(1980) 09 AHC CK 0004

In the Allahabad High Court

Case No : Criminal Misc. Case No. 4361 of 1979

J.C. Tondon and Another APPELLANT

Vs

Munna Lal and Another RESPONDENT

Date of Decision : 17-09-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 482
Penal Code, 1860 (IPC) — Section 386

Citation : (1981) ACR 23

Hon'ble Judges : P.N. Goel, J

Bench : Single Bench

Advocate : J.D. Pandey, for the Appellant; M.B. Misra and A.G.A., for the Respondent

Judgement

P.N. Goel, J.—This is an application u/s 482, Code of Criminal Procedure.

2. Applicants are partners of a shop of Chemists which carries on business under the style of Kohinoor Chemist. Munna Lal, opposite party No. 1 was an employee at this shop for the last about 20 years. On 24-5-1978 Munna Lal filed a complaint before the Chief Judicial Magistrate, Allahabad, against the applicants. The complaint relates to two incidents. It was alleged that Darshan Kumar Ahuja, relation of Jagdish Chandra Tondon, applicant used to make complaint against Munna Lal. Munna Lal had an account in Bank of Baroda. His wife Smt. Sumitra Devi had an account in Indian Overseas Bank.

3. The first incident is: On 16-8-1977 the applicants saw the pass books of Munna Lal and his wife at the shop of Kohinoor Chemist. The applicants asked him from where they got the money outstanding in the two pass books. Munna Lal told them all the details. The applicants told him that the entire money was of their shop, that he should give the entire money to them otherwise they would kill him. Munna Lal objected. Thereupon the applicant No. 2, Sevak Nanawati told him that they did not require his services any more and he should leave their service and take his account. Munna Lal replied that that his account be given to

him and that he would no more work at their shop. Applicant No. 1, Jagdish Chandra Tondon asked him to remain quiet. On account of fear, Munna Lal went away to his house. Then on the same day at 7.30 P.M., applicant No. 1 along with some bad characters reached at his house and took him to his house. At his (applicant No. 1''s) house, applicant No. 1 showed pistol saying that it was a five-bore and was sufficient to level him and members of his family. Munna Lal was disturbed and frightened and asked what he wanted. He was told that he should pay Rs. 3,500.00 which was payable to a Bank. Munna Lal asked from where he should give the said money. He was told that he should withdraw money from the Bank and give the same otherwise he would not remain alive. On 17-8-1977 Munna Lal withdrew Rs. 3,500.00 from Baroda Bank and handed over the same to applicant No. 1. Applicant No. 1 gave him a receipt indicating that this loan money had been repaid. In fact Munna Lal had taken no loan.

4. The second incident is: On 21-8-1977 at 8.30 P.M. applicant No. 1 along with some persons reached at the house of Munna Lal. Munna Lal was not there. His wife Smt. Sumitra was there. Applicant No. 1 showed pistol to her and asked her to give him Rs. 6,000.00 otherwise her husband would be killed, adding that she should not tell this fact to her husband. Applicant No. 1 gave a form of withdrawal of money to Smt. Sumitra Devi and asked her to sign at the place tick-marked. Applicant No. 1 told her to reach the Bank on the next day where he would meet her. On 22-8-1977 Smt. Sumitra Devi went to Indian Overseas Bank along with her brother Bankey Lal and withdrew Rs. 6000.00. Applicant No. 1 was standing at a little distance. Smt. Sumitra Devi gave him Rs. 6000/-.

5. It was then alleged in the complaint that the complainant gave application to the Senior Superintendent of Police, Allahabad, that no action was taken, that then he gave application to Sri Keshan Nath Tripathi, Minister of U.P. who sent it to the superintendent of Police for necessary action. The police ultimately gave final report.

6. On the basis of the application given by Munna Lal to Sri Keshari Nath Tripathi, the police drew up a first information report (copy Annexure 1). On 29-2-1978 the police gave final report. This report was accepted by the Chief Judicial Magistrate on 1-4-1978. Then Munna Lal filed complaint.

7. The Magistrate recorded the statement of Munna Lal u/s 200 Code of Criminal Procedure. Thereafter the Magistrate recorded the statements of Bankey Lal and Sumer u/s 202 Code of Criminal Procedure. Then on 7-8-1978 the Magistrate passed order summoning the applicants u/s 386 IPC.

8. The grievance of the applicants is that Munna Lal had filed a wholly false complaint against them with a view to harass them and that the Magistrate''s order issuing process against them was illegal and arbitrary and that there was no sufficient ground for issuing process.

