
(2014) 06 AHC CK 0027
In the Allahabad High Court
Case No : Criminal Revision No. 1649 of 2014

Indradev

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 23-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 401
Penal Code, 1860 (IPC) — Section 392

Citation : (2014) 5 ALJ 136

Hon'ble Judges : Karuna Nand Bajpayee, J

Bench : Single Bench

Advocate : Bal Krishna Yadav, Advocate for the Appellant

Judgement

Karunanand Bajpayee, J.—This criminal revision has been filed assailing the validity of the Judgment and order dated 12.12.2013 passed by the Additional Sessions Judge, Bareilly in criminal Revision No. 443 of 2013 (Shyama Charan and others v. State of U.P.), Police Station-Devraniya, District-Bareilly whereby the lower revisional court has set aside the initial summoning order dated 9.5.2013 passed by the Judicial Magistrate, Baheri, Bareilly. It appears that on an application moved by the revisionist-complainant u/S. 156(3) Cr.P.C., a criminal case was registered against accused-respondent Nos. 2 to 4. The allegations were to the effect that while the revisionist was returning back to his house from the market along with his brother Jaswant, accused-respondent Shyama Charan intercepted him and after stopping and holding his bicycle hurled abuses. Co-accused Brij Lal and Nukta Prasad too arrived and abused him. It was also alleged that the revisionist was beaten by hockey, causing injuries to him. His ear got torn and the teeth were also hurt. Certain witnesses arrived at the place of occurrence and it was alleged that the accused, thereafter, left him in a precariously grave and injured condition. It was also alleged in the application that Rs. 1920/- which were in his pocket were also snatched away from him. Aforesaid application also contains the fact that the revisionist-complainant was medically examined by the doctor. But it appears that after investigation into the

case, final report was submitted. It further transpires that aggrieved by the submission of the aforesaid final report, the revisionist-complainant appeared before the court of Magistrate and filed his protest petition. The same was treated as a complaint by the court of Magistrate. Thereafter, the regular procedure of complaint case was followed by the court as has been provided under Criminal Procedure Code. Statements u/Ss. 200 and 202 Cr.P.C. were recorded by the court and on the basis of the material produced on behalf of the revisionist-complainant the Magistrate deemed it fit to summon the accused u/S. 392 I.P.C. in order to face the trial.

2. It seems that aggrieved by the aforesaid summoning order dated 9.5.2013 passed by the Magistrate, the accused filed a revision in the court of sessions. A bare perusal of the order passed by the lower revisional court reveals that the accused-respondent did not present themselves before the court and therefore on the basis of the record the court of revision proceeded with the matter and allowed the revision. The summoning order dated 9.5. 2013 was set aside and the matter was remanded back to the court of Magistrate for reconsideration as in the view of the court there was no allegation of loot in the application moved u/S. 156(3) Cr.P.C. and also because the court found that the summoning order did not make it explicit as to which movable property was looted.

3. Now aggrieved by the setting aside of the summoning order the complainant has come up in revision before this Court. Heard Shri. Bal Krishna Yadav, learned counsel for the revisionist and learned A.G.A.

4. The contention of revisionist's counsel is that the impugned order passed by the court is patently illegal and erroneous for the obvious reason that the complainant of the case was never impleaded by the accused as opposite party in the revision filed by them and which also eventually got allowed. It has been emphasized that as the protest petition was treated as a complaint and the magisterial court was proceeding in the matter as a complaint case it was only after following due procedure provided under the Code that the accused were summoned. Therefore, it has been submitted, that it was not only highly improper but was also a breach of regular procedure and law that the complainant himself was never arrayed as opposite party by the accused in the revision which they filed. It has been further contended that even the court below while passing the impugned order remained completely oblivious to the aforesaid anomaly and without giving any notice to the complainant and affording him any opportunity of hearing, the summoning order was set aside. It has been further submitted by the counsel that even the reasoning adopted by the Court while passing the impugned order is against the facts of the case as, according to the counsel, the application moved u/S. 156(3) Cr.P.C. does contain the fact of snatching away of the money from the complainant.

5. This court had the occasion to peruse the impugned order and also the entire record of the case. Ordinarily this Court adopts the procedure to issue notice to the opposite party and thereafter proceed in the matter as such. But the facts

and circumstances of the case are such which reveal a patent illegality so palpable on the face of record that the impugned order for that very reason becomes demonstrably improper, erroneous and absolutely untenable. In that view of the matter adopting the conventional course would not yield any fruitful result and would not be in the larger interest of justice, much more so because this Court proposes only to remand back the matter for rehearing on the merits after affording opportunity to the revisionist-complainant. This Court, therefore, after taking assistance from learned A.G.A. has proceeded to decide this matter as such. The Court has been constrained to decide this matter straightway also because in case of admission and issuing notice to the opposite party the impugned order of revision passed in favour of the accused had to be kept in abeyance and as a consequence of the same the Magistrate's court could have proceeded with the trial against them. As in the wake of heavy pendency of the cases in the Court it would not have been possible to decide this revision on merits in a miserable distance of time the aforesaid course of issuing notice to accused would have been more deleterious to their own interest also.

