
(2012) 12 AHC CK 0079
In the Allahabad High Court
Case No : Application U/S 482 No. 43622 of 2012

Gulajar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-12-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245(2)
Penal Code, 1860 (IPC) — Section 34, 379, 411, 417, 418

Citation : (2012) 12 AHC CK 0079

Hon'ble Judges : Sunil Hali, J

Judgement

Sunil Hali, J.—In the present petition, applicant, who is an informant has filed a complaint in Case No. 2397 of 2012 under Sections 34, 379, 411, 417, 418, 420, 467, 468, 471, 477 I.P.C., P.S. Sihani Gate, District Ghaziabad, process has been issued against the respondent nos. 2 and 3, who were named as an accused in the complaint.

2. The order of summoning was questioned by respondent no. 2 and 3 in this court in which initially a stay order was passed, subsequently, the same was dismissed on 31.5.2012.

3. Having failed to obtain any relief from this court, an application was filed under Section 245(2) Cr.P.C. seeking discharge from the trial. The informant filed his objection to the said application.

4. The grievance of the applicant is that the application has been entertained without accused surrendering before the court in this behalf.

5. The applicant has come up before this Court against the order passed by this court on 13.11.2012 whereby he has entertained the application under Section 245(2) Cr.P.C.

6. I have heard the learned counsel for the parties.

7. The issue involved in this case is as to whether the court can entertain an

application of an accused, who has not surrendered before the court after the process was issued. In order to appreciate this controversy under Section 204 of the Cr.P.C. is quoted below :

204. Issue of Process

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be

(a) a summons case, he shall issue summons for the attendance of the accused, or

(b) a warrant case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under subsection (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under subsection (1) shall be accompanied by a copy of such complaint.

(4) When by any law or for time being in force any process fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87.

8. A close scrutiny of the provision envisages that once the Magistrate has taken cognizance of the offence he is required to issue summons or warrants for causing the accused to be brought before the court. In case where the process is issued on the basis of complaint copy of the same is required to be supplied to the accused. The presence of the accused before the trial court after the issuance of the summons is mandatory. In respect of cases initiated on the police report there is one more condition required to be complied with under Section 207 Cr.P.C. The Magistrate is required, without any delay to furnish a copy of the police report along with all the documents to the accused free of cost which has been collected during the course of investigation. It is on the supply of the documents that the trial can proceed. Unless the accused appear before the court the trial cannot be initiated. What is important here is that trial without the presence of the accused cannot be permitted. It is essential that accused must remain present before the court, before the trial can be initiated.

9. After the surrender before the court exemption can be granted by the court during the trial as and when the application in this behalf is moved.

10. The personal attendance of the accused can be dispensed with only in summons cases as is provided under Section 205 Cr.P.C.

11. From the aforementioned discussion, it appears that as and when the process is issued, the Magistrate is duty bound to issue summon or warrant as the case may be for causing the accused to be brought before the court. Accused is required to furnish a bond as provided under Section 88 Cr.P.C. for appearance before the said court. Under Section 88 is quoted below :

88. Power to take bond for appearance. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial.

12. An accused, who is summoned by warrant or summons as the case may be is required to furnish a bond to the court for his appearance during the course of trial.

13. In the present case it appears that the trial court had summoned the accused and on their failure to appear non bailable warrants were issued. The trial court after execution of non bailable warrants accepted/granted interim bail to the respondent no. 2. Warrants were issued by the court and after accused appeared before the court his application for grant of bail is to be considered under Section 437 Cr.P.C.

14. The power to grant bail in this behalf vests in the court, who has issued the warrant against the accused. Bail has to be granted strictly in consonance with Section 437 Cr.P.C. Unless and until the accused furnishes bond under Section 88 and seeks bail under Section 437 he is not entitled to seek any indulgence in the trial.

15. The essential feature of the court discussion is that the accused is bound to furnish bond that he will appear before the court during the trial, unless otherwise directed by the court. He cannot file any application in the proceedings unless he binds himself to appear before the trial. The application entertained by the trial court without seeking bond is unwarranted.

16. It appears from the order of the trial court that interim bail was granted only to accused no. 1 which has been extended from time to time. There is no provision under Section 437 Cr.P.C. to grant interim bail. It can be granted in exceptional circumstances, normally if the prosecution delays the filing of counter or any such objection or there are exceptional circumstances. Interim bail cannot be granted as a matter of course as has been done in the present case.

17. In cases where the accused is summoned by a warrant he is required to furnish bail bond as stated herein (Supra).

18. Trial court cannot in normal course have granted interim bail in the present case, which it could not do. The trial court has not issued process against the accused no. 1 seeking her arrest in the matter after the process has been issued. She continues to avoid to appear in the court.

19. In view of this, this application is allowed and the trial court is directed to seek presence of the accused no. 1 by issuing warrants against her. The interim bail granted to the other accused should be cancelled and he be directed to appear in the court and seek bail after satisfying the court that he is entitled to it.
20. It is further directed that no decision shall be taken by the trial court on the application filed by the respondent no. 1 and 2 under Section 245(2).
21. It is observed by this court that invariably the trial court without adhering to the provision of the code have been granting indulgence to the accused persons by not issuing coercive process for their presence and binding them to execute a bond after obtaining bail in the matter.
22. Once the process is issued the warrants of their arrest must be issued so as to seek their presence in the court.
23. The practice of granting interim bail must be avoided. They must be directed to make out a case for granting of bail before the Magistrate concerned and furnish bond that they will appear during the course of trial.
24. Till the accused are bound by the court and have not surrendered before the court they have no locus to file any application before the court where the trial is going on.
25. This order be circulated to all the C.J.M. working in the State, who shall further circulate the same to their Magistrates working in there jurisdiction. Registry to take necessary steps in this behalf.