

(2005) 12 AHC CK 0197

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 2170 of 2000

Sardar Awartar Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-12-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 200, 202, 203

Penal Code, 1860 (IPC) — Section 323, 406, 420, 427, 504

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2006) CriLJ 715

Hon'ble Judges : B.B. Agarwal, J

Bench : Single Bench

Advocate : Amarjeet Singh Rakhra, for the Appellant; Saurabh Srivastava, G.A.,
for the Respondent

Final Decision : Allowed

Judgement

B.B. Agarwal, J.—This petition u/s 482 Cr. P.C. has been moved to quash the criminal complaint no. 285 of 2005 filed by respondent no. 2 Narmada Prasad Sonkar alias Ramu under Sections 420, 406, 427, 323, 504, 506 I.P.C and Section 3(1)(X) S.C.S.T Act pending in the Court of Additional Chief Judicial Magistrate, Rae Bareilly, annexure no. 2 to the petition and also to quash the order dated 30.7.2005 passed by A.C.J. M. for summoning of the accused/petitioners under Sections 323, 504, 506, 427 and 406 I.P.C. and Section 3(1)(X) S.C and S.T. Act for trial in the aforesaid complaint annexure No. 1 to the petition.

2. Heard Sri Amarjit Rakhra Advocate, representing the petitioners and Kunwar Mridul Rakesh from the side of respondent no.2.

3. It appears that opposite party no.2 has filed a complaint against the petitioners for the offences punishable under Sections 420, 406, 427, 323, 504 and 506 I.P.C and 3(1)(X) S.C.S.T Act. It is alleged in the complaint that opposite party no. 2 had purchased a pair of shoes from M/s. Deep Shoes,

Station Road, Rae Bareilly on 13.4.2005 for Rs. 580/- only. The shoe did not last long and its sole came off within one month. The complainant visited the said shop and made a complaint about the quality of the shoes. He was told by Sardar Avtar Singh Chabara, petitioner no.1 that the shoes would be replaced by the Company within 20 days. After 20 days the complainant again went to the shop. Then he was told by all the petitioners that the shoes had not been received back from the Company and he was asked to come after two weeks. On 24.6.2005 the complainant along with his brother Sarjoo Prasad Sonkar and one Vijay Singh came at the shop at about 11.30 a.m. He was again asked to come later no. The complainant said to the petitioners for refund of his money which caused annoyance to the petitioners and they all began to hurl abuses on the complainant and they also assaulted the complainant and his brother by hits and slaps and they refused to return the shoes or the money. The accused- petitioner no. 2 had put his revolver on the chest of the brother of the complainant and threatened him. Petitioner no. 1 assaulted on the testicles of the complainant. The incident was witnessed by the brother of the complainant as well as Vijay Singh who has accompanied him upto the shop and also witness Krishna Pal, Anoop Rawat etc. The wrist watch of the complainant had also broken during the incident and he had suffered a loss of Rs. 300/-. The complainant sent complaint petition of the incident at Police Station and S.S.P Rae Bareilly but when no action was taken by the Police, then a complaint was filed on 29.6.2005. The complainant got himself medically examined in the district Hospital, Rae Bareilly on the same day.

4. The statement of the complainant was recorded u/s 200 Cr.P.C. The complainant examined two witnesses, namely, P.W. 1 Sarjoo Prasad Sonkar his brother and P.W.2 Zahir Ahmad u/s 202 Cr.P.C. He also filed a copy of the petition alleged to be sent by him to S.S.P and S.H.O. concerned and postal receipts of the same. He had also filed receipt of purchase of shoe issued from shop of Deep Shoes. He also filed his injury report.

5. After considering the entire evidence produced under Sections 200 and 202 Cr. P.C. the learned magistrate passed the impugned order, annexure no. 1 to the petition whereby the petitioners were ordered to be summoned for trial under Sections 323, 504, 506, 427, 406 I.P.C and Section 3(1)(X) S.C. and S.T Act. The complainant was directed to take necessary steps along with the list of the witnesses and date was fixed for appearance of the accused.

