

(2003) 03 AHC CK 0048
In the Allahabad High Court
Case No : Criminal Revision No. 1742 of 1998

Rajesh Sewani and Others	Vs	APPELLANT
State of Uttar Pradesh and Another		RESPONDENT

Date of Decision : 25-03-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 202(2)
Uttar Pradesh Dacoity Affected Areas Act, 1983 — Section 7

Citation : (2003) CriLJ 4643 : (2004) 1 RCR(Criminal) 60

Hon'ble Judges : Onkareshwar Bhatt, J

Bench : Single Bench

Advocate : G.C. Saxena, for the Appellant; A.N. Mishra and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Onkareshwar Bhatt, J.—This revision is direction against the order dated 17-10-1998 passed by the Special Judge (Dacoit Affected Area), Lalitpur.

2. Sri G.C. Saxena, learned counsel for the revisionists. Sri A.N. Misra, learned counsel for the opposite party No. 2 and the learned A.G.A. have been heard.

3. By the impugned order the Special Judge has taken cognizance of an offence under Sections 395 and 397, I.P.C. against the revisionists-accused and summoned them through non-bailable warrant.

4. Opposite party No. 2 has filed a complaint before the Special Judge in respect of the occurrence in between night of 26/27-9-1997. Affidavits and documents were produced in support of the complaint.

5. The Special Judge called for a police report. The Special Judge did not take cognizance after the receipt of the police report by order dated 18-11-1997. The opposite party No. 2 approached the High Court against the said order and the High Court directed that Special Judge may take decision of his own. This order was passed in Criminal Misc. Application No. 8283 of 1997, on 4-2-1998. The

Special Judge thereafter examined the complainant and passed the impugned order. The Special Judge held that Section 7 of the U. P. Dacoit Affected Area Act, 1983, provides that cognizance can be taken without following the procedure under Sections 200 and 202, Cr.P.C. Section 7 of the above Act is a replica of Section 190 of the Cr.P.C. The Special Judge has not proceeded in accordance with Clauses (a), (b) and (c) of Section 7 of the Act. The Special Judge examined the complainant-opposite party and thereafter passed the impugned order. The examination of the opposite party-complainant can be attributed u/s 200 of the Cr.P.C., therefore, the court below had to exhaust its recourse to Section 202, Cr.P.C. The proviso to Section 202(2), Cr.P.C. says that if it appears to the Magistrate that the offence/complaint is triable exclusively by the court of session, he shall call upon the complainant to produce all his witnesses and examine them on oath. Since the offence alleged is a schedule offence and its trial will proceed as session trial, the Special Judge should have complied with the proviso to Section 202(2), Cr.P.C. This view finds support from the case of Hari v. State of U. P. reported in 1999 ACC 366.

6. In view of the above discussion the revision is allowed. The impugned order is set aside. The Special Judge is directed to call upon the complainant to produce all his witnesses and examine them on oath and thereafter to pass appropriate orders in accordance with law. The revisionists-accused may file fresh bail bonds for his appearance before the Special Judge concerned. The order be certified to the court below and the record be transmitted forthwith.