
(2008) 04 AHC CK 0283
In the Allahabad High Court

Ratan Kumar Rai @ Baban Rai, Ritesh Kumar Rai and Amit Kumar Rai

APPELLANT

Vs

State of U.P. and Bachu Paswan

RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 291, 294
Penal Code, 1860 (IPC) — Section 323, 392, 427, 504, 506

Citation : (2008) 04 AHC CK 0283

Hon'ble Judges : Amar Saran, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amar Saran, J.—Heard learned Counsel for the applicants and the learned A.G.A.

2. An order dated 8.10.2007 passed by the Additional Chief Judicial Magistrate, Court No. 6, Ghazipur, in Criminal Case No. 591 of 2007 Bechu Paswan v. Ratan Kumar Rai and Ors. summoning the applicants under Sections 323, 392, 427, 504, 506 IPC and 3(1)(X) S.C./S.T. Act, has been challenged by means of this application.

3. In the said order, it is observed that the complainant was examined u/s 200 Cr.P.C. thereafter the statements of witnesses Musafir Paswan, P.W.1, Geeta, P.W. 2, Lalima Kumari, P.W.3, Virendra Singh Record Keeper, Police Office, Ghazipur, P.W. 4, Constable No. 75 Ram Pravesh, P.W. 5 and Sri Triveni Sharma, Chief Pharmacist, Primary Health Centre, Rewatipur were examined u/s 202 Cr. P. C. and also certain documents, which included initial N.C.R. No. 27/07, copy of the medical report, the copy of the application to the S.P. Ghazipur and the receipt of the registration were produced.

4. The allegations in the complaint were -that complainant belonged to the scheduled caste (dusadh). The applicants, who belonged to a higher caste forcibly lifted the puwal, which was kept in the premises of the complainant.

When they were stopped they became extremely angry hurled caste derogatory abuses and also threatened to finish of the complainant. Later applicant No. 1 exhorted his two sons Amit and Ritesh to beat up the complainant crying out that the dusadh is becoming very aggressive. Amit, Ritesh and Ratan Kumar beat him with kicks and fists. Medical examination of the injured informant Bechu Paswan was conducted by the Medical Officer, In-charge, Primary Health Centre, Rewatipur.

5. Learned Counsel for the applicants contends that the applicants' fundamental rights were violated summoning them in as much as the doctor, who has conducted the medical examination, was not examined u/s 202 Cr.P.C., but only the Chief Pharmacist was examined to prove the medical report.

6. I am of the opinion that only on that ground a summoning order cannot be set aside. All these points will be seen at the stage of trial when the evidence is led. Even in a trial when a doctor is not examined, u/s 294 Cr.P.C., the other side may be called upon to admit the contents of the medical report. u/s 291 Cr.P.C. there is even a provision in exceptional circumstances to examine a medical witness by means of a commission. At the preliminary stage of inquiry u/s 202 Cr.P.C. also it is not mandatory in each case to examine the witness on oath.

7. A Single Judge decision of this Court in Kailash Nath Pandey and Anr. v. State of U.P. and Anr. 2007 (59) ACC 15 was relied on. In that case, the single Judge remanded the matter to the Magistrate, but it was a case where neither the doctor, who medically examined the complainant, was examined u/s 202 Cr.P.C. nor X-ray plate or X-ray report were produced, nor the doctor, who got the X-ray done, was examined. On the facts of the particular case, an order of remand may be passed. From the facts of that particular case, it cannot be said that in every case where the doctor is not examined u/s 202 Cr.P.C, the summoning order must necessarily be set aside or the matter be remanded to the Court below.

8. Therefore, there is no force in this application. It is, rejected.

9. However, it is directed that if the applicants appear in the aforesaid case before the Court concerned within three weeks, their bail applications shall be decided expeditiously in accordance with law.