6. It is argued that the case is triable by the Court of Session. Hence as per provisions of the Code of Criminal Procedure the complainant was required to produce the entire evidence in support of his contention u/s 202 Cr. P.C. However, only one independent witness has been produced but he is not named in the complaint as a witness. Therefore, the Magistrate does not appear to have applied his mind before passing the summoning order. Moreover, even the list of the witnesses was not filed by the complainant along with complaint and the order of summoning was passed. Therefore, the impugned order is not legal and

valid order, as it was passed without application of mind.

7. My attention was drawn by the learned Counsel for the petitioners towards the provision of Section 204(2) Cr.P.C. As per this provision the complainant is required to file list of witnesses before issuance of the summons to accused. He is not required to file list of the witnesses along with the complaint. This view has been expressed by this Court in the case of Krishna Kant Pathak v. State of U.P. reported in 1995 ACC 14 : 1995 AIHC 2326. The High Court in aforesaid case has held as under :-

Criminal Procedure Code, 1973 Section 204 -Issuing - Summons or warrant - A list of witnesses - Not necessary to accompany the petition of complaint - It can be filed at the time of issuing process and no process would be issued without it.

8. So far as the second submission is concerned, the complainant has produced only two witnesses u/s 202 Cr. P.C, though it is not disputed that the case u/s 3(1)(X) S.C. and S.T. Act was exclusively triable by the Court of Session.

9. Section 202 Cr. P.C. lays down as follows;

202 Postponement of issue of process-

(1)...

Provided that no such direction for investigation shall be made--

(a) Where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) Where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath u/s 200.

(2) In an inquiry under Sub-section (1), the Magistrate, may, if he thinks fit, take evidence of witnesses on oath.

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under Sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

10. Thus, the only requirement is that in a case exclusively triable by the Court of Session the Magistrate is required to call upon the complainant to produce all his witnesses and examine them on oath u/s 202 Cr. P.C. There is nothing that the Magistrate did not call the complainant in this case to examine all his witnesses u/s 202 Cr. P.C. The production of two witnesses u/s 202 Cr. P.C. itself goes to show that the Magistrate did call upon the complainant, to produce all his witnesses and complainant had to produce the witnesses to whom he wanted to

produce in support of his contention. Hence at this stage it cannot be accepted that before passing the impugned order the Magistrate did not adopt proper procedure as required u/s 204 Cr.P.C. As per provision of Sections 203 and 204 Cr. P.C. the Magistrate can take cognizance and pass the summoning order in case he is satisfied after considering the evidence produced under Sections 200 and 202 Cr. P.C. that there are sufficient grounds to proceed against the accused persons. Thus, neither it is necessary for the complainant to file the list of the witnesses along with the complaint nor he can be compelled to produce each and every witness u/s 202 Cr. P.C. The only requirement is that the Magistrate should call upon the complainant to produce all his witnesses in support of his contention and then to consider the evidence produced u/s 200 and 202 Cr. P.C. for satisfying himself as to whether there was sufficient case for proceeding against the accused persons. The Magistrate is not obliged to examine the witnesses who were not produced by the complainant specially when the complainant had already been called upon by the Magistrate to produce all his witnesses in support of his contention. The learned Magistrate no doubt can dismiss the complaint if the witnesses necessary in his opinion to be produced u/s 202 Cr. P.C, if called upon, are not produced by the complainant but it cannot be accepted that the summoning order is not bad in law simply as all the witnesses are not examined u/s 202 Cr. P.C.

11. Now we have to see as to whether the Magistrate has applied his mind in passing the impugned order. The only two witnesses have been produced u/s 202 Cr. P.C. Out of them one is brother of the complainant and the other is one Zahir Ahmad. The other witness was not named in the complaint as an eye witness. The other independent witnesses were named in the complaint, namely, Vijay Singh, Krishna Pal and Anoop Rawat but none out of them has been produced. Perhaps they were not ready to support the complainant's case. The doctor has also not been examined who could prove the medical report.

