
(2012) 11 AHC CK 0036
In the Allahabad High Court
Case No : Criminal Revision No. 221 of 2006

Saiyad Mustaq and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 27-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190(1)(a), 204
Penal Code, 1860 (IPC) — Section 420

Citation : (2013) 3 ALJ 654

Hon'ble Judges : Het Singh Yadav, J

Bench : Single Bench

Advocate : S.S. Shukla and Arvind Singh, for the Appellant; M.C. Chaturvedi, S.C. Dwivedi and Neeraj Tripathi, for the Respondent

Judgement

Het Singh Yadav, J.—In this Criminal Revision order dated 19.12.2005 passed by the learned Chief Judicial Magistrate, Mahoba issuing process u/s 204, Criminal Procedure Code, 1973 (Code) against the revisionists on the complaint moved by Respondent No. 2 is under challenge.

Factual matrix of the case giving rise to this revision briefly stated are that the Respondent No. 2 (complainant) moved complaint in the Court of Chief Judicial Magistrate (C.J.M.), Mahoba disclosing that marriage of his daughter was settled with the Revisionist No. 1 said to be employed abroad. One Chiddu Saudagar and Kamar Ali alias Tillu Master were the mediators. The Revisionists made dowry demand of Rs. 5 lacs. The Respondent No. 2 paid Rs. 15,000/- in cash and Rs. 2,20,000/- through Cheque No. 636081 to the Revisionist No. 1 and his mother (Respondent No. 4) on the occasion of engagement ceremony held on 22.3.2005. Later on, as per choice of the Revisionist Nos. 1 and 4, the Respondent No. 2 got issued two demand drafts of State Bank of India, issued by Mahoba Branch No. 0519393110 dated 13.10.2005 of Rs.. 1,60,000/- and No. 0512679507 of Rs. 60,000/- dated 14.10.2005 in the joint names of the Revisionist Nos. 1 and 4. The Revisionist Nos. 1 and 4 had returned the cheque

drawn as aforesaid in their favour by the Respondent No. 2. The Respondent No. 2 also got issued passport of his daughter to be married with the Revisionist No. 1 as per his advice. The Revisionists on 31.10.2005 along with the mediators approached the Respondent No. 2 at his residence and further demanded Rs. 85,000/- in cash and jewellery to be given by the Respondent No. 2 to his daughter at the time of marriage. When the Respondent No. 2 refused to fit in their caprices, they have broken the engagement and further refused to return the money of the Respondent No. 2 paid to them aforementioned. The revisionists and their relative named in the complaint thus have committed offence of cheating.

The learned Chief Judicial Magistrate after having taken cognizance on the complaint so moved by the Respondent No. 2 u/s 190(1)(a) of the Code of Criminal Procedure (Code) proceeded in the matter as provided in the Chapter XV of the Code. The statements of the complainant and the witnesses were recorded u/s 200 of the Code and the complainant further adduced documentary evidence before the C.J.M. purported to be u/s 202 of the Code. The learned C.J.M. being satisfied that there is sufficient ground for proceeding and the case appears to be warrant case issued warrant against the revisionists u/s 204 of the Code. However, the C.J.M. did not feel satisfied so far as the other persons named in the complaint are concerned, therefore, he dropped the proceedings against them u/s 203 of the Code vide the impugned order, under challenge in this revision invoking Section 397/401 of the Code before this Court.

2. Heard learned counsel for the revisionist, learned A.G.A. and learned counsel for the Respondent No. 2 (complainant) and also perused the record.

