
(2008) 05 AHC CK 0065
In the Allahabad High Court

Narain Singh and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 27-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 320
Criminal Procedure Code, 1973 (CrPC) — Section 107, 116, 151, 156, 161
Penal Code, 1860 (IPC) — Section 307, 354, 395, 504, 506

Citation : (2008) CriLJ 4553

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vinod Prasad, J.—A family consisting of three uterine siblings Narain Singh, Raghubir Singh, Indrapal Singh along with two sons of Narain Singh namely Rajiv Kumar and Yadvendra have filed this Criminal Misc. Application u/s 482 Cr. P. C, with the prayer that entire proceedings of F.R. Case No. 70/05 (Sudha v. Narain Singh and Ors.) including the summoning order dated 30 7-2007 (Annexure 22) passed in the aforesaid case u/s 395, 354, 504 and 506 1PC, P.S. Uldan, district Jhansi, pending before the Special Judge (DAA) Jhansi, be quashed. The ancillary prayer is for stay of further proceedings of the aforesaid case.

2. The facts generating this Criminal Misc. Application briefly stated are that the respondent No. 2 Smt. Sudha w/o Balram Nayee, is a resident of village Banrauni, P.S. Uldan, district Jhansi. Her co-villagers applicants Narain Singh, Raghubir Singh, Indrapal Singh, Rajiv Kumar and Yadvendra reside in front of her house across the public way. It is alleged that the said public way had been blocked by the applicants, because of which Smt. Sudha was feeling difficulty of passage for her and for her live stocks. On her request for removal of the encroachment, she was threatened and therefore, she lodged a case before the concerned Sub Divisional Magistrate, which generated animosity between the two parties.

3. On 18-1-2004 at about 10 a.m., when the respondent No. 2 was sweeping her house in the presence of her father-in-law Asha Ram and her husband Balram, all the applicants trespassed into her house filthily abusing and threatening. Two of the applicants Indra Pal Singh and Rajiv Kumar were armed with guns. They challenged that no body can do any harm to them as the police is siding with them and they will condon the disputed land. Respondent No. 2 rushed to save her husband and objected the challenge, on which Narain Singh and Raghubir Singh pulled her sari and turned it off. To save her prestige in half naked condition, respondent No. 2 entered in her house. Indrapal, Rajiv Kumar and Yadvendra chased her inside her house opened a box and looted Rs. 2000/-. While retreating, they also hurled threats and committed theft of a trolley of cow dung cakes.

4. Failed in her attempt to get her FIR registered, respondent No. 2 moved an application on 19-1-2004 before Deputy Inspector General of Police, Jhansi region, but in vain.

5. On the above allegations, respondent No. 2 invoked the power of the Special Judge (DAA), Jhansi on 7-2-2004, u/s 156(3) Cr. P. C, which was registered as Misc. Application No. 18/04 against the accused persons.

6. Special Judge (DAA) Jhansi called for a report from the concerned police station and the furnished report dated 21-2-2004, indicated that no FIR in respect of the alleged incident was registered. However, on an application filed by the victim under the orders of the concerned SDM, the matter was inquired into. The inquiry revealed that respondent No. 2 and her husband had illegally dumped 500 bricks on the land belonging to the applicants and had encroached the way. In the suit filed by the applicants the Civil Judge (Junior Division) Mauranipur, on 23-9-2003, ordered for maintaining status quo on the disputed plot No. 500. In execution of the court's order the bricks were got removed on 8-12-03, on which date the husband of the respondent No. 2 and the applicants were arrested u/s 151 Cr. P. C. while drawing proceedings u/s 107/116 Cr. P. C. Police further reported that respondent No. 2 is filing applications vindictively and the alleged incident dated 18-1-2004 never happened and respondent No. 2 is trying to falsely implicate the applicants with ulterior motive to illegally grab their bhumidhari plot No. 500 and therefore no action is required.

