

(2014) 11 AHC CK 0209

In the Allahabad High Court

Case No : Criminal Misc. Case No. 5523 of 2013

Gokaran Lal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 192, 200, 202, 202(1) — Penal Code, 1860 (IPC) - Section 307, 323, 325, 34, 380 — Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 176, 19

Citation : (2015) 2 ACR 2299 : (2015) 89 ALLCC 74

Hon'ble Judges : Vishnu Chandra Gupta, J.

Bench : Single Bench

Advocate : Paresh Mishra, for the Appellant; Pradeep Saxena, for the Respondent

Final Decision : Allowed

Judgement

Vishnu Chandra Gupta, J. By means of this petition under section 482, Cr.P.C., the petitioners have prayed for quashing of the summoning order dated 16.2.2013 passed by Special Chief Judicial Magistrate (Custom), Lucknow in Criminal Complaint No. 2137 of 2011 (Ram Nivas Bhatiya v. Gokaran Lal and others), under sections 323, 504 and 452 IPC, Police Station Qaisarbagh, District Lucknow and the consequential proceedings initiated in pursuance of the aforesaid order against the petitioners. Brief facts for deciding this petition are that Ram Nivas Bhatiya, who is the nephew of petitioner No. 1 Gokaran Lal filed a complaint (Annexure No. 2 to the petition) against the petitioners alleging therein that complainant is doing a job of fabricator and also work in Electricity Department and resides at Lal Kuwan, Lucknow. The accused petitioners are his relatives. They came to Lucknow on 25.4.2011 and told the complainant that they came here for talks of marriage and requested to provide stay in his house. The opposite party No. 2 Ram Nivas Bhatiya permitted them to stay. On 26.4.2011, the complainant opposite party No. 2, went for his work. His wife was engaged in the domestic work. The complainant came at home at about 2:00

P.M. and saw that the accused persons are preparing to go after arranging their language. When, he went to take a file of the documents of land from Almirah, the file was not there. He asked about the file to the accused persons, they all denied to take the file. The O.P. No. 2 was of the view that nobody came in the house except the accused persons/petitioners. He asked them to stop and to permit him to search their language. The accused persons became annoyed and again entered in the house and hold the collar of the complainant and abused in filthy language. They also assaulted him with kick and fists and a stick. When his wife came to rescue him, they pulled her. His employee Mukesh is also came to save him but the accused persons were also kicked him out. During this scuffle, the accused persons snatched the chain of the complainant having minimum weight of 10 gms and also snatched Rs. 765/- forcibly kept in the upper pocket. When the complainant raising alarm, the accused persons managed to escape from there.

2. The complainant along with several other persons went in search of the accused persons but they could not be found. Thereafter, the complainant went to Balrampur Hospital where he got him medically examined. It was also alleged in the complaint that at the time of running away from the spot, the accused persons also threatened to life. The police did not register the FIR, so he moved an application by registered post to DG Police for registering the FIR. When, the police did not take action against the accused persons after long time, the aforesaid complaint being Criminal Complaint No. 2137 of 2011, under sections 380, 394, 452, 323, 504 and 506 IPC has been filed by the complainant.

3. After filing of the aforesaid complaint, the statement of Ram Nivas Bhatiya was recorded under section 200, Cr.P.C. and the statements of Mukesh and his wife was recorded under section 202Cr.P.C. The complainant opposite party No. 2 also filed his injury report. Learned Magistrate after considering the material available on record summoned only Gokaran Lal and Shailendra Singh @ Kallu under section 323 and 504 IPC vide its order dated 24.9.2011.

4. Aggrieved by the order dated 24.9.2011, the opposite party No. 2/complainant filed Criminal Revision No. 370 of 2011 before learned Additional Sessions Judge, Court No. 7, Lucknow. The learned Additional Sessions Judge vide order dated 17.4.2012 allowed the revision and set aside the order dated 24.9.2011. While allowing the revision, the record of the complaint was sent back to the learned Magistrate with a direction to pass fresh order after re-evaluating the evidence and facts in the light of the observation made in the judgment after giving opportunity of being heard to the parties.

5. Learned Magistrate after hearing the parties in pursuance of directions of Revisional Court passed the impugned order dated 16.2.2013 summoning all the accused persons to face trial under sections 452, 325 and 504 IPC keeping in view the law laid down by Allahabad High Court in the case of Ram Chandra Chaturvedi and others v. State of U.P., 1996 (33) ACC 5 (Sum.) : 1995 (2) JIC 1890 (HC) and by the Apex Court in the case of Rashmi Kumar (Smt) Vs. Mahesh

Kumar Bhada, and summoned.

6. I have heard Sri Paresh Mishra, learned Counsel for the petitioners, Sri Pradeep Saxena, learned Counsel for the opposite party No. 2. and learned A.G.A. for the State.