6. It shall be apt to recall that the relevant law on the point involved is trite and pristine both. There was a time when after submission of the final report there was no occasion or practice in the magisterial court to hear the first informant on the point of deciding the acceptance or rejection of the final report. But after the pronouncement given by the Hon'ble Apex Court in the case of Bhagwant Singh Vs. Commissioner of Police and Another, it has become the law of the land to issue notice to the first informant in all such cases where the final report is submitted by the Investigating Officer. It was found proper and in keeping with the first principles of natural justice that if an F.I.R. was lodged by the first informant and his allegations could not be substantiated or were found to be false by Investigating Officer it was necessary for the court of Magistrate to give the first informant opportunity of hearing before arriving at the judicial decision whether the court should accept the final report or not. It was in keeping with the same law that in the present matter at hand also the notice was issued to the first informant who availed the opportunity and filed this protest petition before the court against the submission of final report. There were many courses open to the court of Magistrate at this juncture but it is not needed to elaborate upon them. Suffice it to say that the Magistrate adopted the course to treat the protest petition as complaint. Thereafter, regular procedure was followed by the Magistrate and statements of witnesses were recorded. It was only, thereafter, that the Magistrate got satisfied about the commission of the offence and proceeded to summon the accused to face the trial. Being aggrieved it was very much open to the accused to have filed a revision against the summoning order which they also did. But it is absolutely beyond comprehension as to why the complainant himself was not made the opposite party. After all the Court was not proceeding in the matter as a state case and it does not need much elaboration on the point that in complaint cases the litigation is primarily between the complainant and the accused while the State plays only a second fiddle in the

matter. Aforesaid omission seems to be deliberate and not without purpose. But what is more surprising to see is that this fact completely escaped the attention of the lower revisional court who without affording any opportunity of hearing to the complainant and without getting him impleaded in the matter and without taking notice of the aforesaid illegality set aside the summoning order.

7. At times the failure to implead the necessary party in the matter may have grave consequences and the entire hearing of the matter may be rendered illegal and vitiated. If it was incumbent upon the court of Magistrate to summon the first informant and hear him at the time of deciding the fate of the final report, it was all the more important, necessary and therefore judicially needed that the revisional court should have heard the complainant or to have at least provided him necessary opportunity of hearing before setting aside the impugned order, especially so because the court of Magistrate had treated the protest petition as a complaint and was as a result thereof proceeding in the matter as complaint case.

8. At this stage it may also be apt to recapitulate sub-section (2) to Section-401 of Criminal Procedure Code which reads as thus :--

"401. High Court's powers of revision.--

(1)

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence."

It does not admit of any doubt that the "other person" indicated in the aforesaid sub-section shall certainly include the complainant of the case and the impugned order passed by the court of revision whereby it set aside the summoning order was with equal certainty an order made to the prejudice of the complainant.

9. In this view of the matter also, keeping in perspective the statutory provisions referred to above, the infirmity in question looks incurable and the only course open in order to set it right is to provide the complainant the opportunity of hearing and get the matter decided afresh. This court, therefore, finds sufficient reasons to allow the revision.

10. The impugned order is hereby set aside.

11. It is directed that the lower revisional court shall again decide this matter on the basis of merits after affording opportunity of hearing to the complainant so that he may present his case. It is open for the court to get the complainant impleaded in the matter. It shall also be open for it to issue notice to him straightway and fix some date for hearing the matter afresh.

12. It is clarified that the Court has abstained to delve into the inherent merits of the case and has not expressed any opinion at all whether the summoning order passed by the court of Magistrate is right or wrong. The matter has been

remanded only with the object so that lower court may decide the same after affording opportunity of hearing to the complainant. It is also observed that as the revisionist-complainant is obviously having the notice of this order he is therefore expected to appear and pursue the hearing of the matter in right earnest before the court below. This observation has been given in order to clarify that the court below should not interpret the direction of "affording opportunity to the complainant" to mean that unless the complainant or his counsel argues the matter before the court, the proceeding of the revision should be held up or kept hanging for an indefinite period of time. Opportunity implies only a reasonable opportunity. If despite a reasonable opportunity afforded to the complainant he does not represent before the Court, the Court shall be at liberty to proceed in the matter on the basis of its merits.

13. The revision stands allowed in aforesaid terms.

14. It is further observed that if the initial order of summoning the accused passed by the Magistrate or the proceedings consequent thereupon which were pending in the trial court were stayed at any stage by the lower revisional court after filing of the revision, the same order shall continue to operate till the final disposal of the revision which has been remanded back by this order for rehearing. Let this order be certified to the lower court forthwith through fastest mode.