
(2015) 07 AHC CK 0181

In the Allahabad High Court

Case No : Criminal Revision Defective No. 374 of 2005

Gaurang Sarkar and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 202, 204(1)
Penal Code, 1860 (IPC) — Section 307, 323, 392, 504, 506

Citation : (2015) 3 ACR 3532 : (2015) 8 ADJ 86 : (2015) 90 ALLCC 783

Hon'ble Judges : Pramod Kumar Srivastava, J

Bench : Single Bench

Advocate : A.R. Dubey, for the Appellant

Judgement

Pramod Kumar Srivastava, J—Heard learned Counsel for the revisionist and learned AGA and perused records. This revision has been filed against the order dated 14.1.2005 passed by Addl. Chief Judicial Magistrate, Court No. -1, Pilibhit in criminal Misc. case No. 875M/2004 Shubhankar Mandal v. Gaurang Sarkar and others, P.S. Madho Tanda, Pilibhit by which final report in case crime No. 429/2004, sections 307, 323, 504, 506 and 392 IPC was rejected after accepting protest petition and cognizance for offences under sections 323, 504, 506 and 392 IPC was taken and accused (revisionists) were summoned for trial.

2. After allowing application under section 156(3) Cr.P.C. of the complainant Shubhankar Mandal, case crime No. 429/2004 sections 307, 323, 504, 506 and 392 IPC was registered, in which after investigation final report was submitted in the Court. After receiving notice of final report complainant had file protest petition alongwith affidavits of the witnesses. Then learned Magistrate had passed impugned order dated 14.1.2005 rejected the final report and summoned the accused-revisionist for trial. Aggrieved by this impugned order summoned accused persons had preferred present revision with prayer to quash the summoning order.

3. In ruling "M/s. Pepsi Food Ltd. and another v. Special Judicial Magistrate and

others 1998 UP CrR 118," Hon"ble Supreme Court held:--

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning the accused. Magistrate had to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

4. In ruling " Paul George Vs. State, AIR 2002 SC 657 : (2002) CriLJ 996 : (2002) 1 Crimes 263 : (2002) 1 JT 225 : (2002) 1 SCALE 285 : (2002) 2 SCC 406 : (2002) 1 SCR 370 : (2002) AIRSCW 266 : (2002) 1 Supreme 224 ," Hon"ble Supreme Court held :--

"We feel that whatever be the outcome of the pleas raised by the appellant on merit, the order disposing of the matter must indicate application of mind to the case and some reasons be assigned for negating or accepting such pleas.....

It is true that it may depend upon the nature of the matter which is being dealt with by the Court and the nature of the jurisdiction being exercised as to in what manner the reasons may be recorded e.g. in an order of affirmance detailed reasons or discussion may not be necessary but some brief indication by the application of mind may be traceable to affirm an order would certainly be required. Mere ritual of repeating the words or language used in the provisions, saying that no illegality, impropriety or jurisdictional error is found in the judgment under challenge without even a whisper, of the merits of the matter or nature of pleas raised does not meet the requirement of decision of a case judicially."

5. In ruling Smt. Chhaya William and Others Vs. State of U.P. and Another, (2004) 1 ACR 796 ," this Court held:--

"I have carefully gone through the law laid down by Hon"ble Apex Court. No doubt on one hand the enquiry conducted under section 202 Cr.P.C. does not need to be detailed enquiry or scrutiny of evidence to that extent which is required for the purposes of the trial or conviction, but at the same time, the Court has not to sit as a silent spectator. It must apply its mind while passing order for the issue of summonses under section 204(1) of the Code of Criminal Procedure."

6. As held by the Courts the passing of order of summoning any person as accused is a very important matter, which initiates criminal proceeding against him. Such orders cannot be passed summarily or without applying judicial mind.

7. In light of this legal position I have gone through the impugned order. A perusal of this order indicates that learned Magistrate had written nothing concerning facts of the case in hand. Neither any discussion of evidence was made, nor was it considered as to which accused had allegedly committed what overt act. The accused persons of complaint under section 156(3) Cr.P.C. were summoned for offences mentioned in that application. I doubt whether the learned Magistrate had actually read affidavits of complainant and his witnesses or the documents of the original file or not. Learned Magistrate had only written that protest petition and affidavits of complainant and witnesses support the prosecution case. No reason was mentioned in the impugned order as to what those documents contain, and how they help the prosecution case. Reasons for rejection of final report or findings of investigating officer were not mentioned. Impugned order clearly lacks the reflection of application of judicial discretion or mind. Nothing is there which may show that learned Magistrate, before passing of the order under challenge had considered facts of the case and evidence or law. Therefore it appears that, in fact, no judicial mind was applied before the passing of impugned order of summoning. Such order cannot be accepted as a proper legal judicial order passed after following due procedure of law. Therefore impugned order is quashed. Revision, accordingly, succeeds. Interim order passed in this matter is vacated. The case is remanded back to Trial Court with direction to afford complainant the opportunity of hearing and pass afresh the reasoned and speaking order for disposal of protest petition and final report in light of points discussed in the body of judgment.