
(2010) 09 AHC CK 0011

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 756 of 2004

Chiddu @ Wahid Khan and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 17-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 200, 202, 203
Penal Code, 1860 (IPC) — Section 308, 323, 395, 504, 506

Citation : (2011) 3 ACR 3056

Hon'ble Judges : Yogendra Kumar Sangat, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Yogendra Kumar Sangat, J.—This is an application u/s 482, Cr. P.C. to quash the order dated 29.11.1996, passed by the learned Magistrate as contained in Annexure-4 and the order dated 21.1.2004, passed by learned revisional court as contained in Annexure-5 and also every proceedings arising out of these orders.

2. Heard Learned Counsel for the petitioners and learned Additional Government Advocate for the State and perused the record. No one appeared on behalf of the respondent No. 2, although a counter-affidavit on behalf of respondent No. 2 is available on the record and no rejoinder-affidavit has been filed by the petitioners against the same.

Matter was listed for hearing after publication of the notice in the cause list dated 28.8.2010 classified as in the list of cases likely to be infructuous. Name of the counsel for the respondent No. 2 Sri Awdhesh Kumar is printed in the list, but as earlier said, no one appeared on his behalf.

3. Undisputed facts are that on 11.10.1993 in front of the house of the respondent No. 2 in the morning an occurrence has taken place and both the parties of the case had given different versions that how the occurrence has

taken place. As per present case at about 6.30 a.m. when respondent No. 2 was at his house, petitioner No. 1 Chiddu alias Wahid Khan with his companion with an intention to "loot" forcibly entered into his house with deadly weapons and started abusing and threatening and "looted" household articles worth (Rs.) 2,000 and Jewelry worth (Rs.) 5,000 and also insulted ladies and children and threatened them. Under their fear, respondent No. 2 left his house to save his life. On raising alarm witnesses from the mohalla came there. It is further said that petitioners have obstructed the respondent No. 2 saying that if F.I.R. is lodged, they will manage to send him in jail. With the said reasons, the respondent No. 2 could not come to lodge the F.I.R. and only on 14.10.1993 he informed the Superintendent of Police, Gonda through telegram, but no F.I.R. was lodged. Application was sent to D.I.G. by registered post repeatedly for lodging the F.I.R. An application was also sent to I.G. and D.G.P. through registered post, but no heed was paid by the police personnel. Only then he moved application u/s 156 sub-clause (3), Cr. P.C. in the court of learned Magistrate, district Gonda. On the same, learned Magistrate passed the order directing the police personnel to register the case and to investigate in the matter. Case was registered at Crime No. 218/1995 u/s 395, I.P.C. and F.I.R. was lodged. Without doing any investigation in the matter and without recording the statement of the witness, final report was submitted by the police of P.S. concerned in the matter. When the same was reached at the Court of Magistrate, respondent No. 2 moved a protest petition with the prayer of re-investigation in the matter, but on the same, a complaint case was registered and after recording the statement of the complainant u/s 200. Cr. P.C. and his witness u/s 202. Cr. P.C. and hearing to the counsel for the complainant and also after going through the record, the learned Magistrate found that prima-facie case is made out and there are sufficient ground to summon the accused-persons and he ordered for summoning the accused-persons vide order dated 29.11.1995 for their trial for the offence u/s 395, I.P.C. A revision against the summoning order was filed in the court of learned Session Judge, but the same was dismissed by the learned Session Judge vide its order dated 21.1.2004 and the summoning order of the accused petitioners for their trial was confirmed. Aggrieved by these two orders, this petition u/s 482, Cr. P.C. has been filed. In this petition also vide order dated 26.10.2004 operation of the summoning order dated 29.11.1996 against the petitioners was stayed by this Court.

4. In cross version it was averred that on 11.10.1993 at about 7.00 a.m., petitioner No. 1 Chiddu alias Wahid Khan has gone to ease and when he was returning to his house and reached near the house of the respondent No. 2, the women of the family of the respondent No. 2 started abusing him and when they were objected respondent No. 2 and his two sons namely Arjun and Alakhram came out and started beating to petitioner No. 1 which attracted his brother namely Ramjan petitioner No. 3 and Yasin alias Cheen petitioner No. 5. Due to injuries suffered by the petitioner No. 1, he became unconscious. Report of the incident was lodged by the brothers of the petitioner No. 1 and Case Crime No.

338/1993 under Sections 323, 308, 504 and 506, I.P.C. was registered against" the respondent No. 2 and others. After investigation in the matter, charge-sheet was submitted by the police for their trial which resulted in conviction of the respondent No. 2 and his two sons in Session Trial No. 269/1996. State v. Mohi Prasad, vide order dated 16.3.2004, passed by learned Additional Session Judge, Court No. 4, Gonda.

5. Learned Additional Government Advocate stated that in counter-affidavit conviction in the case as above of respondent No. 2 and his two sons was not denied but it was averred that against the conviction order in the session trial, Criminal Appeal No. 696/2004 was filed and the same is pending before this Court and the respondent No. 2 and his two sons have already been enlarged on bail in the matter.