7. Special Judge, (DAA) Jhansi, on 25-2-2004, ordered the application u/s 156(3) Cr. P. C, to be registered as a complaint and fixed 1 -3-2004 for recording of statement u/s 200 Cr. P. C. However, respondent No. 2 approached this Court and on the direction of this Court, police of P.S. Uldan registered the FIR against accused and during investigation recorded the statements of respondent No. 2 and her witnesses vide annexure Nos. 4, 5, 6, 8, 9, 10, 11, 12 and 13 to the appended affidavit.

8. Smt. Sudha in her statement u/s 161 Cr. P. C. supported her allegations. However, her witnesses Giran Singh, Bharat, Asha Ram (father-in-law of

respondent No. 2) and Balram (husband), Kashi Prasad, Lala Ram, Jagat Raj and Nathu Ram did not support her allegations and deposed that on the date of the incident (18-1-2004) there was triadic altercation for removal of bricks from the way between both the sides who were accusing each other but the intervention of village people pacified the incident and both the sides went to their respective houses. All the witnesses specifically denied the incident of assault and molestation of respondent No. 2. They further deposed that their affidavits were got typed by their counsels and they did not know its contents. After investigation I.O. vide annexure 14 to the affidavit, submitted a Final Report on 15-7-2004 being F.R. No. 4. However, Circle Officer concerned, on 17-9-2004 directed for further investigation.

9. u/s 173(8) Cr. P. C. the matter was further investigated by another investigating Officer, Shiv Shanker Shukla, who also submitted a F.R. in the court on 14-10-2004, vide annexure 15, on which the Special Judge, (DAA) Jhansi ordered " Seen register."

10. Vide annexure 18 to the affidavit respondent No. 2 filed a protest petition on 12-1-2005, Special Judge (DAA) Jhansi rejected the FR on 9-2-2005 and he directed for further investigation u/s 173(8) Cr. P.C.

11. Further investigation was carried on for the second time and this time also I.O. found the incident to be false and he concurred with the submission of the two earlier F Rs. , vide his report dated 15-6-2005 on which informant was noticed fixing 28-6-2005.

12. Respondent No. 2 appeared in the court and moved an application for filing a protest petition. On 5-8-2005 time was sought and then on 7-9-2005 Special Judge (DAA) Jhansi, heard the counsel of the respondent No. 2 and perused the record and fixed 12-9-2005. On the said date respondent No. 2 filed some documents. On 6-10-2005 Special Judge (DAA) Jhansi heard the arguments on the FR and protest petition and fixed 17-10-2005 for remaining arguments and disposal. On 17-10-2005 nothing happened and 17-11-2005 was fixed in the case. On the said date Special Judge (DAA) Jhansi recorded the statement of Respondent No. 2 u/s 200 Cr. P.C, and on the next date he recorded the statements of C. W. 1 and C. W. 2. Trial court heard the arguments on 30-8-2006 fixing 31-8-2006 for orders. The order sheet further indicates that the case was again fixed for hearing and ultimately vide impugned order dated 30-7-2007 Special Judge (DAA) Jhansi rejected the FR dated 15-7-2004 and directed that the case be registered as special case and there after summoned the applicants for the offences Under Sections 354, 395, 504 and 506 IPC fixing 18-9-2007 for their appearance by issuing summons.

13. Hence this application by the applicants challenging the whole proceedings and the summoning order dated 30-7-2007.

14. Both, respondent No. 1 State represented by AGA and informant respondent No. 2 represented by Sri A. K. Ojha, Advocate were allowed time on 3-10-2007

to file counter affidavits but they opted to argue the matter finally without filing any counter affidavit. Therefore, I have heard them in opposition.

