

(2008) 03 AHC CK 0198
In the Allahabad High Court

Hari Ram Raikawar and Smt. Ganga	APPELLANT
Vs	
State of U.P. and Smt. Krishna Devi	RESPONDENT

Date of Decision : 14-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 203, 204, 397
Penal Code, 1860 (IPC) — Section 406

Citation : (2008) 03 AHC CK 0198

Hon'ble Judges : Ajai Kumar Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajai Kumar Singh, J.—This criminal revision has been preferred by revisionists/accused against order dated 14.2.2005 passed by learned II Additional chief Judicial Magistrate, Court No. 7, Jhansi in criminal case No. 2339/04 Smt. Krishna Devi v. Raju Raikawar and Ors. u/s 406 IPC, P.S. Prem. Nagar, District Jhansi by which the learned Magistrate summoned both the revisionists to face trial for the offence u/s 406 I.P.C.

2. Briefly stated that the facts are that a Criminal Complaint was filed by Smt. Krishna Devi (opposite party No. 2) before learned IInd Additional Chief Judicial Magistrate, Court No. 7, Jhansi, which was registered as Criminal Case No. 2339/04 Smt. Krishna Devi v. Raju Raikawara and Ors. alleging that the accused No. 1 Raju Raikawar is her husband and revisionists 1 and 2(accused) are her father-in-law and mother-in-law respectively. It has been further alleged by the complainant that her divorce had taken place with accused No. 1 Raju Raikawar (non revisionist) and that both revisionists/accused have misappropriated her "stri dhan". Learned Magistrate recorded the statement of opposite party No. 2 u/s 200 Cr.P.C. and also recorded the statements of witnesses Moolchand and Pramod as C.W. 1 and C.W. 2 u/s 202 Cr.P.C. After considering the statements of the complainant and witnesses and the material on the record the Magistrate vide the impugned order, summoned both the revisionists/accused for their trial

for the offence u/s 406 IPC and dismissed the complaint against Raju Raikawar (non-revisionist). Feeling aggrieved the present revision has been filed by the revisionists/accused.

3. Heard Sri K.B. Srivastava learned Counsel for the revisionists, Sri K.P. Tiwari learned Counsel for the opposite party No. 2 and learned AGA ibid perused the record.

4. It is contended by learned Counsel for opposite party No. 2 as well learned AGA that the present revision has filed against; the summoning order passed in a complaint case which is an interlocutory order and same is not maintainable in view of the law laid down by the Apex Court in Adalat Prasad Vs. Rooplal Jindal and Others, Learned Counsel for the opposite party No. 2 also contended that the accused has no locus standi to be heard before passing of the order summoning him and that grievance, if any may be raised by him before trial Court before framing of the charge. In support of this contention learned Counsel placed reliance on Smt. Usha Devi Agrawal v. State of U.P. and Anr. 2004 (1) J.T.C. 515 (All).

5. Admittedly present revision is against the summoning order passed by the learned Magistrate in a complaint case. In my opinion the said order is an interlocutory order within the meaning of Section 397(2) Cr.P.C. and in view of the case law mentioned above the proper remedy for the revisionists is to approach this Court by filing an application u/s 482 Cr.P.C. It has been held by the Apex Court in Adalat Prasad case (Supra) that

what is necessary or a condition precedent for issuing process u/s 204 is the satisfaction of the Magistrate either by examination of the complainant and the witnesses or by the inquiry contemplated u/s 202 that there is sufficient ground for proceeding with the complaint hence issue the process u/s 204 of the Code. In none of these stages the Code has provided for hearing the stage and the stage of hearing of the accused would only arise at a subsequent stage provided for in the latter provision in the Code.

Also it has been held by the Apex Court that-

it is true that if a Magistrate takes cognizance of an offence, issues process without there being any allegation against the accused or any material implicating the accused or in contravention of provisions of Sections 200 and 202, the order of the, Magistrate may be vitiated, but then the relief an aggrieved accused can obtain at that stage is not by invoking Section 203 of the Code because the Criminal Procedure Code does not contemplate a review of an order. Hence in the absence of any review power or j inherent power with the subordinate criminal courts, the remedy lies in invoking Section 482 of the Code.

6. In view of the above legal position I, hold that the summoning order is an interlocutory order within the meaning of Section 397(2) Cr.P.C. and revision against the same is not maintainable, and the present revision is liable to be

dismissed on this ground alone.

7. I also find that even on merit there is no need for interference in the impugned order because a bare perusal of the impugned order shows that it has been passed by the learned Magistrate after considering the statements of the complainant and witnesses under Sections 200 and 202 Cr.P.C. and the allegations made in the complaint. As such, I find no illegality in the impugned order and the Impugned order requires no interference.

8. In view of the above, I am of the opinion the revision is liable to be dismissed and is accordingly dismissed.