one of the three ways.

Section 156 Cr.P.C. reads as under:

"156. Police officer's power to investigate cognizable case--(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the

limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered u/s 190 may order such an investigation as mentioned-above."

Section 190 Cr.P.C. reads as under:

"190. Cognizance of offences by Magistrates--(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any 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 his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are without his competence to inquire into or try."

7. It is crystal clear that both the aforesaid sections are independent sections. Section 156 Cr.P.C. is in Chapter XII of Cr.P.C. which deals with the information to the police and their powers to investigate whereas Section 190 Cr.P.C. is in Chapter XIV which deals with conditions requisite for initiation of proceedings. They are not dependent on each other. Even if any order is passed u/s 156(3) Cr.P.C. directing the officer in charge of a police station to register and investigate a cognizable case and police submits its report u/s 173(2) Cr.P.C. in favour of accused or against the informant, the Magistrate can ignore the conclusion arrived at by the I.O. and independently applies his mind to the facts emerging from the investigation and take cognizance of the offence, if he thinks fit and exercise his power u/s 190(1)(b) Cr.P.C.

8. The Magistrate is not bound in such situation to follow the procedure laid down in Section 200 & 202 of the Code for taking cognizance of a case u/s 190(1)(a) though it is open to him to act u/s 200 or Section 202 Cr.P.C. also. Here in the case in hand a criminal complaint was filed by the opposite party No. 2 u/s 200 and his witnesses were examined u/s 202 Cr.P.C. and considering the aforesaid evidence learned Magistrate was of the opinion that there are sufficient ground to proceed and then he issued processes u/s 204 Cr.P.C. vide detailed order dated 2.12.2005.

There is no incorrectness, illegality or impropriety in the order impugned.

Revision is devoid of merit and it stands dismissed. Interim order dated 14.2.2006 staying the proceeding of complaint case No. 1016 of 2005 "Than Singh v. Ashok Kumar Rana and others" under Sections 420, 471, 120-B of I.P.C. pending before the Court of the then Xth A.C.J.M., Court No. 36, Agra is hereby vacated.

Let a copy of this judgment be communicated to the learned trial Court to proceed with the case in accordance with law after serving notice to the complainant.

Revisionists are directed to appear before the learned trial Court on 22.7.2014.