15. Sri V. P. Srivastava Learned Senior Counsel assisted by Sri Lav Srivastava supporting the case of the applicants contended that the summoning order of the applicant is wholly malafide and illegal. They contended that the whole prosecution version is absolutely false, as no incident as was alleged by respondent No. 2, ever took place on 18-1-2004. They further submitted that even the father-in-law Asha Ram and husband Balram did not support the allegations levelled by respondent No. 2 vide annexure 8 and 9 to the affidavit. Learned Senior counsel further contended that even the co-villagers did not support the case of the informant. It is further urged that the police investigated the matter thrice and on all the three occasions it find the case of the prosecution to be false and submitted F Rs all the times. Learned Counsel submitted that initially the case was investigated by Sri R.K. Singh and subsequently the investigation was conducted by Shiv Shanker Shukla and thereafter a third investigation was conducted by a third I.O. and all the three times they came to the same conclusion that the incident is false and the respondent No. 2 wants to falsely implicate all the applicants. It is further submitted that the said conclusions arrived at by the concerned Investigating Officers are well reasoned and based on correct facts and there was no justification for the Special Judge (DAA) to have summoned the applicants only on the basis of the statement of respondent No. 2 contradicted by other witnesses. Prosecution of the applicants is vexatious, vindictive pervaded by ulterior motive and must therefore be quashed urged learned Counsel.

16. Learned Senior Counsel further submitted that the procedure adopted by the Special Judge (DAA) Jhansi is foreign to the scheme of procedure for trial prescribed under the Code of Criminal Procedure (in short referred to as Code). Learned Counsel submitted that initially the FR was drafted but the Co. ordered for further investigation. After further investigation, FR was submitted second time on 14-10-2004 in the court of Special Judge who registered it on 14-10-2004. The protest petition was filed against the FR vide Annexure No. 18 on 12-1-2005, on which Special Judge on 9-2-2005 ordered for further investigation. After further investigation again FR was submitted third time in the court on 15-6-2005, on which all of a sudden after hearing the argument the statement of respondent No. 2 was recorded on 17-11-2005. The protest petition thus was treated as a complaint by the Special Judge (DAA) Jhansi and he preferred to proceed with the case, as a complaint case. Subsequently, he recorded the statements of C. W. 1 and C. W. 2 on 20-10-2005. Thereafter on the question of summoning, the Special Judge heard the arguments and fixed nine dates from 30-1-2006 to 30-8-2006 and on the last date he fixed the case for orders on 31-8-2006. It is contended that on the next date no order was passed and again the case was fixed for hearing and ultimately vide order dated 30-7-2007 the FR has been rejected and the applicants have been summoned on the basis of material contained in the case diary, totally ignoring recorded

statements u/s 200 and 202 of the Code. Learned Counsel contended that once the Magistrate preferred to treat the protest petition as a complaint and followed the procedure of a complaint case by recording of the statements u/s 200 and 202 Cr. P. C, he could not have reverted back to the procedure prescribed for police challani case and reject the FR and summon the applicants straight way on the basis of the case diary. Learned Counsel further submitted that ignoring the statements u/s 200 and 202 Cr. P. C. and reverting back to the procedure of the police challani case is wholly illegal and therefore, the impugned summoning order dated 30-7-2007 is bad in law and deserves to be quashed. After the statements u/s 200 and 202 Cr. P. C, the Special Judge (DAA) could have proceeded either u/s 203 or 204 of the Code contended learned Counsel. It is also submitted that since whole efforts of respondent No. 2 is pervaded with vindictiveness with clandestine motive of harassment the applicants should not be allowed to be harassed by her and therefore, the present application be allowed and the prosecution of the applicants be quashed.

17. Learned AGA as well as Sri A. K. Ojha, counsel for the respondents on the other hand contended that after submission of the FR, Special Judge (DAA) Jhansi has rejected it and summoned the applicants and hence there is no illegality in the impugned order dated 30-7-2007. They further contended that so far as the allegations of malafides are concerned, since these are disputed questions of facts, prosecution of the applicants should not be thrown out at this stage and the informant and the prosecution must be offered a chance to substantiate their allegations. Affidavits were filed supporting prosecution version and looking into the materials collected during investigation and in those affidavits that the applicants have been summoned and therefore, there is no illegality in the procedure adopted by Special Judge, they harangued. They concludingly, contended that this application is bereft of merits and deserves to be dismissed.