7. It has been contended by learned Counsel for the petitioners that this complaint has been filed with mala-fide intention only to harass the petitioners and to settle the disputes of previous litigation in respect of the properties in between petitioner No. 1 Gokaran Lal and opposite party No. 2. It has been further submitted that petitioners No. 2, 3 and 4 are the sons of petitioner No. 1 Gokaran Lal and petitioner No. 5 Jitendra Kumar is the nephew of petitioner No. 1 Gokaran Lal. Petitioner No. 6 Satyaveer is the maternal uncle of petitioners No. 2, 3 and 4. The petitioners No. 1 to 5 are resident of District Bareilly and petitioner No. 6 resides at Shahjahanpur and as such they are residing beyond the territorial limits of jurisdiction of learned Magistrate who took cognizance and summoned the petitioners. The learned Magistrate totally ignored the amended provisions of section 202, Cr.P.C. which are mandatory in nature to be complied with by him while forming opinion to summon the accused persons residing beyond the territorial jurisdiction of that particular Magistrate.

8. In support of his argument, learned Counsel for the petitioners relied upon the judgment of the Apex Court in the case of National Bank of Oman Vs. Barakara Abdul Aziz and Another, and submitted that the impugned order is illegal and is liable to be set aside.

9. He further submitted that the story set up by opposite party No. 2 in his complaint is most improbable and is not believable and even a prudent man cannot believe the truthfulness of the story. Earlier to this complaint, the petitioners Gokaran Lal, Satyaveer and Shailendra Singh were involved by opposite party No. 2 in a criminal case registered under section 307 read with section 34 IPC but the accused persons were acquitted in the month of October, 2011 from the charges in ST No. 500 of 1996 (State v. Satyaveer and others). Before institution of this criminal case, the opposite party No. 2 also filed a partition Case No. 199 of 2012 (Annexure-8 to this petition), under section 176 of U.P.Z.A. & L.R. Act at Bareilly against Gokaran Lal, Akhilesh Kumar and Jitendra Kumar, which is still pending. Mukesh, who is shown to be the employee of opposite party No. 2, is virtually the real brother of the wife of opposite party No. 2. He does not reside in the same house nor near the house of the opposite party No. 2 where the incident alleged to have been taken place. He resides at very distinct place in Lucknow as is evident from the complaint itself and the address given by Mukesh in his statement recorded under section 202, Cr.P.C. No independent witness has been produced by the opposite party No. 2 in support of allegations contained in complaint though the incident is said to have been occurred in broad day light and in densely populated area of old City Lucknow. It has further been contended that the allegations of snatching of chain and money are also unbelievable and so far as the injury report is concerned, the injuries are

superficial in nature and they were either fabricated or self-inflicted.

10. In the counter affidavit filed by opposite party No. 2, the relationship amongst the petitioners and the opposite party No. 2 has not been denied. The criminal prosecution of petitioners in S.T. No. 500 of 1996, acquittal in the said criminal prosecution and the pendency of the proceedings under section 176 of U.P.Z.A. & L.R. Act have also not been denied. However, no specific reply has been given regarding the relationship of Mukesh and the opposite party No. 2 and simply stated in this regard that the allegations contained in the petition are not correct.

11. Learned Counsel for the petitioners on the strength of the authority rendered by Hon''ble Supreme Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, submitted that this case falls in seventh category of Bhajan Lal's case supra and, therefore, the entire proceedings are an abuse of the process of Court. The entire family has been roped in with mala fide intention by concocting a false story and getting it supported from near and dear.

12. It has been further contended by learned Counsel for the petitioners that even at the time of summoning the petitioners under sections 452, 325 and 504 IPC, the material part of the story has been disbelieved by the learned Magistrate with regard to snatching of chain and money and extending threats by not summoning the petitioners in other sections. On these grounds the interference in this matter is warranted under section 482, Cr.P.C. and this Court must have exercised its powers to quash the entire proceedings of aforesaid complaint against the petitioners.

13. Learned Counsel appearing for the opposite party No. 2 vehemently opposed the submissions of learned Counsel for the petitioners relying upon the judgment of Ramesh Chandra Chaturvedi's case (supra) and submitted that in proceedings under section 482, Cr.P.C., the complaint cannot be quashed because at the stage of taking cognizance, it cannot be taken into consideration whether the allegations are false or injury report is fabricated. The assessment could be made on the facts and the evidence adduced during trial. Learned Counsel further relying upon another judgment of the Apex Court in the case of Fiona Shrikhande Vs. State of Maharashtra and Another, submitted that the scope of inquiry under sections 200 and 202 Cr.P.C. is only to see the sufficiency of grounds for proceeding in a complaint and the learned Magistrate has to arrive at a prima facie satisfaction that as to whether there are grounds to proceed with the complaint as whole without adverting to the defence of the accused and without going into the merits of the case. The learned Magistrate has to examine prima facie case, inherent probability of the allegations made in the complaint and to satisfy that prima facie ingredients of alleged offences are made out from the complaint. While issuing the process against the accused persons, once the learned Magistrate exercised his discretion by affirming opinion regarding existence of the grounds of proceedings, higher Court could not substitute his own discretion and, therefore, this petition deserves to be dismissed.

