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(2008) 10 AHC CK 0127

In the Allahabad High Court

Ganga Ram — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 24-10-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 173, 212, 239, 240
Penal Code, 1860 (IPC) — Section 336, 36, 504

Citation : (2009) CriLJ 1362

Hon'ble Judges : R.M. Chauhan, J

Bench : Single Bench

Judgement

R.M. Chauhan, J.—This revision has been filed by the complainant against Judgment and order dated 9th February 2007 passed by the learned Additional Sessions Judge, Court No. 2, Allahabad by which he has set aside the order dated 24th January 2007 passed by the learned Special Chief Judicial Magistrate, Allahabad in Complaint Case No. 2534 of 2005 (Ganga Ram v. Gyan Narain & others) under Sections 336, 504 and 506(2) IPC, Police Station Daraganj, Allahabad. The relevant facts giving rise to the present revision may be summarised as under:

2. The complainant Sri Ganga Ram S/o Shri Ram Lal R/o 986-A 1361 Laska Kuti, Daraganj, Police Station Daraganj, District Allahabad moved an application before the learned Additional Chief Judicial Magistrate-VIII, Allahabad (in short "the Magistrate") u/s 156(3) of the Code of Criminal Procedure (in short "the Code") against the accused S/Sri Gyan Narain Shivpur, Kandha, Govind, Vijai Kumar and Shatrughan for direction to the Station Officer, Daraganj, Allahabad to register and investigate the case. The complainant in his application has alleged that house No. 986/1360, Laska Kuti, adjacent to his house No. 986-A/1360 Laska Kuti, was lying vacant and none was owner of the house. Accused Shatrughan S/o Gopali Nishad, who is a man of criminal nature, was in unauthorised occupation of this house (986/1360 Laska Kuti). Accused Gyan Narain, Kandha, Govind, Vijai Kumar and Shatrughan had no concern with this house. But accused Gyan Narain, pretending himself to be the owner in possession of House No. 986/1360

Laska Kutir, executed an agreement to sell the house in favour of the accused Kandha and Govind, while he was neither the owner nor in possession of the house. The agreement was forged and fake one. The accused, Gyan Narain in the deed of agreement to sell wrongly included a portion of his house No. 986-A/1361 Laska Kuti. On the basis of the forged deed they were adamant to grab the portion of his house, which was included in the forged deed of agreement. The accused, who are men of criminal nature, want to dispossess him forcibly from the portion of his house wrongly included in the deed of agreement. They use to flow dirty water towards his house and throw garbage etc., causing nuisance. When he objects them, they use to abuse and threat him with dire consequences so that he may leave his house. The accused usually pelt pebbles towards his house. The accused are in search to abduct his only son Sri Bhola Nath, who is an employee in Cheoki Depot, Allahabad. They are also threatening to kidnap his two grand sons namely, S/Sri Ramesh and Mahesh. They also threatened that they will cause their death after abduction.

3. The learned Magistrate allowed the application filed by the complainant and directed the S.O. of Police Station Daraganj to register and investigate the case. The Police after investigation of the case submitted final report in the matter. The complainant filed a protest petition before the learned Magistrate against the Final Report submitted by the Investigating Officer) and prayed for summoning the accused. The learned Magistrate on the basis of the evidence collected by the Investigating Officer found that prima facie offences under Sections 336, 504 and 506(2) IPC were being made out against the accused. Consequently, he allowed the protest petition filed by the complainant and summoned the accused for the aforesaid offences vide order dated 23rd January 2002.

4. The accused challenged the summoning order passed by the learned Magistrate through Writ Petition No. 3287 of 2002 before this Court, which was dismissed by the Court in default of the petitioners. Thereafter, they put in their appearance before the learned Magistrate where the case, was transferred) and moved an application to discharge them. The learned Magistrate rejected their application vide order dated 17th July 2006. The accused, thereafter, challenged the order dated 17th July 2006 passed by the learned Magistrate in Criminal Revision No. 544 of 2006 before the learned Sessions Judge, Allahabad. The revision was allowed by the Additional Sessions Judge/Fast Track Court No. 20, Allahabad vide order dated 11th October 2006. The revisional court directed the learned Magistrate to consider the evidence available on the Case Diary and thereafter pass a fresh order, according to law.

5. The complainant challenged the Judgment and order passed by the revisional court by filing Criminal Revision No. 6704 of 2006 before this Court, which was finally disposed of vide order dated 21st December 2006 with the directions to the learned Magistrate to pass a fresh order after considering the materials available on the Case Diary and thereafter to pass order of discharge or for framing of the charge/s, as the case may be. The Court had further directed to

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pass such an order within a period of one month from the date of receipt of a copy of the order. The order passed by this Court is being extracted below:

Heard learned Counsel for the applicant and the learned AGA.

The revisionist is aggrieved by an order dated passed by lower revisional court by which the lower revisional court has allowed the revision of the accused and remanded the matter back to the trial court for reconsideration of the discharge application of the accused person. Since, it is the matter of remand and the complainant as well as the accused has got all rights under the law, I am not inclined the exercise of my power u/s 397 Cr.P.C. in such a view.

