
(1997) 03 AHC CK 0110
In the Allahabad High Court
Case No : Criminal Revision No. 1787 of 1984

Rashid and Ors.

APPELLANT

Vs

Abdul Hafiz & Anr.

RESPONDENT

Date of Decision : 14-03-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190(1)(a), 200, 202

Citation : (1997) 03 AHC CK 0110

Hon'ble Judges : P.K.Jain, J

Final Decision : Allowed

Judgement

P.K. Jain, J.—List has been revised, None appears for the revisionists.

2. Heard Sri S.S. Shah for the opposite party No. 1 and learned AGA for the State and perused the material on record. The revision is against the summoning order.

3. It appears that the opposite party No. 2 lodged a report for offences u/Ss. 4577 380, I.P.C. It appears that final report was submitted by the police on conclusion of investigation. Thereafter the complainant approached the Magistrate concerned and filed a protest petition alongwith some affidavits of witnesses. The trial Court passed following order on 31584:

4. The summoning order is challenged mainly on two grounds that after filing of the protest petition the Magistrate was required to examine the complainant under Section 200, Cr.P.C. and his witnesses under Section 202, Cr.P.C. and that there is no material apparent from the order as to what material was perused by the learned Magistrate, which prompted him to pass the impugned order. The learned counsel for the opposite party No. 1 contends that the Magistrate can after rejection of the final report, summon the accused on the basis of material collected in investigation and is not bound by the opinion of the investigation agency and in such a case he was not required to examine the complainant under Section 202, C.P.C. It is further contended that the learned Magistrate

observed that he examined material on record and affidavits etc. which means that the learned Magistrate has examined the material collected by the investigating agency and the affidavit of the witnesses filed by the complainant.

5. So far as following the procedure or the complaint case after complainant filed a protest petition and affidavit of some of the witnesses is concerned, after decision of the Hon''ble Supreme Court in Bhagwant Singh v. Commissioner of Police and another, 1986 A.W.C. 26, the informant must be given notice and heard before final report is accepted by the Magistrate. The court before whom final report is submitted, is duty bound to serve notice upon the complainant and invite objection to the acceptance of the final report. In such a case if objection is filed by the first informant then such an objection cannot be treated to be protest petitions and after filing of the objections the court may accept the same and reject the final report and summon the accused person under Section 190(1) (a) of Criminal Procedure Code.

6. However, in the instant case there is serious doubt as to what material was perused by the learned Magistrate while passing the impugned order. The learned Magistrate simply stated in his order that he has perused the evidence, affidavit, etc. and material available on record. There is no specific mention that the final report was not acceptable nor there is mention of any such objection or material warranting rejection of the final order. The Magistrate should have passed the order specifically recording reason as to what material was perused by him, and as to why final report was not acceptable.

7. In the absence of such consideration on the part of the learned Magistrate, the impugned order cannot be sustained in law. The revision is allowed and impugned order is set aside. The case is sent back to the Chief Judicial Magistrate for decision afresh according to law.

Revision allowed.