
(2009) 02 AHC CK 0144

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 457 of 2009

Chhote Lal Mali @ Girdhari Mali & Ors.

APPELLANT

Vs

State of U.P. & Anr.

RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204, 482

Citation : (2009) 02 AHC CK 0144

Hon'ble Judges : Ved Pal, J

Final Decision : Dismissed

Judgement

Vedpal, J.—This petition under Section 482, Cr.P.C. has been filed by the petitioners for quashing the summoning order dated 2882008 passed by the learned A.C.J.M., District Pratapgarh in Complaint Case No. 1483 of 2008 under Sections 379, 147, 323, 504, 506, I.P.C. and under Section 3 (i) (x) of the SC and ST Act.

2. Notice on behalf of the opposite party No. 1 has been accepted by the learned A.G. A.

3. Heard learned Counsel for the petitioners as well as the learned A.G.A. for the State.

4. Learned Counsel for the petitioners submitted that the petitioner Chotey Lal had filed a civil suit for permanent injunction and a complaint against Chotey Lal Saroj & Ors. for the offence punishable under Sections 147, 148, 323, 504, 506, 427 and 452, I.P.C. which was numbered as complaint case No. 110/2008 and wherein accused persons were summoned on 1542008. That as a counterblast, the opposite party No. 2 Chotey Lal Saroj filed the complaint Case No. 1483/2008 under Sections 379, 147, 323, 504, 506, I.P.C. against the petitioners on false ground with mala fide intention and it is wrong to allege that the petitioners had ever abused Chotey Lal or had ever committed theft or had damaged the watch of Chotey Lal. That Shri Nanhey Lal who was examined as witness under Section

202, Cr.P.C. in support of the complainant had given an affidavit to the effect that his statement was never recorded in the Court and his signature was obtained on a blank paper fraudulently by Shri Ajit Kumar Singh, Advocate who belongs to his village and utilised the same to prepare his statement under Section 202, Cr.P.C. That the learned Magistrate had not considered the case properly and has summoned the petitioners to face trial in an arbitrary manner and as such the said complaint is liable to be quashed, learned Counsel for the petitioner relied on the case of Zandu Pharmaceuticals Works Ltd. & Ors. v. Mohd. Sharaful Haque & Anr., 2005(2) JIC 188 (SC) : 2005 SCC (Cri) 283.

5. Learned A.G.A, supported the impugned order by submitting that the proper inquiry in the complaint was made by the learned Court below. That the allegations of the complaint stood supported with the statement given on oath by the complainant Chotey Lal Saroj and his two witnesses namely Babu Lal and Nanhey Lal and as such there was sufficient material to summon the petitioner. That on the basis of the allegations, ingredient of the offence are clearly made out and this Court at this stage, cannot hold inquiry on the reliability of the evidence adduced by the complainant. That it is wrong to allege that the complaint has been initiated on account of mala fide or because of the previous litigation between the parties. That the ruling cited by the learned Counsel for the petitioners, is of no help to them in the present case. That the cognizance of the offence is neither barred by limitation nor there is evidence that complaint is mala fide. That on the basis of the allegations, made in the complaint, cognisable offence is clearly made out for which the petitioners have been summoned to face trial and as such the petition deserves to be rejected. That after passing the summoning order, the petitioners themselves arranged false affidavit of Nanhey Lal which cannot be relied on, in these proceedings.

6. Considered the respective submissions made by the parties and perused the record of the case.

7. Meticulous scrutiny of the evidence is not possible in these proceedings. In the proceedings under Section 482, Cr.P.C., it is to be seen whether on the basis of the allegations made in the complaint, a case of cognisable offence is made out or not and there is prima facie evidence in support of the allegations. In the present case, Chotey Lal Saroj in his complaint has not suppressed the factum of previous litigation but has clearly stated that he was on litigating terms with Chotey Lal petitioner who alongwith others, had come to him for settlement of the disputes and then they committed the alleged offence. The factum of previous litigation between the parties is not sufficient to establish mala fide. Enmity of previous litigation cuts both ways. On one hand, it may be a motive for commission of the offence while on the other hand, it may be a motive for false implication. The enmity how worked is to be seen after the evidence of the parties. Mere allegation of mala fide against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. In the instant case, allegations made in the complaint stands supported with the

statement given on oath by Chotey Lal Saroj under Section 200, Cr.P.C. and statement on oath by two witnesses namely Babu Lal and Nanhey Lal. The learned Court below has specifically held that prima facie case for summoning the accused for the alleged offence is made out. The statement of Nanhey Lal recorded under Section 202, Cr.P.C. contain the certificate of the Magistrate that it was recorded on his dictation in the Court, thus at this stage, it cannot be said that statement of Nanhey Lal was prepared on any blank paper containing his signature. The credibility of the contents of the said affidavit of Nanhey Lal is to be decided by the trial Court at an appropriate stage. Thus, at this stage, it cannot be said that complaint was filed due to mala fide or cognisable offence is not made out on the basis of the complaint's allegations. In these circumstances, the said ruling cited by the learned Counsel for the petitioner mentioned herein before is not helpful to them. There exists no ground to interfere in the matter in these proceedings. The petition deserves dismissal.

The petition under Section 482, Cr.P.C. is therefore dismissed in limine.