

(2016) 02 AHC CK 0091

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 3268 of 2003.

Mansukh Lal & 2 others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 94 ACrC 134 : (2016) 4 ADJ 29 : (2017) 1 AILLJ 324

Hon'ble Judges : Vijay Lakshmi, J.

Bench : Single Bench

Advocate : Dharendra Singh Rajput, Advocate, for the Appellant; Govt. Advocate and Amar Nath Singh, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Vijay Lakshmi, J. - By means of this writ petition, the petitioners have moved this court with prayer to issue a writ in the nature of certiorari for quashing the two orders. The first is the order dated 5.4.2002 passed by the C.J.M. Jalaun at Orai, in Complaint Case No. 368 of 2000 and the second is order dated 20.2.2003 passed by the Sessions Judge, Jalaun at Orai, in Criminal Revision No. 128 of 2003.

2. Heard learned counsel for the petitioners and learned A.G.A. Perused the record.

3. None appeared on behalf of O.P. No. 4 even in the revised call.

4. The record shows that despite the fact that a considerable time has expired since the filing of Vakalatnama by Mr. Amrendra Nath Singh, learned counsel for O.P. No. 4, no counter affidavit has yet been filed by him.

5. Respondent no. 4 filed Complaint Case No. 368 of 2000 against the petitioners in the court of C.J.M. Orai, District Jalaun, making allegations under sections 379, 380, 218, 506, 120B I.P.C. The learned Magistrate after recording

statements under sections 200 and 202 Cr.P.C. summoned the accused-petitioners under the aforesaid sections by order dated 5.4.2002. The petitioners filed Criminal Revision No. 128 of 2003 in the Court of Sessions Judge, Orai, District Jalaun, with prayer to set aside the summoning order of the Magistrate dated 5.4.2012, which was also dismissed on 20.2.2003 by the revisional court. Hence, this writ petition.

6. The brief facts relevant for the decision of this writ petition are that the respondent no. 4, Het Singh, filed a complaint against all the petitioners with allegations that on 14.2.2000 when he had gone to take payment of pension at treasury office Orai, the accused petitioners entered into his house and took away his saw machine and other articles worth Rs. one lakh. At the time of occurrence a large crowd had gathered at the spot. The petitioner no. 2, Ram Awtar Singh, fired in the air in order to disperse the crowd and abused the family members of respondent no. 4, who went to police station to lodge the FIR but his FIR was not lodged. Thereafter he filed a complaint in the court of the Magistrate. The learned Magistrate after recording statement of respondent no. 4 under section 200 Cr.P.C. and of witnesses Satya Narayan and Ram Bahadur under section 202 Cr.P.C., summoned the petitioners under the aforesaid sections. Aggrieved by the summoning order, the petitioners filed Criminal Revision No. 128 of 2003 in the court of Sessions Judge, Jalaun at Orai, which was also dismissed by the learned Sessions Judge on the ground that from the allegations made in the complaint as well as from the statements of the complainant and his witnesses recorded under sections 200 and 202 Cr.P.C. a prima-facie case under sections 379, 380, 218, 506, 120B I.P.C. is made out.

7. The legality and correctness of the orders of both the courts below has been challenged in this writ petition mainly on the grounds that both the courts below have passed the impugned orders without application of mind and without considering that the respondent no. 4 was running a saw mill illegally without any license and three range cases were pending against him in the courts below. It has been contended by learned counsel for the petitioners that the petitioners had not stolen the saw machine but the instruments of the saw mill and woods, which were taken into custody by them, were stored at the police station Madhuwagarh on the same day i.e. 14.2.2000 at 17.00 P.M., which were duly entered in G.D. No. 18. It is next contended that the release application moved by respondent no. 4 for release of aforesaid instruments of saw mill and woods was rejected by learned Magistrate and even the appeal filed against the order of the Magistrate rejecting the release application was also dismissed by learned Sessions Judge on 20.7.2000. It has lastly been argued that the petitioners are Government servants employed in the forest department and they are not liable to be prosecuted without sanction from the competent authority. However, the complainant, by concealing the real facts, has falsely implicated them only with malafide intention.

8. On the aforesaid grounds it has been prayed that both the impugned orders

summoning the petitioners and the criminal proceedings initiated against them be quashed.

9. Per contra, learned AGA has contended that looking into the facts of the case and on the basis of prima-facie evidence as available on record, it cannot be said that no offence is made out against the petitioners. He has next contended that the petitioners have not even stated about any such order of any competent court or authority authorising them to take away the saw-machine and woods of respondent no. 4 and to keep those at police station. Moreover, they have not taken any plea regarding lack of sanction in their petition. Learned AGA has lastly contended that the disputed defense of the accused cannot be adjudicated at the stage of summoning.

10. In *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335, the Hon"ble Apex Court has laid down certain principles, on which a Court can quash the criminal proceedings. Hon"ble Supreme Court has held that the criminal proceedings may be quashed only on the following grounds:-

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognisable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognisable offence but constitute only a non-cognisable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private

and personal grudge."

11. So far as the facts of the case in hand is concerned, it is quite evident that this case does not fall in any of the categories recognised by the Apex Court.

12. Both the courts below have come to the conclusion that the petitioners/accused persons should be summoned to face trial under Sections 379, 380, 218, 506, 120B I.P.C. because a prima facie case was found against the accused persons. The law regarding sufficiency of material which may justify the summoning of accused and to proceed against them in a given case is well settled that at the initial stage of summoning, a court has to stay away from embarking upon a roving enquiry into the factual details of the case. It is also not advisable to adjudicate whether the case shall ultimately end in conviction or not. Only a prima facie satisfaction of the court about the existence of sufficient ground to proceed in the matter is required, while summoning a person to face trial.

13. In the case of Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi 1976 3 SCC 736 the Hon"ble Apex Court had held as follows:

"The magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under Section 202 of the Code of Criminal Procedure which culminates into an order under Section 204 of the Code."

14. The disputed defence taken by the accused/petitioners cannot be considered at this stage. The petitioners have only been summoned by the trial court. They will have various opportunities before the trial court to agitate their grievance at appropriate stage. Moreover the petitioners have got a right of discharge under Section 239 Cr.P.C. or under Section 209 Cr.P.C. or 226/227 Cr.P.C. in session"s triable cases through a proper application for the said purpose and they are free to take all the submissions in the said discharge application before the Magistrate and the trial court.

15. In wake of above discussion, I do not find any good ground to interfere in the matter and to quash the complaint or the summoning order or the criminal proceedings against the petitioners. Hence, prayer for quashing the impugned order is refused.

16. However, considering the submissions made by learned counsel for the petitioners, it is directed that in case the petitioners appear before the court concerned within thirty days from today and apply for bail, the same shall be heard and be disposed of by the courts below in view of the settled law laid by

the Seven Judges" decision of this Court in the case of Amrawati and another v. State of U.P. reported in 2005 Cr.L.J. 755 approved by Hon''ble Apex Court in 2009 (3) ADJ 322 (SC) Lal Kamendra Pratap Singh v. State of U.P.

17. With the aforesaid directions this writ petition is dismissed and the interim order is vacated.