6. Learned Counsel for the petitioners have challenged the validity and propriety of the order passed by the two courts below on the ground that trial court and learned Session Judge have not seen that only to pressurize the applicants, respondent No. 2 managed to lodge the F.I.R. against them and learned Magistrate has without application of mind and without taking into consideration of the pendency of the session trial against the respondent No. 2 and other straightway summoned the applicants and learned Session Judge erroneously rejected the revision filed by the petitioners.

7. Learned Additional Government Advocate argued that at the most present case could be said a cross version of the case of the petitioners and under the provisions of law and in the interest of justice, it is necessary that the cross version should be seen by the Court and its correctness, legality and validity must be checked. It is also the established law that both the cases should be investigated and trial of both the cases should be concluded side by side by the one or same Court. But from the facts of this case, it was not possible as order for summoning the petitioners and accused in the present case were passed at later stage and operation of this order was stayed under the order of this Court in this petition. It is not stated on behalf of the petitioners that what is the material illegality, invalidity and improbability in the impugned orders passed by the two courts below.

8. Main emphasis was given by the Learned Counsel for the petitioners only on this point that accused persons were summoned to face the trial under Section. 395, I.P.C. which is exclusively triable by the Court of Session. Learned Counsel argued that it was the duty of the learned Magistrate as provided u/s 202, Cr. P.C. to call upon the complainant to produce all his witnesses and examined them on oath. In the present case only on the statement of the complainant and one witness Ramjan, learned Magistrate had passed the order of summoning the accused persons for the offence u/s 395. I.P.C. Learned Additional Government Advocate had drawn the attention of the Court on the law laid down in Pradeep v. State 2006 (2) JIC 483 : 2006 (2) ACR 1490 , where it was held that u/s 202, Cr. P.C. in Session triable cases all his witnesses means only those witnesses on

whom complainant based reliance. In the present case, if complainant examined himself and one witness Ramjan only and at this stage learned Magistrate found it sufficient for summoning the accused persons for their trial, no illegality, invalidity and improbability could be said in the order passed by the learned Magistrate which was confirmed by the learned Session Judge in revision also. In the present case, it is not disputed to the parties that some occurrence has taken place on the date of occurrence and place of occurrence is also almost not disputed which is in front and inside of the house of the respondent No. 2. It is correct that no explanation of injuries of the petitioner No. 1 is given in the complaint and in the statement recorded under Sections 200 and 202, Cr. P.C. and no injury report of the complainant etc. has been submitted on behalf of the prosecution and also details of looted property and jewellery is not given in the complaint, but learned Additional Government Advocate argued that this is primary stage of the case. Explanation is there on behalf of the respondent No. 2 that after the occurrence police authorities were informed by telegram and thereafter by applications to D.I.G. and I.G. and also S.P., Gonda and when the police authorities have not paid any heed only then application u/s 156(3), Cr. P.C. was moved. It is also not disputed that final report was submitted by the police in the matter but on the protest petition and the affidavit submitted on behalf of the respondent No. 2 alongwith petition, learned Magistrate on the protest petition has treated the case as complaint case and after recording the statement under Sections 200 and 202, Cr. P.C. passed the impugned order. It is established law that at the stage of summoning or non-summoning the accused persons for their trial in complaint case, the learned Magistrate has to see only the prima facie case and what evidence is adduced and stated in statement under Sections 200 and 202, Cr. P.C. is not to be scrutinized in such a way as evidence is scrutinized in the trial of the accused persons. In case of Nirmaljit Singh Hoon Vs. The State of West Bengal and Another, the Hon''ble Apex Court held that in seeing the sufficient ground for conviction even though the persons charged for an offence in the complaint might have a defence, the matter had to be left to be decided at the appropriate stage by the appropriate court and issue of process under Sections 203 and 204, Cr. P.C. could not be refused by the Magistrate unless he finds that evidence led before him is self-contradictory. In Khacheru Singh v. State 1982 Cr LJ 629. the Hon''ble Apex Court held that order of issuing the summon to the accused persons in complaint case, Session Judge set aside the summoning order and High Court confirms the order of Session Judge, the Hon''ble Apex Court held that if eventually Magistrate comes to the conclusion that no offence is made out against the accused, he himself can discharge or acquit the accused as the case may be and set aside the order of learned Session Judge as well as High Court.

9. From the perusal of the material on record and looking into the facts of the case, at this stage, it cannot be said that no offence is made out against the applicants-petitioners. All the submissions made at bar which relates to the disputed questions of fact which cannot be adjudicated upon by this Court in

proceedings u/s 482, Cr. P.C. It is correct that respondent No. 2 and his two sons were convicted by the competent court in the cross case but undisputedly appeal of the conviction order is pending before this Court and it is to be seen in the appeal after appreciation of the evidence whether conviction order is good or not. There may be defence of the accused-petitioners in the case but that cannot be seen at this stage in proceedings u/s 482, Cr. P.C.

10. In the facts and circumstances of the case, there is no merit in the present application u/s 482, Cr. P.C. Order passed by the learned Magistrate for summoning the accused-petitioners for their trial which was confirmed by the learned Session Judge in revision is not liable to be set aside. Accordingly, application u/s 482. Cr. P.C. is hereby dismissed.