
(1986) 01 AHC CK 0062

In the Allahabad High Court

Case No : Criminal Misc. Application No. 15712 of 1985

Mahendra Kumar Jain and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 21-01-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 202(2), 204, 204(1)

Penal Code, 1860 (IPC) — Section 2, 395, 4

Uttar Pradesh Dacoity Affected Areas Act, 1983 — Section 2, 5, 7, 7(1), 7(2)

Citation : (1986) 10 ACR 208

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : P.K. Jain, for the Appellant; Vinod Kumar Sharma and Dileep Kumar, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Agarwal, J.—This is an application u/s 482 Code of Criminal Procedure.

2. First information report was lodged at police station Tundla district Agra, by Anil Kumar Jain (opposite party No. 2) on November 30, 1984, against the applicants for offence u/s 395 Indian Penal Code. The police submitted final report at the conclusion of the investigation to the Special Judge, Agra, constituted under the U.P. Dacoity Affected Areas Act, 1983 (hereinafter referred to as the U.P. Act 31 of 1983). A protest petition was filed in matter on March 15, 1985. The Special Judge recorded the statements of witnesses for the complainant and under the impugned order dated November 6, 1985, he summoned the applicants-accused for offence u/s 395 Indian Penal Code.

3. Learned Counsel for the applicants contends that the cognizance taken by the Special Judge, Agra, is vitiated for the following reasons:

(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.

4. I have heard learned Counsel for the parties and considered the grounds referred to above, but I do not find any basis made out for interference in the exercise of the inherent jurisdiction. There is no dispute that this arises from a dacoity affected area within the meaning of Section 2(a) of the U.P. Act 31 of 1983. Section 7 of this Act lays down the procedure and powers of Special Courts. The expression " Special Court ", according to Section 2(e) means a court constituted u/s 5. Section 5 empowers the State Government to constitute a Special Court in consultation with the High Court for the purpose of speedy trial of scheduled offences committed in a dacoity affected area. Offence u/s 395 falls within " scheduled offences " as enumerated in the Schedule appended to the Act read with Section 2(b). The procedure and powers of Special Courts prescribed in Section 7 are as under:

(i) A Special Court may take cognizance of any scheduled offence.

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

(b) upon 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 227 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 persons 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.

5. From the above it will be noticed clearly that there is dichotomy maintained between inquiry on the one hand and the trial on the other. As per Sub-section (2) a Special Court while trying a "scheduled offence" so far as may be, follows the procedure provided in the Code for trial of sessions cases. The proviso to Sub-section (2) enables the provision contained in Section 207 of the Code also to be availed by the Special Judge, Sections 200/202 are placed in Chapter XV (Complaints to Magistrates). Section 200 is attracted where a Magistrate takes cognizance of an offence on complaint, Section 202 comes in picture also where cognizance is to be taken by a Magistrate on a complaint. Section 204 pertains to Chapter XVI (Commencement of Proceedings before Magistrates). This again is attracted where the consideration is before a Magistrate for taking cognizance of an offence. It is in relation to a Magistrate issuing a summons or warrant, as the case may be, u/s 204(1) that the Sub-section (2) lays down that no such process shall issue against the accused until a list of the prosecution witnesses has been filed. Section 209 which also falls in Chapter XVI lays down the procedure for commitment of cases to the Court of sessions when offence is triable exclusively by it. In so far as the Act 1983 is concerned, there is no question of commitment of the case to the Court of session. There is no inquiry preceding as such the trial.

6. The Special Judge is empowered to take cognizance straightaway in accordance with Sub-section (1) of Section 7 of this Act and then proceed as laid thereafter. Sub-section (2) significantly talks of the procedure provided by the Code of "trial" of sessions cases. This does not cover what is laid down in the Code in relation to inquiry. Section 207 of the Code makes provision for the supply to the accused of copy of police report and other documents. This has been expressly incorporated in the proviso to Sub-section (2) for obvious reasons to enable the accused even in such trials to have the relevant documents. But for the rest the procedure envisaged in the Code relating to inquiry including the

commitment to the Court of Session is excluded by necessary implication. The reason behind is clearly understandable, since the complaint lies to the Special Judge straightaway as such and there has to be no commitment made to him there arises no question of invoking Sections 200-202 or 204 for that matter. Inquiry is clearly distinct from trial and this is manifest also on reference to the definition given to the expression " inquiry " in Section 2(g) of the Code. Inquiry, according to this definition, is other than a trial and is conducted under the Code by a Magistrate or Court. I am conscious that according to Section 4 of the Code offences under any law other than the Penal Code have ordinarily to be investigated, enquired into and tried according to the same provisions. But in Sub-section (4)(2) itself there is exception where there is any other enactment for the time being in force regulating the manne or place or investigation, inquiry or trial. According to Sub-section (3) of Section 7 of the Act, 1983, also the procedure laid in the Code does not apply in so far as it is inconsistent with the provisions of this Act. Sub-section (2) of Section 7 as explained above excludes the procedure relating to inquiry from being invoked where the trial takes place before the Special Judge, except in so far as Section 207 of the Code is concerned. This means in other words that in the case as at present, there may be no objection raised from the side of the applicants-accused based on the grounds Nos. (i) (ii) aforementioned are concerned.

7. Learned Counsel appearing for the opposite-parties contended that before proceeding to take cognizance and summoning the accused-applicants the Special Judge has taken care to record the statements of the entire set of witnesses. The witnesses examined by the Special Judge are the two injured persons, namely, Smt. Ganga Devi and Smt. Maina Devi, besides the four alleged eye-witnesses, namely, Mahendra Singh, Mohan Lal, Rafiq, Hardam Singh and also the two Medical Officers, besides the Investigating Officer. This, according to the complainant, constitutes the entire lot of witnesses as appearing also from the reference made in the protest petition. There was it is true, no separate list appended as such, to the protest petition, which, for all practical purposes, is drawn in the form of a complaint. But this is altogether immaterial since Section 204 or Sections 200/202 of the Code for that matter are inapplicable. A learned Single Judge has taken the same view in *Jitendra Pratap Singh and Others Vs. State of U.P. and Others*, : *Jitendera Pratap Singh and Others Vs. State of U.P. and Others*, . It is only by way of satisfaction before taking cognizance that the Special Judge may be said to have recorded these statements.

8. In so far as grounds Nos. (iii) and (iv) aforementioned are concerned, suffice it may to say that the Court is not called upon to enter into the merits at this stage and these are things which do not go to the root of the jurisdiction either. It remains open to the accused to put them in cross-examination, if so advised, to the witnesses concerned. The procedure adopted by the Special Judge obviously does not suffer from illegality nor is there the lack of jurisdiction so as to attract the summary powers of this Court u/s 482 of the Code.

9. The application accordingly fails and is dismissed in limine. The interim stay granted on November 30, 1985 is vacated.

Application dismissed.