

(1986) 12 AHC CK 0011
In the Allahabad High Court
Case No : Criminal Revision No. 266 of 1986

Mahendra Kumar jain and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 08-12-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 202(2), 204(2), 207
Penal Code, 1860 (IPC) — Section 323, 395, 503
Uttar Pradesh Dacoity Affected Areas Act, 1983 — Section 7

Citation : (1987) 1 AWC 264

Hon'ble Judges : Umesh Chandra, J

Bench : Single Bench

Advocate : A.K. Sinha Thursday, January 13, 2011 and P.N. Roy, for the Appellant; Dilip Kumar and AGA, for the Respondent

Final Decision : Dismissed

Judgement

Umesh Chandra, J.—This revision is directed against an order, dated 6-11-1985, passed by Special Judge, Agra, in Sessions Trial No. 55 of 1985 Anil Kumar v. Mahendra Kumar and Ors. summoning all the accused persons to stand trial u/s 395 IPC. The impugned order is as follows:

Perused the evidence recorded under Sections 200 and 202 Code of Criminal Procedure. The police had earlier investigated the case and submitted final report against which the complainant filed protest petition and filed the present complaint and adduced all possible evidence in support thereof. There is prima facie evidence supported with medical evidence to make out a case u/s 395 IPC. Summon all the accused persons for facing trial u/s 395 IPC. Fix 2-12-1986.

2. On 29-11-1984 at 20.5 hours Mahendra Kumar Jain lodged a report against Rajendra Kumar and Pandey Anil Kumar under Sections 323/503 IPC about an occurrence alleged to have taken place at about 5 P.M. at Chauraha Tundla. On 30-11-1984 at 1.45 A.M. Anil Kumar son of Rajendra Kumar also lodged a report against Mahendra Kumar and others about the incident alleged to have taken

place on 29-11-1984 at about 5 P.M. These reports contained versions, one given by the Petitioners and the other by opposite party No. 2 with regard to the incident which had taken place on 29-11-1984 as a result of a civil litigation between them.

3. The facts in brief are that Applicant. Mahendra Kumar Jain is the owner of house No. 4/27 situate at Tundla Chauraha. This house was under the tenancy of Rajendra Kumar Jain opposite party No. 3 who allegedly vacated the same without intimating the landlord and got the same allotted in his favour on 14th December, 1977. Aggrieved by the ex-parte order of allotment, Mahendra Kumar Jain moved an application for cancellation of the order which was cancelled on 17-4-1979. Thereafter a revision was filed which was dismissed on 16th January 1981 by VIII Additional District Judge, Agra. Petitioner Mahendra Kumar then moved an application for release of the premises before the SDM (Rent Control and Eviction Officer), Etmadpur, district Agra. This application was rejected on 19th May 1981. Aggrieved against the order of rejection on the release application, a revision was filed which was ultimately allowed on 15th March, 1984. Armed with this order, the Petitioners filed an application before the Sub-Divisional Magistrate for recovery of possession and on 22-11-1984 the Sub-Divisional Magistrate passed an order and issued process in Form D. On 29th November, 1984, the Sub-Inspector of Police attached to police station Tundla started delivering possession of the house to the landlord and it is alleged that the house was partially got vacated by 3 P.M. when the son of Rajendra Kumar Jain, namely, Anil Kumar opposite party No. 2, produced the order of the Sub-Divisional Magistrate, Etmadpur, staying delivery of possession immediately. The entire process of giving possession was stopped and Rajendra Kumar Jain was put back in possession of the house.

4. The police started investigation into the allegations made in the first information report of the opposite parties and on coming to the conclusion that no such offence was made out, submitted a final report in the case. A protest application was filed by Anil Kumar Jain opposite party No. 2 and the Special Judge recorded the statements of some witnesses under Sections 200 and 202 Code of Criminal Procedure and passed the impugned order summoning the Petitioners to face trial u/s 395 IPC by putting appearance on 2-12-1985. Aggrieved against that order, the present revision has been filed.

5. The order passed by the Special Judge under revision has been challenged on the following grounds:

1. That the allegations made in the report are patently absurd and inherently improbable so that no prudent person can reach a conclusion that there was sufficient ground for proceeding against the accused.

2. In view of the statements on record, no case against the Applicants is made out, and the entire proceedings which have been initiated, are malicious and with ulterior motive.

3. The Special Judge had no jurisdiction to record statement of the witnesses under Sections 200 and 202 Code of Criminal Procedure and as this evidence has been taken into consideration, the Special Judge was influenced on extraneous considerations in summoning the Petitioners to put in appearance for trial.

4. Lastly the impugned order has been passed mechanically and without application of judicial mind.

6. Learned Counsel for the opposite parties has argued that the present petition is not maintainable, inasmuch as the parties had fought out the case when an application was moved u/s 482 Code of Criminal Procedure by Mahendra Kumar Jain and others against opposite parties 2 and 3. Such an application was moved by the present Petitioners on 30-11-1985 which was registered as Criminal Misc. Application No. 15712 of 1985. The petition was dismissed in limine after hearing the learned Counsel for the Petitioners on 29th January 1986. The record of this criminal miscellaneous application shows that the petition was directed against the summoning order which is now being challenged and the following grounds were taken:

(i) a list of the prosecution witnesses required u/s 204(2) Code of Criminal Procedure was not filed from the side of the complainant;

(ii) all the witnesses for the complainant were not examined as required under the proviso to Sub-section (2) of Section 202 of the Code;

(iii) there is contradiction between the averments contained in the first information report, referred to above, and the affidavit filed by R.K. Jain dated November 30, 1984, which is Annexure-5 to the application; R.K. Jain it may be pointed, is the father of Anil Kumar Jain; and

(iv) the statement of Smt. Maina Devi, one of the injured persons made before the Special Judge is discrepant.