3. Counter affidavit and rejoinder affidavit have been exchanged between the parties.

4. Learned counsel for the revisionists contended that the learned C.J.M. while passing the impugned order has failed to apply his judicial mind and passed the impugned order of issuing process against the revisionist without considering the fact that the version put-forth by the complainant in his complaint is absolutely false and fabricated. The marriage of the Revisionist No. 1 could not be materialized with the daughter of Respondent No. 2 because his employer in Saudi Arabia did not provide him Family Visa. Learned counsel stressed much that on perusal of impugned order it is obvious that learned C.J.M. has not applied his mind to the facts of the case and also the law applicable thereto. He has also failed to consider that no document said to be in possession of the complainant such as payment of money through drafts, passport and video film alleged to have been prepared, have been filed, The learned C.J.M. has applied the provisions of Chapter XV of the Code in mechanical manner without applying his mind. The learned C.J.M., nowhere disclosed reason for his satisfaction about sufficient ground for proceeding u/s 204 of the Code in the impugned order. The impugned order, therefore, is illegal as being against the facts on record and also the law applicable and deserves to be set aside.

5. For his submission he placed reliance on Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, , in this case Hon"ble Supreme Court held thus:--

Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as 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 that 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 has to carefully scrutinise 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.

6. On the other hand, learned A.G.A. and learned counsel for the Respondent No. 2 contended that the scope of enquiry under Chapter XV of the Code by the Magistrate is extremely limited at this stage. The Court has to ascertain the truth or falsehood of the allegations made in the complaint on the basis of material placed before him by the complainant for the limited purpose of finding out whether prima facie case for issuing of process has been made out or not.

7. In this case the Respondent No. 2 (complainant) has not only examined himself and two of the witnesses u/s 200 of the Code to establish prima facie case but has also produced documents to prove that a sum of Rs. 2,20,000/- was paid to the Revisionist Nos. 1 and 4 towards the part payment of their dowry demand through two demand drafts. The complainant and the witnesses in their statements on oath recorded u/s 200 of the Code have categorically prima facie proved the facts disclosed in the complaint. The complainant has also produced documentary proof u/s 202 of the Code.

8. The Revisionists could not dare to refuse that the marriage of the daughter of the Respondent No. 2 was settled with the Revisionist No. 1 rather it is stated that the marriage could not be materialized as the employer of the Revisionist No. 1 did not provide the family visa. Thus, at the stage of preliminary enquiry under Sections 200 and 202 of the Code the Respondent No. 2 has produced sufficient prima facie evidence in support of his version which is sufficient ground for issuing process against the revisionists. The arguments of the learned counsel for the revisionists that the learned C.J.M. while passing the impugned order has not applied his judicial mind is also incorrect. It is a fact that the complainant has named 12 persons in his complaint but the learned C.J.M. after examining the prima facie evidence adduced by the revisionists has issued process only against the revisionists. This shows that the learned C.J.M. after scrutiny of the prima

facie evidence and material adduced by the complainant has applied his judicial mind to the facts of the case and legal provisions relating thereto.

The revision has no force and accordingly liable to be dismissed.

9. The only question involved in this revision is-whether the impugned order of the learned Chief Judicial Magistrate, Mahoba issuing process against the Revisionist is arbitrary and illegal as from the facts and material produced before him by the complainant, prima facie no offence u/s 420, I.P.C. and S. 3/4 Dowry Prohibition Act have been committed.

10. Chapter XV of the Code relates to the complaint to the Magistrates and covers cases of actual commencing of proceedings in a Court or before a Magistrate. On receiving a complaint the Magistrate first takes cognizance of an offence on the complaint then he shall examine upon oath the complainant and the witnesses present, if any, u/s 200 of the Code. The substance of such examination shall be reduced to writing and shall be signed by the persons make it and also by the Magistrate and, if, the Magistrate thinks fit, he may either enquire in the matter himself or direct investigation to be made by a police officer or by such other persons as he thinks fit to decide whether or not there is sufficient ground for proceeding. After considering the statements of the complainant and the witnesses made u/s 200 of the Code and the result of enquiry or investigation, if any, u/s 202 of the Code, the Magistrate is of the opinion that there is no sufficient ground for proceeding he shall dismiss the complaint u/s 203 of the Code. But if the Magistrate is of the opinion that there is sufficient ground for proceeding then he shall issue the process for the attendance of the accused u/s 204 of the Code by summon or warrant where the case is a warrant case.

