

(2009) 03 AHC CK 0010

In the Allahabad High Court

Case No : Criminal M. Application No. 7592 of 2009

Rukhsana Begum and Others

APPELLANT

Vs

State of U. P. and Another

RESPONDENT

Date of Decision : 27-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482, 82, 83
Penal Code, 1860 (IPC) — Section 323, 504, 506

Citation : (2009) 2 ACR 1363

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Advocate : Animesh Chatterji, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Vinod Prasad, J.—On mention being made in the morning that trial Judge in a haste has issued non-bailable warrant as well as process under Sections 82 and 83, Cr. P.C. against the applicants and therefore, the matter is urgent, I direct the record of this case to be summoned.

2. Heard the learned Counsel for the applicants and learned A.G.A. for and against of this application. A certified copy of the order sheet of the trial court of the concerned S.S.T. No. 161 of 2008, State v. Rukhsana Begum and others, has been produced before me which I take on record.

3. On 6.1.2009 the accused persons were heard by the Special Judge S.C./S.T. Act, Agra on the question of framing of charge. The accused persons denied the charge and claimed to be tried. Resultantly, trial Judge framed charges against them for offences under Sections 323, 504, 506, I.P.C. and 3(1)(x) of S.C./S.T. Act. Fixing 19.2.2009 for recording the prosecution evidence.

4. On the aforesaid date, i.e., 19.2.2009 prosecution witnesses did not appear and therefore, the trial Judge issued bailable warrant against the two witnesses Smt. Kamala Devi and Ram Nath fixing 18.3.2009 for their appearance and

evidence. On 18.3.2009, though the witnesses were present but the present accused-applicants were absent and hence trial Judge cancelled their bail, issued N.B.W. and simultaneously issued process under Sections 82 and 83, Cr. P.C. against them fixing 20.4.2009. Hence, this application u/s 482, Cr. P.C. for quashing the order dated 18.3.2009 and the coercive measures.

5. The order-sheet, which has been produced today, clearly indicates that trial Judge acted in undue haste without any valid reason. After framing of charge, on the first date fixed for recording the evidence, witnesses were not present. The present applicants-accused were present in the Court. Next date fixed was 18.3.2009, on which date though the witnesses were present but the applicants were not present. It was first lapse on the part of the applicants to appear in the Court. If the accused persons were not present, the trial Judge could have summoned them therefore, process of bailable warrant. Cancelling the bail of the accused on the first lapse is not a justifiable judicial exercise. In the present case, the trial Judge not only cancelled the bail of the applicants-accused but also issued N.B.W. and process under Sections 82 and 83, Cr. P.C. simultaneously. The order passed by the trial Judge, shows his hasty action and gives an indication of abuse of power vested in the Court. Special Judge should have acted with more restraint. It is not expected from Special Judge to trample the judicial discipline and take coercive action against the accused when it is not called for. Issuance of process under Sections 82 and 83, Cr. P.C. on the very first date alongwith cancellation of bail therefore, cannot be allowed to be sustained.

6. I, therefore, allow this Crl. Misc. Application and set aside the order dated 18.3.2009, passed by Special Judge, S.C./S.T. Act, Agra in the aforesaid S. S. T. No. 161 of 2008. Applicants are directed to appear on 20.4.2009 in the trial court, which is the next date fixed.