7. Having heard learned Counsel for the parties, I find that the petition has no force and must be rejected for the following reasons--

Firstly, the argument of the learned Counsel for the Petitioners that the learned Special Judge had no jurisdiction to record the statements of the prosecution witnesses under Sections 200 and 202 Code of Criminal Procedure and that the impugned order is vitiated as extraneous evidence was taken into consideration by the Special Judge for summoning the accused to stand trial, is based on Section 7 of the U.P. Dacoity Affected Areas Act, 1983 which provides that--

(1) A Special Court may take cognizance of any scheduled offence--

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon its own knowledge that such offence has been committed;

Provided that all cases triable by a Special Court under this Act, pending before any court immediately before the date of the commencement of this Act in a dacoity affected area, shall stand transferred to the special court having jurisdiction over such cases and shall be dealt with and disposed of in accordance with the provisions of this Act.

(2) A Special Court shall, while trying a scheduled offence, so far as may be, follow the procedure provided by the Code of Criminal Procedure, 1973 for trial of sessions cases;

Provided that the Special Courts may, wherever necessary, perform the functions of a Magistrate u/s 270 of the said Code and proceed to try the case as if the case had been committed to Court of Sessions for trial under the provisions of such Code.

(3) Save as otherwise expressly provided in this Act, the provisions of the Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1973 shall in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Special Court and for the purposes of the provisions of the said Code, the Special Court shall be deemed to be a Court of Sessions and the person conducting the prosecution before a Special Court shall be deemed to be a public prosecutor.

(4) A Special Court may, with a view to obtain the evidence of any person supposed to have been directly or indirectly concerned in or privy to any scheduled offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof and any pardon so tendered shall for the purpose of Section 308 of the said Code, be deemed to have been tendered u/s 307 thereof.

(5) A Special Court may pass upon any accused persons convicted by it any sentence authorised by law for the punishment of offence of which such person is convicted.

8. This argument has no force. It is not denied that the Special Judge had jurisdiction to examine the final report and consider the merits of the protest petition. If the final report was not to be accepted blindly, it follows, that the Special Judge had jurisdiction to reassess the evidence of the prosecution witnesses and to that end he had jurisdiction to re-examine the witnesses and reassess the evidence, to find out if the allegations made in the First Information Report were prima facie correct and laid basis for the trial of the accused.

9. Secondly, both the reports, one lodged by the Petitioners and the other by the opposite parties, were the results of the passions generated by two orders, one dated 20-11-1984, under which the Petitioners were executing the warrant for possession of house in dispute and the other passed by the Sub-Divisional

Magistrate Etmadpur staying the delivery of possession immediately. Investigation is proceeding about the report, dated 29-11-1984, filed by Mahendra Kumar Jain against the opposite parties about the incident alleged to have taken place the same day at 6 P.M. u/s 323/503 IPC. It would therefore be manifestly unjust if the report lodged by Anil Kumar about the incident alleged to have taken place the same day at about 5 P.M., both reports relating to the incidents following the above two orders, is quashed.

10. Thirdly, the Petitioners, Mahendra Kumar Jain and others had filed a petition u/s 482 Code of Criminal Procedure with the same request and on the same ground as mentioned above. This petition has been rejected and the order has become final. Consequently Mahendra Kumar Jain and others cannot be permitted to reopen the issues by the present revision petition.

11. Fourthly, I may refer to the two rulings, one in Jitendera Pratap Singh and Others Vs. State of U.P. and Others, . In this case it has been held that in proceedings started by a Special Judge u/s 7 of the U.P. Dacoity Affected Areas Act, Sections 200 and 202 Code of Criminal Procedure are not applicable. The argument advanced in this case was that "The Special Judge will have himself to examine the complainant and his witnesses as provided under Sections 200 and 202 Code of Criminal Procedure before issuing processes against the Petitioners. I do not agree with this contention of the Petitioners" counsel also. The provisions of Sections 200 and 202 Code of Criminal Procedure are not applicable to a proceeding started by a Special Judge u/s 7 of the Ordinance. This is clear from the following proviso to Section 7 itself:

Provided that the Special Court may, wherever necessary, perform the functions of a Magistrate u/s 207 of the said Code and proceed to try the case as if the case had been committed to court of sessions for trial under the provisions of such Code.

12. This view was upheld in Criminal Misc. Application No. 15712 of 1985 in which the argument was that the proceedings before the Special Judge are vitiated because statements of the prosecution witnesses have been recorded under Sections 200 and 202 Code of Criminal Procedure and it was held that "it is only by way of satisfaction before taking cognizance that the Special Judge may be said to have recorded these statements".

13. There is no substance in the argument advanced by learned Counsel for the Petitioners that the satisfaction of the Special Judge should always be in favour of the accused. The satisfaction of the Special Judge is based on the evidence on record whether it is in favour of the prosecution or the accused. The Special Judge, therefore, has not erred in recording the statements of the prosecution witnesses and basing his satisfaction on this evidence also. It may be mentioned that the Special Judge has considered alongwith the evidence, the medical evidence on record.

14. Lastly, the argument that the contents of the First Information Report lodged

against the Petitioners do not disclose a triable offence is also without any force. As has been mentioned above, there was an incident on 29-11-1984 after the execution of the warrant for delivery of possession was stayed. The moot point for consideration is as to who started the marpit and this can be decided only after in compliance of the summoning order, the Petitioners put in appearance and lead evidence.

15. For the reasons mentioned above, the Criminal Revision has no force and is dismissed. The order, dated 6-11-1985 passed by the Special Judge, Agra, in Anil Kumar v. Mahendra Kumar Sessions Trial No. 55 of 1985 summoning the Petitioners to stand trial u/s 395 IPC is confirmed.