11. After going through the entire provisions of the Chapter XV and Section 204 of the Code and after having considered the rival contentions of both the sides I am fully convinced with the arguments made by the learned A.G.A. and learned counsel for the Respondent No. 2 that scope of the enquiry under Sections 200 and 202 of the Code is very limited at the stage of Section 203/204 of the Code. What the Magistrate has to do, is to see whether at a cursory perusal of the complaint and evidence recorded during preliminary enquiry under Sections 200 and 202, is their prima facie evidence in support of accusation made against the accused. All that he has to see whether or not there is sufficient ground for proceeding against the accused at this stage. The Magistrate is not supposed to scrutinise evidence recorded under Sections 200 and 202 of the Code meticulously as in the trial. The standard of scrutinizing evidence is also not the same as required that at the stage of framing of charge while passing order u/s 204 of the Code. Therefore, condition precedent for issuing process u/s 204 is the satisfaction of the Magistrate that there is sufficient ground.

12. In Shivjee Singh Vs. Nagendra Tiwary and Others, the Apex Court held thus:--

The object of examining the complainant and the witnesses is to ascertain the truth or falsehood of the complaint and determine whether there is a prima facie case against the person who, according to the complainant has committed an offence. If upon examination of the complainant and/or witnesses, the Magistrate is prima facie satisfied that a case is made out against the person accused of committing an offence then he is required to issue process. Section 202 empowers the Magistrate to postpone the issue of process and either inquire into the case himself or direct an investigation to be made by a police officer or such other person as he may think fit for the purpose of deciding whether or not there is sufficient ground for proceeding. u/s 203 the Magistrate can dismiss the complaint if, after taking into consideration the statements of the complainant and his witnesses and the result of the inquiry/investigation, if any, done u/s 202 he is of the view that there does not exist sufficient ground for proceeding. On the other hand, Section 204 provides for issue of process if the Magistrate is satisfied that there is sufficient ground for doing so. The expression "sufficient ground" used in Sections 203, 204 and 209 means the satisfaction that a prima facie case is made out against the person accused of committing an offence and not sufficient ground for the purpose of conviction. This interpretation of the provisions contained in Chapters XV and XVI of Cr.P.C. find adequate support from the judgments of this Court in *Ramgopal Ganpatrai Ruia and Another Vs. The State of Bombay*, *Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another*, *Chandra Deo Singh Vs. Prokash Chandra Bose and Another*, *Nirmaljit Singh Hoon Vs. The State of West Bengal and Another*, *Kewal Krishan Vs. Suraj Bhan and Another*, *Mohinder Singh Vs. Gulwant Singh and others*, and *S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. and Others*, .

13. This Court in *Umrao Singh Vs. State of U.P. and Others*, held thus:--

Thus, at that stage only disclosure of a prima facie case has to be looked into and nothing more. At that stage, Magistrate is not required to conduct a roving enquiry into various facets and disputed question of facts to fathom out a defence for the accused yet to be tried and scuttle the prosecution at its very inception. Whether the witnesses are reliable or not, whether the prosecution allegations are reliable or not, whether the witnesses are credible and confidence inspiring or not, all these aspects are alien to the scope of enquiry at that stage. Magistrate cannot go into these aspect to aggrandize scope of enquiry to codswallop extent.

14. Considering the rival submissions and the case laws cited above, it is now settled that at the stage of Sections 203 and 204 of the Code the Magistrate has to consider a prima facie case and nothing more. The scanning of material and the evidence recorded u/s 200 of the Code cannot be equated with the scrutiny and appreciation of evidence as required at the final stage. A Magistrate is also not required to conduct roving enquiry into the various facts of the case. The Magistrate is also not supposed to examine that the witnesses whose statements u/s 200 of the Code has been recorded are reliable, credible and inspiring

confidence.

15. After considering the submissions of both the sides and on perusal of case laws, the Court is of the firm view that the learned C.J.M., Mahoba committed no error or illegality while passing the impugned order. The revision has no force accordingly dismissed.