

(2006) 12 AHC CK 0014
In the Allahabad High Court

Pappoo Yadav alias Rajesh, Bhayyan alias Surendra and Gauri Shanker APPELLANT

Vs

State of U.P. and Smt. Beti Bai RESPONDENT

Date of Decision : 07-12-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 323, 504, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2007) 1 AWC 803(1)

Hon'ble Judges : Barkat Ali Zaidi, J

Bench : Single Bench

Judgement

Barkat Ali Zaidi, J.—Against an order of summoning by the Magistrate, Jhansi under Sections 323, 504, 506 I.P.C. and Section 3(i)(x) of S.C./ ST. Act, the three petitioners have come to this Court under Article 226 of the Constitution of India, seeking quashing of summoning order.

2. I have heard Sri S.K. Chaturvedi counsel for the petitioners and Sri R.S. Maurya Addl. Government for the State.

3. All possible kind of pleas irrespective of their applicability and oblivious of their propriety have been adopted in an indiscriminate manner, as will appear from the grounds in the memo of petition, and for this purpose, the grounds in the memo of petition may be quoted which are as Under.

(I) Because, the learned Additional Sessions Judge illegally failed to see that cognizance of case was taken by the Magistrate who was not competent to take the cognizance.

(II) Because, the learned Sessions Judge failed to see that the charge-sheet was Wed by the officer who is not competent and authorize by the State to file the charge-sheet.

(iii) Because, the record of the case do not suggest that the offence was committed at a place within public view as there Is no witnesses except father-in-law whose presence is wrongly shown.

(iv) Because, the learned Sessions Judge also failed to consider that the offence u/s 506 I.P.C. could not be made out as there is no a/legations In the complainant was terrorized because of Intimidation by the petitioners.

(v) Because, the learned Sessions Judge also failed to consider that no case u/s 504 I.P.C. is made out as there was no statement of fact in the complaint which could suggest the provoking the breach of peace by the alleged Insult and there are no abusive word given in the complaint.

(vi) Because, there was no actual injuries, therefore, no case under Sections 504/506, 323 I.P.C. and Section 3(i)(x) of SC/ ST Act is made out against the petitioners.

(vii) Because, the cognizance taken by the Judicial Magistrate, being without jurisdiction, the learned Sessions Judge must have allowed the revision.

4. It will be an abuse of the process of time of this Court to consider all these grounds, which are prima-facie vexations, and it would suffice to strike them down with the observation, that none of them, can be of any help to the petitioners.

5. Some points raised may, however, be answered. It has been said that no offence under some sections like Sections 504, 506 and 323 I.P.C. can be framed on the facts of the case. It would be premature for this Court to consider this submission because, it is for the Magistrate to see at the time of framing of charge what offence, if any, is made out. Any decision by the court at this stage would be appropriating the functions of the Magistrate, and he would be bound thereby, and would not be able to exercise his discretion. It has also been mentioned that the Magistrate as well as the Investigating Officer were not competent in law to exercise the functions which they have performed. No reason has been assigned as to why they were not competent. Such statements without any reason are wholly meaningless. It may also be mentioned that the argument about the lack of competence in th Magistrate and the Investigating Officer exercising jurisdiction in the case has been waived before the Sessions Judge as will appear from the impugned order and have been reiterated here. That is what constrained to this Court to mention earlier that the grounds for relief have been taken indiscriminately.

6. One of the pleas is that the Magistrate has not applied his mind but again no reason has been assigned as to how can it be inferred that the Magistrate has not applied his mind.

7. It has also been mentioned that cognizance is taken of an offence and not of the accused. This plea has probably been taken because the Magistrate mentioned in his order taking cognizance against the accused. This circumstance

makes no difference and the words used by the Magistrate cannot provide any ground of relief to the petitioners. It has to be realized that an offence does not survive in abstract and comes alive only when it is integrated with a human being. The two though separate, are still inseparable.

8. The counsel for the petitioners have referred to the pronouncement of the Supreme Court in the case of Pepsi Food Ltd. and Anr. v. Special Judicial Magistrate and Ors. 1998 S.C. 118. That was a case under the Prevention of Food Adulteration Act. Reliance was placed by the counsel for the petitioners on para-22 of the report, which is as follows:

22. Summoning of an accused in a criminal case is a serious matter. Criminal law can not be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would mat be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate had to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima-facie committed by all or any of the accused.

9. There can be no controversy about what has been mentioned by the Supreme court but there is nothing in this case about which it may be said that the Magistrate did not apply his mind and the observation made by the Supreme court are not applicable to the facts of the present case.

10. The other case, referred to by the petitioner's counsel was a Single Judge decision of the Allahabad High Court in the case of Beni Prasad Verma v. State of U.P. and Anr. 2004 (Suppl.) A.C.C. 845. Where a similar view is expressed, and it was held on the facts of the particular case, that the Magistrate had not applied his mind but no such allegation can be sustained against the Magistrate in the present case.

11. The facts and circumstances of each case are different and it has to be examined on their basis whether the Magistrate has applied his mind or not. Every case, therefore, depends upon its own facts and the two cases referred to by the petitioners' counsel are of no help.

12. copy of this order be sent by Registry to District Judge, Jhansi for sending it to Judicial Magistrate, court No. IX for information.

13. Petition dismissed.