9. Sri M.B. Misra, Advocate, filed vakalatnama on behalf of Munna Lal. But no counter affidavit was filed nor Sri M.B. Misra appeared on any date before this

Court.

10. Learned Counsel for the applicants and the learned Counsel for the State have been heard.

11. The main question is whether the learned Magistrate was justified in issuing process against the applicants on the material before him. Section 482 confers inherent power on the High Courts to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of process of any Court or otherwise to secure the ends of justice.

12. As said above the complaint relates to two incidents. It will be noticed that according to the allegations of the complaint Darshan Kumar Ahuja, a relation of applicant No. 1 used to make complaint against the complainant, Munna Lal. On this account the applicants were obviously annoyed with the complainant. On 16-8-1977 the applicants saw the pass books of Munna Lal and his wife and they were not satisfied with the accounts given by Munna Lal in respect of the amounts standing in the pass books. The applicants clearly asserted that the said amounts were of their shop. They asked the complainant to withdraw the amounts and hand over the same to them otherwise he would be killed. The complainant objected to their allegations. Thereupon the applicant No. 2 terminated his services and told him that he could take his accounts. Munna Lal agreed and asked them to give his account. Thereupon the applicant No. 1 told him that he would be set right. Then on the same day at 7.30 P.M. applicant No. 1 along with some bad characters reached at the house of Munna Lal and took him to his house. At his house applicant No. 1 showed him pistol, gave him threat and asked him to give him Rs. 3500.00. It is noticeable that on 16-8-1977 Munna Lal lodged no report against the applicants or even against the applicant No. 1, who wanted to extort money from him. In his statement u/s 200 Code of Criminal Procedure Munna Lal stated that applicant No. 1 showed pistol to him at his (Munna Lal''s) house. His statement u/s 200 shows that the threat was extended to Munna Lal at the house of Munna Lal whereas in the complaint applicant No. 1 extended threat at his own house. Thus there is a clear variation between the allegations of the complaint and the statement u/s 200. If the allegations of the complaint were really true, Munna Lal could easily make a report in respect of the incident on 16-8-1977. But no report was lodged. Munna Lal withdrew money (Rs. 3500.00) from Bank of Baroda on the next day, 17-8-1977. On that day applicant No. 1 gave him a false receipt. Even on that day Munna Lal did not lodge any report against the applicant.

13. With regard to the second incident, applicant No. 1 gave threat to Smt. Sumitra Devi on 21-8-1977 at 8.30 P.M. at her house. At that time the complainant was not present at his house. Smt. Sumitra Devi was not examined before the Magistrate. In case the allegations about the incident of the evening of 21-8-1977 were true, Munna Lal or Smt. Sumitra Devi could easily lodge a report. Moreover, in view of the past conduct of the applicants Smt. Sumitra Devi would not have quietly gone to Indian Overseas Bank on 22-8-1977 to withdraw

the money and handed over the same to the applicant No. 1. It will be noticed that after having handed over money to applicant No. 1 on 22-8-1977 near Indian Overseas Bank, no action whatsoever was taken by the complainant or his wife or Bankey Lal, brother of Smt. Sumitra Devi on 22-8-1977 or on the next day, 23-8-1977. The complaint does not indicate on which date he gave an application to the Senior Superintendent of Police. In his statement u/s 200 Code of Criminal Procedure the complainant did not state that he had given any application to the Senior Superintendent of Police on 22-8-1977 or near about. He simply stated that he gave information to the Senior Superintendent of Police and Sri Keshari Nath Tripathi, Minister, upon which a case was registered by the police in which final report was given.

14. The position that follows from the above is that the complainant filed complaint against the applicants with false allegations otherwise he would have taken steps against the applicants on 16-8-1977. Had the Magistrate applied his mind carefully to all these facts, he would not have issued process against the applicants. It seems that the Magistrate cursorily looked into the statements recorded Under Sections 200 and 202 Code of Criminal Procedure and did not examine the allegations of the complaint and the statements in the light of the circumstance that the complainant did not immediately take action in the matter.

15. The facts and circumstances of this case clearly show that the complainant wanted to harass the applicants by bringing a complaint with false allegations. Thus it is a case in which there has taken place abuse of the process of the Court by the Magistrate in issuing process against the applicants u/s 386 IPC. It is a fit case for the exercise of inherent powers u/s 482 Code of Criminal Procedure by this Court.

16. Application is allowed and the proceedings of Criminal Case No. 348 of 1978 pending before Sri S.N. Singh, Special Magistrate, Allahabad, or his successor against the applicants are quashed.