14. The Hon''ble Supreme Court in National Bank of Oman Vs. Barakara Abdul Aziz and Another, at page 492 observed as follows:

"9. The duty of a Magistrate receiving a complaint is set out in section 202 Cr.P.C. and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal Court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under section 202 Cr.P.C. is different from the investigation contemplated in section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under section 202 Cr.P.C. is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

- (i) on the materials placed by the complainant before the Court;
- (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and
- (iii) for deciding the question purely from the point of view of the complainant without at all advert to any defence that the accused may have.

10. Section 202 Cr.P.C. was amended by the Code of Criminal Procedure (Amendment) Act, 2005 and the following words were inserted:

"and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,"

The notes on clauses for the above mentioned amendment read as follows:

"False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend Sub-section (1) of section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused."

The amendment has come into force w.e.f. 23.6.2006 vide Notification No. S.O. 923(E) dated 21.6.2006.

We are of the view that the High Court has correctly held that the above mentioned amendment was not noticed by the CJM, Ahmednagar. The CJM had failed to carry out any enquiry or order investigation as contemplated under the amended section 202 Cr.P.C. Since it is an admitted fact that the accused is residing outside the jurisdiction of the CJM, Ahmednagar, we find no error in the view taken by the High Court."

15. The question for consideration before this Court is;

While discharging its obligation under this mandatory provision Court how to act?

16. The provisions of section 202(1) are quoted herein below;

"202. Postponement of issue of process-(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit,*[and shall in case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding;

Provided that no such direction for investigation shall be made-

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by Court of Sessions; or

(b) where the complainant has not been made by a Court, unless the complainant and witnesses present (if any) have been examined on oath under section 200."

Inserted by Act No. 25 of 2005, sec. 19 (w.e.f. 23.6.2006)

17. The aforementioned provisions give discretion to Magistrate either to conduct inquiry into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit.

18. The inquiry contemplated prior to insertion of this provision was also limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

"(i) on the materials placed by the complainant before the Court;

(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and

(iii) 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."

19. The insertion of provision was intended to put a safe guard to those proposed accused who are not residing in the territorial jurisdiction of the Court. The legislature found that false complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this Clause seeks to amend sub-section (1) of section 202 to make it obligatory upon the Magistrate that before summoning the accused person residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.

20. To fulfil the intention of statute the Magistrate before issuing process after invoking this provision should satisfy himself that the complaint filed against the person residing out side jurisdiction of the Court is not for his harassment. How the Magistrate satisfy himself must reflect from proceedings conducted by him. Therefore, a conscious action to be taken. Specific order is required to be passed regarding postponement of issuing process and for initiation of enquiry either by himself or ordering investigation, as the case may be. If the Magistrate decided to enquire himself he should put necessary questions with the witnesses and also to the complainant, like; identity of accused, acquaintance of complainant and witness with the accused, relationship in between accused and complainant and in between complaint and witnesses etc.

21. If Magistrate decide to order investigation than purpose of investigation and person to whom investigation is entrusted should be clearly mentioned by giving a reasonable time to complete the investigation. It is also important to note that this investigation under section 202 Cr.P.C. is different with the investigation under section 156 Cr.P.C. Therefore, Magistrate to ensure before ordering investigation that Investigating Officer or any other person shall not be allowed to arrest the accused in such investigation. The Magistrate shall also keep in mind the provision added to sub-section (1) of section 202, Cr.P.C. which deals with cases in which investigation could not be directed.

22. In the present case, it is not reflected from the proceedings that learned Magistrate has exercised its discretionary jurisdiction to comply this mandatory provision.

23. Having considered the facts and circumstances of the case and the legal provision contained in statute book, of which violation has been made by the learned Magistrate, this Court is of the firm view that proceeding initiated by the petitioner deserve to be quashed including the order of summoning passed against the petitioner and the case be remanded back to the Magistrate.

24. So far as other ground of challenge are concerned, I am of the view that the learned Magistrate may consider all these aspects of the matter while passing the fresh order. Hence, this petition is allowed. The proceedings of Criminal Complaint case No. 2137 of 2011 (Ram Nivas Bhatiya v. Gokaran Lal and others), under sections 323, 504 and 452 IPC, Police Station Qaisarbagh, District Lucknow pending in the Court of Special Chief Judicial Magistrate (Customs), Lucknow are quashed against the petitioners with all consequential proceedings including impugned order of summoning dated 5.8.2011. The matter is remanded back to the Court concerned with direction to the Magistrate concerned to pass a fresh order after complying the above mentioned amended provisions of section 202 Cr.P.C. in the light of the observation made by this Court after affording opportunity of being heard to the opposite party No. 2.