
(2007) 08 AHC CK 0085
In the Allahabad High Court

Ghanshyam Singh

APPELLANT

Vs

State of U.P., Ashok Kumar Shukla Representative, Mahendra
and Mahindra Financial Ltd., Balvinder Singh, Mahindra and
Mahindra Financial Ltd. and Preetam Pal Singh

RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 203, 204

Citation : (2007) 08 AHC CK 0085

Hon'ble Judges : Vijay Kumar Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vijay Kumar Verma, J.—Challenge in this Revision is to the order dated 07.07.2006 passed by the Chief Judicial Magistrate, Basti in Criminal Case No. 140 of 2005 Ghanshyam Singh v. Ashok Kumar and Ors. By the impugned order, the complaint filed by the revisionist Ghanshyam Singh against (1) Ashok Kumar Shukla; (2) Balwinder Singh; (3) Preetam Pal Singh (opposite parties 2 to 4 herein) has been dismissed u/s 203 Cr.P.C.

2. Heard Sri Ali Hassan, learned Counsel for the revisionist and learned A.G.A. for the State and perused the record of Criminal Case No. 140 of 2005 carefully. Since, no adverse order has been passed against the opposite parties No. 2 to 4, hence, notices have not been got served on them, because they have no locus standi to contest the revision.

3. The facts leading to the filing of this revision, in brief, are that a complaint was filed by the complainant Ghanshyam Singh on 12.01.2005 in the Court of Chief Judicial Magistrate, Basti against opposite party No. 2 to 4, which was registered as criminal case No. 140 of 2005. It was; alleged in the complaint that when the complainant was going to get the bank draft prepared for Rs. 20,000/- in the Branch of Union Bank near Pandey School, Basti by Jeep No. U.P. 51C-9402 on 31.12.2002 and reached at roadways tiraha at about 1.00 p.m., one Virendra

Pandey @ Manu got the Jeep halted. At that time Baij Nath Gupta resident of Gandhi Nagar was also going with the complainant. When after getting down from Jeep, they were talking and chewing beetle on road side, Ashok Kumar Shukla, who was generally seen in the showroom of Sardar Motors, came on motorcycle with some person and seeing the complainant and his companions, he sat in the Jeep and after starting it, fled away carrying jeep in fast speed. It is further alleged that Rs. 20,000/- were kept in the dickey of jeep. Statement of the complainant u/s 200 Cr.P.C. was recorded on 30.07.2005 and thereafter enquiry u/s 202 Cr.P.C. was made, during which, statements of Inderdev Singh and Baij Nath Prasad were recorded as P.W. 1 and P.W. 2 respectively. After hearing the counsel of complainant, the learned Chief Judicial Magistrate, Basti vide impugned order dismissed the complaint holding that grounds to summon the accused persons are not sufficient. Being aggrieved, the complainant has come to this Court in this Revision.

4. It was contended by the learned Counsel for the revisionist that the learned C.J.M. has committed gross illegality in making detailed assessment of the evidence and dismissing the complaint on the basis of minor contradictions in the statements of witnesses. Next submission made by learned Counsel for the revisionist was that at the stage of Section 203 Cr.P.C. only prima facie case to proceed against the accused is to be seen and the evidence led by the complainant is not to be assessed with a view point of conviction.

5. Having given my thoughtful consideration to the aforesaid submissions made by the learned Counsel for the revisionist and after going through the record of Criminal Case No. 140 of 2005 Ghanshyam Singh v. Ashok Kumar and Ors., I agree with the learned Counsel for the revisionist that learned Chief Judicial Magistrate has committed gross illegality in dismissing the complaint.

6. It is settled legal position that at the stage of passing order u/s 203 or 204 Cr.P.C. only prima facie case has to be seen and not whether the evidence as adduced is to result in conviction of the accused persons. In the case of Nirmaljit Singh Hoon v. State of West Bengal and Anr. (10) 1973 ACC 181 , while considering the scheme of Sections 200, 203 Cr.P.C. it has been held by Hon''ble Apex Court that the Section does not say that a regular trial of adjudging truth or otherwise of the person complained against should take place at that stage, for, such a person can be called upon to answer the accusation made against him only when a process has been issued and he is on trial. Section 203 consists of two parts. The first part lays down the materials which the Magistrate must consider, and the second part says that if after considering those materials there is in his Judgment no sufficient ground for proceeding, he may dismiss the complaint.

7. In the case of Chandra Deo Singh Vs. Prokash Chandra Bose and Another, , the Hon''ble Supreme Court held that at the stage of enquiry u/s 202 Cr.P.C. the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction. Again in the case of Smt. Nagawwa v.

Veeranna Shivalingappa Konjalgi and ors. (13) 1976 ACC 225 (SC), while considering the scope of enquiry u/s 202 Cr.P.C. Hon''ble Supreme Court has held that it is extremely limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint (a) on the materials placed by the complainant before the Court; (b) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; (c) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In that case, it has been held also by way of illustration that the order of Magistrate issuing process can be quashed 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.

8. In the case of S.W. Palanitkar and Ors. v. State of Bihar and Anr. (44) 2002 ACC 168, the Hon''ble Supreme Court has held that at the stage of Sections 200 and 203 Cr.P.C. searching sufficient ground to convict is not necessary.

9. In view of the legal position herein-above mentioned, it is clear that alter the inquiry as contemplated under Sections 200 and 202 Cr.P.C. if the Magistrate is satisfied that there is sufficient evidence to proceed against the accused, he may issue summon or warrant as the case may be and at that stage the Court is not required to evaluate the evidence as if it was finally deciding the case. In the instant case, the learned Chief Judicial Magistrate, Basti after referring to some contradictions in the statements of witnesses has dismissed the complaint holding that grounds to summon the accused persons are not sufficient. This view of the learned Chief Judicial Magistrate is wholly erroneous, because on the basis of the statements of the complainant Ghanshyam Singh recorded u/s 200 Cr.P.C. and statement of witness Baij Nath Prasad, who is named in the complaint, prima facie case to proceed at least against the accused Ashok Kumar Shukla is made out, because on the basis of the statements of these witnesses, it is prima facie established that Ashok Kumar Shukla after starting complainant''s Jeep No. U.P. 51C-9402, carried the same on 31.12.2002. So far as the accused Balwant Singh and Preetam Pal Singh are concerned, neither the complainant in his statement recorded u/s 200 Cr.P.C. nor the witness Baij Nath Prasad in his statement u/s 202 Cr.P.C. has said that the accused Ashok Kumar Shukla was acting as agent of these accused. P.W. 1 Indra Dev Singh also has not stated that Ashok Kumar Shukla was the agent of Balwinder Singh and Preetam Pal Singh. Hence, on this ground, although dismissal of complaint against above named two accused was proper, but dismissing the complaint against Ashok Kumar Shukla also was not at all justified and legal.

10. Consequently, the revision is hereby allowed. The impugned order dated 07.07.2006 is set-aside. The learned Chief Judicial Magistrate, Basti is directed to pass fresh order in Criminal Case No. 140 of 2005 keeping in view the observations made in the body of this judgement.

11. The office is directed to return lower Court record expeditiously along with a copy of this judgement.