
(2014) 03 AHC CK 0022
In the Allahabad High Court
Case No : Criminal Revision No. 897 of 2006

Bandana Gupta and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 31-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 204
Penal Code, 1860 (IPC) — Section 323, 452, 498, 504, 506

Citation : (2015) 88 ALLCC 536

Hon'ble Judges : Karuna Nand Bajpayee, J

Bench : Single Bench

Advocate : B.N. Singh, Advocates for the Appellant; S.K. Pandey, U.C. Mishra and Suhil Kumar Dubey, Advocates for the Respondent

Judgement

Karuna Nand Bajpayee, J.—This criminal revision has been filed assailing the order dated 19.10.2005 passed by Judicial Magistrate, Kalpi, District Jalaun in Complaint Case No. 474 of 2005 (Pradeep Kumar v. Santosh Kumar and others) under sections 452, 323, 504 and 506 IPC, Police Station Kalpi, District Jalaun whereby the revisionists have been summoned to face the trial.

Counsel for revisionists Sri Manish Kumar Singh holding brief of Sri B.N. Singh has appeared on behalf of the revisionists but even on repeated calls none has appeared on behalf of respondent No. 2. List has already been revised.

Pleadings between the parties have been exchanged.

2. In the wake of heavy pendency in this Court whereby dockets of pending cases are already bursting on their seems, there is no reason to further procrastinate the matter. This Court, therefore, deems it fit to proceed on the basis of the record and with the assistance of the learned AGA representing the State.

3. It appears that a complaint was filed on behalf of Sri Pradeep Kumar Gupta, respondent No. 2 against the accused-revisionists alleging that his wife Bandana

Gupta had illicit relations with revisionist No. 4 Santosh Kumar and he had had the occasion to see them in a compromising position. According to him he registered the protest before his wife and also before his mother-in-law but they became aggressive and got some blank papers signed at the point of pistol when he visited their house. It was further alleged that on the date of occurrence, the revisionists, Santosh Kumar, Archana (wife of Santosh), Bandana Gupta (wife of opposite party No. 2) and his mother-in-law Munni Devi entered into his house along with two unknown persons who were armed with country made pistols and thereafter made a criminal assault on his mother and father. According to the version given in the complaint-accused persons gave threat to him to the effect that in case the illicit relationship of Bandana with Santosh shall be divulged or disclosed then all of the family members of respondent No. 2 shall be eliminated and killed.

4. On this complaint the regular procedure of a complaint case was followed and the Court below vide its order dated 19.10.2005 thought it fit to summon the accused Santosh Kumar under sections 323, 504, 506, 452 and 498 IPC and accused Bandana, Munni Devi and Archana were summoned under all the aforesaid sections except section 498 IPC.

5. The submission of the Counsel is that the real story behind the curtain is entirely different than what had been projected by the opposite party No. 2. In fact according to the submission of the Counsel, revisionist Bandana Gupta was very cruelly treated by her husband and the other in-laws as they along with her husband had started pressing for the demand of dowry. In fact the opposite party No. 2 husband Pradeep Kumar himself had a crush on his bhabhi Prem Lata and was carrying on objectionable relationship with her. All the persuasion of the wife to make good sense prevail on her husband failed and instead of improving his conduct he started threatening her with dire consequences and went to the extent of making an attempt on her life by firing at her. She was brutally beaten also and thrown out. After coming to her parents' house she was got medically examined. Since then, according to the Counsel, the wife had been leading a deserted life. This cruel treatment compelled her to bring criminal prosecution against her husband and other in-laws which was registered as Crime No. C-6/2005 under sections 498, 323, 504 and 506 IPC in police station Kotwali Orai, District Jalaun. It has also been submitted that in order to seek maintenance under section 125 Cr.P.C. she had also moved before the Lower Court an application to the same effect. A copy of the application under section 125 Cr.P.C. has been filed as Annexure-1 in this revision. The Counsel has laid great emphasis on the dates on which the FIR was lodged and also the date on which the application under section 125 Cr.P.C. was filed. According to the Counsel the date of application under section 125 Cr.P.C. is 7.6.2005 while the date of the FIR registered against the opposite party is 25.2005. The contention is that in order to wreak vengeance and in order to put coercive pressure upon the wife and her parents not to prosecute the aforesaid cases in right earnest, the present entirely frivolous complaint has been brought as a measure of an

arm twisting device. It has been argued that the malicious prosecution is palpable on the face of record and the allegations alleged are so patently absurd that no prudent man can ever accept them to be true. In such circumstances, according to the Counsel, the summoning order ought to be set aside as the same has also been passed in a very cryptic and mechanical manner without judicial application of mind and without adverting to the inherent improbabilities of the allegations contained in the complaint and also the material produced before the Court.

