
(2005) 08 AHC CK 0050

In the Allahabad High Court

Case No : Criminal M. Application No. 4978 of 2000

Kumari Kusum and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 05-08-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 244, 245(2), 300
Penal Code, 1860 (IPC) — Section 147, 323, 447, 452, 468

Citation : (2006) 1 ACR 485

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : P.K. Bharadwaj, for the Appellant; V.S. Rajpoot and A.G.A., for the Respondent

Judgement

Poonam Srivastava, J.—Heard Sri P. K. Bharadwaj, learned Counsel for the applicants and learned A.G.A. for the State.

2. The inherent power of this Court has been invoked challenging the order dated 24.7.2000, passed by the VIIIth Additional District and Session Judge, Bulandshahr in Criminal Revision No. 104 of 1997, Km. Kusum and Ors. v. State of U. P. and order dated 7.1.1997 passed by the IInd Additional Chief Judicial Magistrate, Bulandshahr in Case No. 5078 of 1994, Dalip Singh v. Hukum Singh and Ors., under Sections 323, 147, 447 and 506, I.P.C.

3. A complaint was filed by the opposite party No. 2 against the applicants and two other persons namely Hukum Singh and Jagveer Singh. The statements under Sections 200 and 202, Code of Criminal Procedure were recorded and the learned Magistrate summoned all five accused including the present applicants. They appeared before the Magistrate and got themselves bailed out. The next date fixed was 16.12.1986 for evidence u/s 244, Code of Criminal Procedure but the complainant did not appear on the said date, whereas the accused were present. The complaint was dismissed u/s 245(2), Cr. P.C on 16.12.1986. A copy of the order is annexed as Annexure-I to the affidavit. Subsequently a second

complaint was filed on 18.12.1986 relating to the same incident and once again evidence was recorded under Sections 200 and 202, Code of Criminal Procedure of the witnesses Roopram and Shiv Charan. However, the Magistrate did not summon the present applicants, only Hukum Singh and Jagveer Singh were summoned vide order dated 27.2.1988. An application was moved on behalf of the accused challenging the maintainability of the second complaint relating to the same facts in respect of which they were already discharged previously. However, the complaint case proceeded. At the stage of evidence u/s 244, Cr. P.C., an application u/s 319, Code of Criminal Procedure was moved by the opposite party No. 2. The evidence recorded u/s 244, Code of Criminal Procedure has been annexed as Annexure-6. The applicants were summoned vide order dated 7.1.1997 which was challenged in revision which was also dismissed. These two orders are impugned in this application. Besides, prayer for quashing of the complaint has also been made on the ground that no prima facie case is made out against the applicants, no injuries have been sustained by any one as such no prima facie case is made out and the complaint is liable to be quashed. This Court had stayed the operation of the impugned order whereby the applicants were summoned u/s 319, Code of Criminal Procedure in the year 2000. The ground of challenge before the learned Magistrate was that since the applicants were discharged previously for the same offence, they cannot be tried for a second time and the proceedings are barred by Section 300, Code of Criminal Procedure. The learned Magistrate recorded a finding that the discharge of the accused cannot be said to be an order of acquittal and, therefore, Section 300, Code of Criminal Procedure does not come into play. The learned Magistrate held that order of "discharge" is not equivalent to "acquittal" therefore, the objection raised is not sustainable. The second argument on behalf of the applicants before the learned Magistrate was that the complaint is barred by time and the offence alleged against the applicants is Sections 323, 452 and 506, I.P.C. The said objection was also rejected by the Magistrate on the ground that the punishment u/s 506(2), I.P.C is 7 years and, therefore, Section 468, I.P.C. does not come in operation. This order was confirmed in revision.

4. After hearing the counsel for the applicants and learned A.G.A., it is clear that the occurrence is said to have taken place on 4.2.1982 whereas the complaint was instituted in the year 1990, i.e., after lapse of 8 years. Besides, the evidence u/s 244, Code of Criminal Procedure was recorded after approximately 10 years. It appears that the injuries alleged to have been received during the time of occurrence were never got examined and there is no injury report on record. In the circumstances, the argument is that it is a frivolous complaint. The three applicants, who are ladies, have been implicated only to cause harassment. It has further been argued that the Magistrate, after examining the witnesses under Sections 200 and 202, Code of Criminal Procedure did not think it proper to summon the applicants, and only two other accused were summoned. Subsequently, they have been asked to face trial on the basis of an application moved by the complainant u/s 319, Code of Criminal Procedure. The Apex Court

has repeatedly held that the powers u/s 319, Code of Criminal Procedure should be exercised sparingly and only if the Court comes to a definite conclusion, on the basis of evidence recorded during the trial that the person who has been summoned was involved in commission of the crime, only then a person who is not facing trial, can be asked to appear as an accused.

5. I have perused the impugned orders. The accused have been summoned on the basis of an application moved by the complainant, in the circumstances, the impugned order is not sustainable in law and is liable to be quashed.

6. There is yet another circumstance, the complaint has been filed after lapse of 8 years of the incident, no injury report is on the record and once the complainant chose not to pursue the complaint and was absent on 16.12.1986. Subsequently after a lapse of four years, the instant complaint was filed. It has been emphatically argued that the continuation of the proceedings on the basis of second complaint is nothing short of an abuse of the process of the Court and is liable to be quashed. Learned Counsel has placed several decisions of the Apex Court, *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others*, . The Apex Court ruled that the summoning of an accused in a criminal case is a serious matter. The criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to set the law in motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and law applicable thereto. It is not that the Magistrate is a silent spectator at the time of recording preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record. In the instant case, the manner in which the applicants have been summoned and that too after having been discharged on previous occasion after lapse of approximately 10 years from the date of occurrence, it can safely be concluded that the proceeding if allowed to continue, is nothing short of an abuse of the process of the Court and liable to be quashed.

7. For the reasons discussed above, the application is allowed and the order dated 7.1.1997 passed by the IInd Additional Chief Judicial Magistrate, Bulandshahr confirmed in revision vide judgment and order dated 24.7.2000 passed by the VIIIth Additional District and Session Judge, Bulandshahr in Criminal Revision No. 104 of 1997, *Km. Kusum and Ors. v. State of U. P.* are set aside.