However, the trial court is directed not to be influenced by any observation made by the lower revisional court in Criminal revision No. 544 of 2006 (Kanha v. State of U.P.). It is expected that the trial Magistrate will look into the material contained in the case diary and if the prima facie offence is made out, he will frame charge charges against the accused. The trial court is further directed to decide the question of discharge within one month from the date of production of certified copy of this order before it and in any case he will decide the trial within a period of five months thereafter.

With the aforesaid directions, the revision is finally disposed off.

Sd/ 21.12.2006

6. In compliance of the order of this Court, the learned Magistrate considered the matter afresh. He after hearing prosecution and accused as well as after considering the materials available on the Case Diary found that there was prima facie evidence on the case diary to presume that the accused had committed offence under Sections 36, 504 and 506(2) IPC. Consequently, the learned Magistrate vide order dated 24th January 2007 directed that the charges would be framed against the accused accordingly.

7. The accused being aggrieved by the aforesaid impugned order filed a revision before the Sessions Judge, Allahabad which was disposed of by the Additional Sessions Judge, Court No. 2, Allahabad vide Judgment and order dated 9th February 2007. The learned Additional Sessions Judge allowed the revision on the ground that only the complainant had supported the prosecution case and the rest of the witnesses, namely Ghanshyam, Dularey, Umesh, Balkishan Tiwari did not support the allegations made by the complainant that accused wanted to occupy his house forcibly and that they used to throw dirty water and garbage etc., towards his house. They also denied the allegation that the accused used to threat the complainant as well as his family members to eliminate them. The complainant has not mentioned any specific date, time and place of occurrence whereas Section 212(1) of the Code requires that date time and place of occurrence must be mentioned in the charge. Since the complainant has not specifically mentioned the date, time and place of occurrence, therefore, it will not be possible to frame charge/s against the accused. The allegations of the

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complainant regarding pelting pebbles, using filthy words and threats are not specific, consequently, it will not be possible to frame charge/s against the accused on the basis of the statement of the complainant Sri Ganga Ram and other documents available on the Case Diary. Consequently, the learned Additional Sessions Judge by the impugned Judgment and order allowed the revision and quashed the order passed by the learned Magistrate dated 24th January 2007 in Complaint Case No. 3287 of 2002 new 2534 of 2005; Ganga Ram v. Gyan Narain and Ors. Feeling aggrieved by the impugned Judgment and order passed by the learned Additional Sessions Judge, the complainant has filed the present revision before this Court.

8. The accused opposite party Nos. 2 to 5 did not turn up to oppose the revision despite sufficient service of notice.

9. Heard the learned Counsel for the revisionist and the learned AGA appearing for opposite party No. 1.

10. The learned Counsel for the revisionist argued that in view of the directions passed by this Court in Criminal Misc. Writ Petition No. 6704 of 2006, the learned Magistrate heard the prosecution and the accused and considered the materials available on the case diary. The learned Magistrate on the basis of the materials available on the Case Diary found that there was prima facie evidence against the accused to presume that they had committed aforesaid offence, consequently, he by order dated 24th January 2007 directed that the accused would be charged accordingly.

11. The learned Counsel for the revisionist further argued that the Magistrate relied upon the principles of law laid down by the Apex Court in the case of Shanti Lal Panchal v. Prithvi Raj 1991 CriLJ 214 and Orrissa High Court in the case of State Bank of India, Balangir Branch Vs. Satyanarayan Sarangi and Another, wherein it was held that it was not necessary fot the learned Magistrate to give detailed reasons for framing charge. It was only required that if there was sufficient materials on record to presume that there was prima facie evidence in support of the offence/s, alleged to have been committed by the accused, the Magistrate could order for framing the charge/s. In this case, although, the learned Magistrate has not given detailed reasons and the evidence on the basis of which he has reached to the conclusion that there is prima facie evidence in support of the aforesaid offences against the accused but such detailed reasons are not required u/s 240 of the Code for framing charge/s against the accused. On the other hand, if the learned Magistrate has to discharge the accused, he is required to give reasons in view of the provision u/s 239 of the Code. The impugned order, therefore, passed by the learned Magistrate did not suffer from any illegality or propriety.

12. The learned Counsel further argued that in the instant case, learned Additional Sessions Judge was expected only to consider the Regality/propriety or correctness of the order passed by the learned Magistrate, as required u/s

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397(1) of the Code. The learned Additional Sessions Judge was not required to make meticulous comments on the evidence collected by the Investigating Officer available on the case diary. He has considered the evidence collected by the Investigating Officer on merits, which was not required at this stage. He has allowed the revision mainly on the ground that there is no specific allegation of the complainant regarding the date, time and place of the occurrence, therefore, no charge can be framed against the accused unless specific date, time and place of occurrence is mentioned, as required u/s 212(1) of the Code.

