
(1995) 07 AHC CK 0037
In the Allahabad High Court
Case No : C.M.W.P. No. 14061 of 1995

Kunji Lal alias Pappu and Others

APPELLANT

Vs

Smt. Guddi and Another

RESPONDENT

Date of Decision : 11-07-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 203, 204
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 406, 468(1), 504, 506

Citation : (1996) 20 ACR 44

Hon'ble Judges : S.C. Jain, J

Bench : Single Bench

Advocate : S.C. Srivastava, for the Appellant;

Judgement

S.C. Jain, J.—On a criminal complaint filed by Smt. Guddi, Respondent No. 1 under Sections 406, 468-1, 323, 504 and 506. I.P.C. and also u/s 3/4 of Dowry Prohibition Act, the Petitioners Kunji Lal alias Pappu, Udai Bhan Dheemar, Manohar Dheemar, Smt. Lachhia and Smt. Vijai were summoned to make appearance in the court. This summoning order was passed by the Magistrate after recording the statements of the complainant u/s 200, Code of Criminal Procedure and also recording the statements u/s 202. Code of Criminal Procedure.

2. The learned Counsel for the Petitioners states that there has not been any proper discussion of evidence while passing the summoning order by the learned Magistrate and the said order has been passed without applying the mind. It is this order which has been challenged by filing this writ petition. Whether this writ petition is maintainable is a question which needs consideration. My attention has been drawn towards a decision of a single Judge of this Hon'ble Court in the case of Kailash Chaudhari and Ors. v. State of U.P. and Anr. reported in 1994 ALJ 174. As per this decision, in Section 204, Code of Criminal Procedure, the Magistrate is expressly not enjoined with a duty to record reasons for issuing

process but Section 204 cannot be read in isolation. The powers of the Magistrate u/s 204 have to be read and construed in the context of his powers under Sections 202 and 203. The Magistrate while issuing process u/s 204, must, in brief, set out the allegations made in the complaint and the material brought on record and must also state that in his opinion, the complaint discloses the ingredients of the offence alleged to have been committed by the accused and that the material brought on record as a result of the enquiry or investigation u/s 200 read with Section 202, prima facie, constitutes valid evidence which, if believed and unrebutted at the trial, would result in conviction.

3. As per the decision of this Court, the order issuing process on ex parte consideration of the complaint and material u/s 204, Code of Criminal Procedure, being only a step towards trial, is interlocutory order and, therefore, no writ petition against interlocutory order will lie. The order issuing process u/s 204, Code of Criminal Procedure is an interim order and not a judgment and that order can be varied, rescinded or recalled by the Magistrate and the proceedings dropped if a complaint on the very face of it, does not disclose any offence against the accused. In view of this legal proposition, this Court in writ jurisdiction has not to decide the question of fact and I am afraid that this Court will not be in a position to pass the order which the Petitioners have sought in this writ petition. The accused must be relegated to his remedy u/s 204, Code of Criminal Procedure to approach the Magistrate and satisfy him that the processes could not have been issued. If the Magistrate is so satisfied, he may recall the order u/s 204, Code of Criminal Procedure and dismiss the complaint u/s 203, Code of Criminal Procedure.

4. When there is an alternate remedy available and there is no violation of fundamental rights, the writ jurisdiction, which is an extraordinary one, cannot be invoked.

5. With these observations this writ petition is not maintainable and hence, dismissed.

A copy of this order be given to the learned Counsel for the Petitioners on payment of usual charges as per rules and also a copy of this order be sent to the court concerned.