18. I have pondered over the rival submissions and gone through the record of this Criminal Misc. Application.

19. A perusal of the record indicates that it is not disputed that the police had arrested both the sides on 8-12-2003 u/s 151 Cr. P.C., for breach of peace by acting u/s 107/116 Cr. P. C. The report of the police station (annexure 2) dated 21-2-2004 indicates that some application was filed before the Sub Divisional Magistrate Jhansi. The police inquired into the matter under the orders of SDM and found that the husband of respondent No. 2 and her family members have illegally stored 500 bricks on plot No. 500 which belong to the applicants and they have encroached the way. The civil Judge (JD) Mauranipur on 23-9-2003 had passed an order of status quo. The said order of status quo was executed by the police. The record further reveals that the police gave a report that the incident alleged on 18-1-2004 is totally false and the application was filed only to falsely implicate the applicants with ulterior motive to grab the landed property belonging to them. The order of Special Judge (DAA) Jhansi dated 25-2-2004

indicates that he had registered the application u/s 156(3) Cr. P.C. as a complaint case and had fixed 1-3-2004 for recording of the statement u/s 200 Cr. P. C, but under the orders of this Court FIR was directed to be registered and the allegations were investigated by the police. All the witnesses including father-in-law and husband of respondent No. 2 did not support the allegations of respondent No. 2 in respect of incident alleged to have occurred on 18-1-2004. All the witnesses unequivocally made statements before the I.O. that there was an altercation on the said date, and the villagers got the matter pacified and neither the cloths of the respondent No. 2 were pulled and torned off nor she was abused nor any incident of robbery/ dacoity took place. The police thus submitted a FR vide Annexure 14. The said FR however, was rejected by CO. concerned and the incident was further investigated. Again second I.O. submitted FR on 29-9-2004. In the aforesaid report the second I.O. mentioned that the respondent No. 2 was used as a ploy by Sahab Singh Yadav cousin brother of the applicants No. 1 and 2, as he was an accused for offence u/s 307 IPC case and was charge sheeted, which case was pending trial. Sahab Singh had also grabbed the village land which he was forced to vacate. The report further mentioned that on 18-11-2002 Sahab Singh illegally grabbed a house of two rooms adjacent to the land belonging to the applicants in respect of which, O.S. No. 128/03 was filed by the applicants. On 8-12-2003 the family members of respondent No. 2 were arrested u/s 151 Cr. P. C. On 18-1-2004, the alleged date of the incident it was respondent No. 2, who vetuparised the applicants and they did nothing. It was further mentioned that under the orders passed by this Court on 14-5-2004, the application u/s 156(3) Cr. P. C. was registered as a FIR on 16-6-2004 at the police station Uldan. It is further mentioned in the report that Sahab Singh is behind the whole incident, who is using the respondent No. 2 as his ploy to harass and pressurise the applicants. The police came to the conclusion that no incident occurred on 18-1-2004 and, therefore, again submitted FR. Protest petition was filed by the respondent No. 2 on 12-1-2005 along with some affidavits. Special Judge (DAA) Jhansi vide his order dated 9-2-2005 directed for further investigation.

20. In further investigation also the police found the case to be false and submitted FR on 2-5-2005. The said report was received and registered in the court on 15-6-2005. Respondent No. 2 prayed for filing of objections, and therefore, she was heard. The dates after dates were fixed in the case and ultimately protest petition of respondent No. 2 was directed to be registered, as a complaint case and on 17-11-2005 statement u/s 200 Cr. P. C. of respondent No. 2 was recorded. On the following date the statements of CW1 and CW2 were recorded and the case was fixed for orders. The order sheet of the trial court indicates that subsequently 19 dates were fixed and ultimately on the 20th date i.e. 30-7-2007 FR was rejected and the applicants were summoned.

21. Above facts, indicate that the protest petition filed by respondent No. 2 was treated to be a complaint followed by recording of statement u/s 200 Cr. P. C. on 17-11-2005 and thereafter of the witnesses u/s 202 Cr. P. C. on 20-12-2005.

