
(2010) 10 AHC CK 0355
In the Allahabad High Court
Case No : Criminal M.W.P. No. 19373 of 2010

Manoj Pandey alias Chhotkan and Others	APPELLANT
Vs	
State of U.P. and Another	RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202
Penal Code, 1860 (IPC) — Section 147, 323, 452, 504, 506

Citation : (2011) 1 ACR 921

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Agarwal, J.—Heard learned Counsel for the Petitioners, learned A.G.A. for the State and perused the material on record.

2. No notice is issued to private Respondent in view of the order proposed to be passed today, however, liberty is reserved for private Respondent to apply for variation or modification of this order if he feels so aggrieved.

3. This writ petition has been filed with a prayer to quash the order dated 25.2.2010. passed by Judicial Magistrate-I, Gorakhpur in Criminal Case No. 387 of 2009 Nitesh Pandey v. Manoj Pandey and Ors. as well as order dated 25.8.2010. passed by Sessions Judge, Gorakhpur in Criminal Revision No. 235 of 2010.

4. The application u/s 156(3), Code of Criminal Procedure filed by Respondent No. 2 was treated by the Magistrate as a complaint. After recording the statements of complainant u/s 200, Code of Criminal Procedure and his witnesses u/s 202, Code of Criminal Procedure, learned Magistrate summoned the Petitioners to face trial under Sections 147, 323, 452, 504 and 506, I.P.C. The revision filed by the Petitioners - accused was rejected by learned Sessions Judge.

5. Learned Counsel for the Petitioners submitted that there was a dispute between the parties due to chak road and the matter was of civil nature and due to this reason, the Petitioners have been falsely implicated in this case.

6. Learned A.G.A. supported the impugned order.

7. As per the complaint, on 26.6.2009, on account of dispute due to chak road, the accused persons entered the residential house of the complainant at about 12:00 noon, 4 hurled abuses and beat the complainant. When the witnesses intervened, the accused persons ran away hurling threats.

8. The complainant in his statement u/s 200, Code of Criminal Procedure and the witnesses Vijay Narayan Pandey (P.W. 1) and Rishi Muni Pandey (P.W. 2) in their statements u/s 202, Code of Criminal Procedure supported the complaint case. The complainant was also medically examined after four days and three abrasions were found on his person besides complaint of pain in left shoulder.

9. In the writ petition, no finding of fact can be recorded. The correctness of the allegations made in the complaint can only be judged after a proper trial. I do not find any error or illegality in the summoning order passed by the Magistrate. There is no good ground to interfere.

10. The writ petition is devoid of merit and is accordingly dismissed.

11. However, in the facts and circumstances of the case, it is directed that if the Petitioners surrender before the Magistrate concerned within a period of three weeks from today and apply for bail, their prayer for bail be considered by the courts below on the same day keeping in view a Full Bench decision of this Court in the case of Amrawati and Anr. v. State of U.P. 2004 (57) ALR 290 : 2004 (3) ACR 2888, as affirmed by Hon"ble Apex Court in Lal Kamendra Pratap Singh v. State of U.P. 2009 (3) ADJ 322 : 2009 (2) ACR 2063 (SC).

For a period of three weeks, no coercive process shall be executed/issued against the Petitioners.