13. The learned Counsel argued that although Section 212(1)) of the Code requires the date, time and place of occurrence have to be mentioned in the charge/s but it is not mandatory, if the accused is not going to be prejudiced by the charge/s without specific date, time and place of occurrence to be mentioned in the charge. In such a situation, there will be no illegality in framing the charge/s. In fact the learned Additional Sessions Judge by making meticulous comments on the materials collected by the Investigating Officer for framing of the charge against the accused has committed illegality. The impugned order is, therefore, bad in law and is liable to be set aside.

14. The learned Counsel for the revisionist further submitted that the learned Additional Sessions has allowed the revision and set aside the order passed by the learned Magistrate but he has not passed any consequential order i.e., whether the accused have been discharged or the case has been remanded back by him to the learned Magistrate for re-consideration to discharge the accused. The impugned order is, therefore, illegal on this ground too and is, therefore, liable to be set aside.

15. I agree with the arguments advanced by the learned Counsel for the revisionist. The Apex Court in the case of Kanti Bhadra Shah and Another Vs. The State of West Bengal, has considered in detail as to how the charge/s will be framed against the accused as well as how he can be discharged. The relevant observation of the Hon''ble Supreme Court and the principle of law laid down therein is being extracted below:

8. We wish to point out that if the trial Court decides to frame a charge there is no legal requirement that he should pass an order specifying the reasons as to why he opts to do so Framing of charge itself is prima facie order that the trial Judge has formed the opinion, upon considering the police report, and other documents and after hearing both sides, that there is ground for presuming that the accused has committed the offence concerned. Chapter XIX deals with provisions for trial of warrant cases instituted on police report. Section 239 reads thus:

239. When accused shall be discharged.- (1) If, upon considering the police report and the documents sent with it u/s 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate

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considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

9.The said Section shows that the Magistrate is obliged to record his reasons if he decides to discharge the accused. The next Section (Section 240) reads thus:

240. Framing of charge.- (1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

10. It is pertinent to note that this Section required a Magistrate to record his reasons for discharging the accused but there is no such requirement if he forms the opinion that there is ground for presuming that the accused had committed the offence which he is competent to try. In such a situation he is only required to frame a charge in writing against the accused.

Even in cases instituted otherwise than on police report the Magistrate is required to write an order showing the reasons only if he is to discharge the accused....

In view of the aforesaid principles of law laid down by the Apex Court, it is clear that when the Magistrate, on the basis of the materials available on the Case Diary, decides to frame charge/s against the accused, he is not required to record the reason. But in reverse case i.e., when he opts to discharge the accused, he has to accord his reasons.

16. In this case, from a perusal of the impugned order passed by the learned Magistrate, it appears that learned Magistrate has considered in detail the materials available on the Case Diary to frame the charge/s against the accused. The learned Magistrate has passed the impugned order not in a mechanical way but after applying his mind on the materials available on the Case Diary and has drawn the conclusion that there is prima facie evidence in support of the aforesaid offences against the accused and so they will be charged accordingly. The learned Additional Sessions Judge has set aside the impugned order passed by the learned Magistrate mainly on the ground that he has not properly considered the evidence available on the Case Diary. Furthermore, the statement of the complainant regarding the allegations made in the complaint are vague in nature. He has not specifically mentioned the date, time and place of occurrence. In fact the learned Additional Sessions Judge has made a meticulous comments of the evidence and other materials available on the Case Diary at the stage of framing of the charge, which was not required at this stage.

17. As per legal requirements the learned Magistrate was expected only to go through the Case Diary at the time of framing the charge against the accused

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and after a perusal of the Case Diary, if he found that there was prima facie evidence in support of the alleged offences, he could order to frame the charge/s against the accused. In this case, the learned Magistrate after considering the materials available on the Case Diary and after hearing the prosecution and the accused, found prima facie evidence for framing charges against the accused for the aforesaid offences and thus he passed the impugned order for framing the charge against him. The learned Additional Sessions Judge was expected to consider the question of (sic)/propriety or correctness of the impugned order passed by the Magistrate. He was not expected to consider the evidence available on Case Diary and make meticulous comments. But he has considered the evidence available on the Case Diary on merit as if he was hearing the appeal. The impugned order passed by the learned Additional Sessions Judge is, therefore, illegal and is liable to be set aside.

18. The aforesaid order passed by the learned Magistrate, in my opinion, did not suffer from any any illegality or (sic) propriety, which did not call for any interference.

19. At this state it will be pertinent to mention here that the learned Additional Sessions Judge, while allowing the revision, did not pass any consequential order as to whether the accused stood discharged or the case was remanded back to the learned Magistrate for consideration afresh to discharge the accused in view of the observations made (sic) him in the judgement. The impugned order passed by the learned Additional Sessions Judge, in my opinion, appears to be illegal on this ground too.

20. For the reasons mentioned above, the impugned order passed by the learned Sessions Judge is illegal and is liable to set aside and the revisions deserves to succeed.

21. Therefore, the revision is allowed and order dated 9th February 2007 passed by the learned Additional Sessions Judge, Court No. 2, Allahabad in Criminal Revision No. 544 of 2007 (Kanha alias Kanhai and Ors. v. State of U.P. and Anr.) is set aside.

The leaned Magistrate will proceed with the case according to law and dispose of the case expeditiously.

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