When the Special Judge (DAA) Jhansi adopted complaint case procedure, then he could have proceeded further only u/s 203 or 204 Cr. P. C. on the basis of recorded statements. However very queerly Special Judge clearly ignored the statement recorded by him and summoned the applicants on the basis of materials contained in the Case Diary. Thus what the Special Judge did that he coalesced the two procedures prescribed for police challani case as well as of complaint case albeit it was well within his right to reject the FR and summon the accused straight way. That having not been done, the Special Judge, (DAA) Jhansi eschewed the procedure prescribed for police challani case and he proceeded to follow the procedure of a complaint case. It was therefore, mandatory for him to look into the statements recorded u/s 200 and 202 Cr. P. C. and then pass orders either u/s 203 or 204 Cr. P. C. of dismissal of complaint or of summoning of the accused persons as the case may be. Instead of relying upon the recorded statements u/s 200/202 Cr. P. C, Special Judge (DAA) again switched over to the material contained in the case diary and summoned the applicants and hence the procedure, adopted by Special Judge is wholly illegal. He was entitled to adopt one procedure prescribed for summoning of the accused either as a police challani case or as a complaint case. He could not have changed from one to another at his will. It is reminded that the two procedures for police challani case and complaint case are entirely different and adherence to only one of them is sanctified by law. It is also very surreal that if the Special Judge had not to consider the statements u/s 200 and 202 Cr. P. C, why he recorded them at all. Recording of statements was a judicial exercise, therefore, trial Judge was not entitled to ignore them.

22. Another disturbing feature of the case is that in the case diary there was no material against the applicants but for the statement of respondent No. 2, which was contradicted by her husband and father-in-law, her two closest relatives. There were repeated Final Reports submitted by the police and at least one of such report dated 29-9-2004 was a detailed one. The said report clearly indicated that the whole exercise under taken by the respondent No. 2 is vindictive and vexatious. It does not at all appeal to reason as to why the Special Judge relied upon the solitary statement of respondent No. 2 over other statements of rest of all witnesses including her husband and father-in-law. Allegations of respondent No. 2 was contradicted by other witnesses overwhelmingly. In my view the evidence against the allegations of respondent No. 2 were so heavily loathed against her allegations that Special Judge could not have preferred her allegations vis-a-vis the three F. Rs. Power of Criminal Courts can not be wielded as a tool for vexatious prosecution motivated by harassing psyche. Curbing of such a prosecution for protection of individual's dignity and his liberty is a judicial necessity for which only powers have been conferred on this Court as well as on the apex court both under Article 320 and 226 of the Constitution and Section 482 of the Code.

23. Yet another disturbing feature of the case is that while rejecting the FR and passing summoning order, Special Judge has not given any reason why he does

not agree with the conclusions arrived at by the police. I do not mean to say that Special Judge was bound by the opinion of the police but what I want to indicate is that in matters like the present case which was repeatedly investigated and was concluded repeatedly by the submission of the Final Reports then mere ipse-dixit of the informant should not be used as a weapon of harassment of innocent persons to launch a lame prosecution. In my view the Special Judge would have done well if he would have recorded some reasons for not agreeing with the police report or at least should have indicated in the summoning order why he is summoning the accused. What seems to me is that there was no material contained in the CD against the applicants and that is why the Special Judge conveniently ignored to mention the reasons for summoning the applicants and rejecting the FR. For justifiability of the summoning order, I myself has looked into the evidences collected during investigation filed along with this application. It clearly indicates that whole exercise conducted by the respondent No. 2 is nothing but malicious. It is a case of no injury. Chances of conviction of the applicants on the bare statement of respondent No. 2 alone which is full of unnaturality and absurdity is very remote.

In view of the above discussions, I find that the prosecution of the applicants is nothing but only their harassment and their summoning order de-hors the law. Learned Counsel for the respondent No. 2 as well as learned AGA have also failed to point out any material which can substantiate the charge levelled by respondent No. 2.

24. In view of the above discussion, this Criminal Misc. Application is allowed and the summoning order of the applicants dated 30-7-2007, passed by Special Judge, (DM) Jhansi, in FR Case No. 70/05, Smt. Sudha v. Narain Singh and Ors. Under Sections 395, 354, 504 and 506 IPC is quashed.

25. Copy of this order be sent to the Special Judge (DAA), Jhansi for his intimation.