6. Learned AGA strives to defend the summoning order on the ground that at the stage of summoning of the accused, the Court is not supposed to adjudge the ultimate reliability of the evidence produced and considerations to adjudge the guilt or the innocence of the accused are not to be applied at the preliminarily stage where the Magistrate's inquiry must remain confined to find out whether there are sufficient grounds to proceed in the matter or not.

7. I have deeply cogitated upon the rival submissions made at the bar and also had occasion to go through the record including the impugned order. But before reflecting upon the facts of the case it may be necessary to recapitulate the law on the point. It is true that the yardstick which the Court applies to adjudge the final guilt or innocence of the accused is entirely different from the one which is brought into application at the stage of section 204 Cr.P.C. where the Court decides whether the particular accused ought to be summoned to face the trial or not. The law on the point is trite and has been well expatiated upon in great detail in a catena of decisions. But that does not go to mean that even if the allegations of the complaint are bristling up with high improbability or even if the allegations contained therein are so inherently absurd and against the natural or normal human conduct which we see reflected in day to day human affairs that on the very face of the record, it becomes manifestly demonstrable that the prosecution has been instituted out of ranker and malice, then the Court should still blind itself and lay its hands off and allow a palpably mala fide prosecution to go on. The Courts are not supposed to act as engines of oppression nor are they supposed to act as inanimate post offices where the ipse dixit of the vengeful complainant should be accepted as a gospel truth and a vindictive complainant should be allowed to prey upon his bete noires unchecked and unobstructed. In a significant pronouncement given by the Apex Court in the case of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, , it has held that in the following class of cases an order of the magistrate issuing process against the accused can be quashed or set aside:

"(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that

there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

8. The observations made by Apex Court in case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , and specially illustration Nos. 5 & 7 have a strong bearing on facts of this case.

Illumined by the aforesaid observations made by the Apex Court when this Court delved into the facts of the case in question, the most unacceptable part of the allegation appears to be this that if revisionist No. 1 Bandana was in fact carrying on an illicit relationship with her sister's husband (brother-in-law/Jija) such a relationship shall be the most objectionable relationship in the view or the opinion of her own sister Archana and also in the estimate her own mother Munni Devi. It is inconceivable to imagine a situation where Bandana herself along with her own mother and the aforesaid paramour brother-in-law Santosh Kumar would go into the house of her husband opposite party No. 2 and will give a threat that if the illicit relationship which Bandana herself was carrying with Santosh Kumar shall be exposed or divulged the family members of the opposite party No. 2 shall be eliminated. It is inconceivable or at least in the highest degree improbable that Bandana's mother or Bandana's own sister with whose husband she was carrying on the immoral relationship, would themselves become a party in the perpetuation of the same lecherous and lascivious relationship. If the truth or falsity of an allegation is to be adjudged on the measurement of normal natural conduct or in the yardstick of the ordinary manner in which the day-to-day affairs take place then such an allegation revolts against the basic instincts of human nature and conduct and can certainly not be believed as such. Conspicuously enough the allegations in questions have followed the filing of two cases against the opposite party. It was only after the FIR against the opposite party had already been lodged and a suit of maintenance by wife had already been filed that the present complaint which is bristling with improbabilities has been brought against the revisionist accused. The timing is conspicuous and not innocuous and is certainly pregnant with its meaningful implications. Even the other allegations made are also not very palatable to stomach and it is rather difficult to believe them. The impugned order has been passed without assigning any reason whatsoever and is too cryptic to be of any help to disclose the mind of the Court below.

9. In the aforesaid circumstances where mala fides of the prosecution are

manifestly demonstrable and the allegations are too absurd to be believed by any prudent man, this Court deems it fit to set aside the impugned order. Revision stands allowed. The impugned order dated 19.10.2005 is hereby set aside.

Office is to certify this order to the Court below.