12. It is argued that the fact has also not been considered by the Magistrate as to why the petitioners no. 1 and 2 have been implicated. The shoes were purchased by the complainant from the shop known as "Deep Shoes" and he appears to have made contact at the said shop when the shoes became defective it does not appear that he did disclose to the petitioners particularly petitioner no. 3 that he will come on the said date for taking back his shoes. Hence there was no occasion for the petitioners no. 1 and 2 to be present at the said shop on that day in early hours of the day specially when the petitioners no. 1 and 2 are said to have been engaged in separate business. Thus, the argument that the order has been passed without application of mind by the Magistrate carries weight in view of the fact that the independent witnesses named in the complaint, were not produced. Since it was a case exclusively triable by the Court of Session and the prosecution after committal of the case could rely only on the witnesses produced u/s 202 Cr. P. C. the examination of at least one independent witness and the doctor for proving the medical report of the injured-complainant was necessary. My attention was also drawn by the learned Counsel

for the petitioners towards the provision of Section 208 Cr. P. C. which lays down as follows:

208. Supply of copies of statements and documents to accused in other cases triable by Court of Session Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process u/s 204 that the officer is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following :-

(1) the statements recorded u/s 200 or Section 202, of all persons examined by the Magistrate :

(2) the statements and confessions, if any recorded u/s 161 or Section 164;

(3) any document produced before the Magistrate on which the prosecution proposes to rely ;

Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof direct that he will only be allowed to inspect it either personally or through pleader in Court.

13. It is argued that in view of the aforesaid provisions, the Magistrate could not furnish copy of the documents which was not got proved by the complainant u/s 202 Cr. P. C. and therefore, the copy of the injury report was required to be proved before the copy of it was to be furnished to the accused. Since the medical report has not been got proved by producing the doctor and the receipt of purchase of shoes has not been proved by the complainant himself in his statement u/s 200 Cr. P. C. hence copies of the same could not be furnished by the Magistrate to the accused before the committal of the case. However, the Magistrate in the impugned order appears to have taken into consideration the medical report. However, this aspect of the case has not been considered by the Magistrate as to how he could furnish the copy of the medical report to the accused when it was not got proved by the complainant. Thus, it can be safely said that the Magistrate in this case has not applied his mind before taking into cognizance and passing the impugned order. Therefore, the order of summoning passed by the Magistrate appears to be illegal.

14. Now we have to see as to whether this Court in exercise of its power u/s 482 Cr. P. C. can quash the order of summoning of the accused for trial.

15. It is argued that the petition u/s 482 Cr. P. C. is not maintainable quashing of the impugned order. The learned Counsel for petitioners has opposed it and placed reliance on the law laid down by Hon"ble the Apex Court in the case of Subramunium Sethuraman v. State of Maharashtra reported in Supreme Court Cases (Crl.) 2005 242 : AIR 2004 SC 4711. Wherein it was held by the Supreme Court that the order taking cognizance and summoning of the accused passed u/s 204 Cr.P.C. is an interlocutory order and cannot be reviewed, reconsidered or recalled by the Magistrate as there being no provision in the Code and the only remedy available to the aggrieved accused is extraordinary remedy u/s 482

Cr.P.C.

16. Counsel for the respondent opposite-party no. 2 on the other hand placed reliance on the law laid down by the Apex Court in the case of Amar Nath and Others Vs. State of Haryana and Another, . The Apex Court has held that the High Court has no power to revise "interlocutory" order and inherent power cannot be exercised when there is an express bar in a provision of the Code.

17. My attention was drawn towards the provisions of Section 397(2) Cr.P.C. which lays down as follows:

397 Calling for records to exercise of powers of revision

(1)...

(2) The powers of revision conferred by Sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal; inquiry; trial or other proceeding.

18. According to the counsel for the respondents the order of summoning is held to be an interlocutory order and as per provision of Section 397(2) no revision lies against the order. Even in view of the aforesaid law the inherent powers of the High Court cannot be exercised in connection with that order when there is express bar in the provisions of the Cr. P. C. This argument in my opinion is very attractive but has no force in view of the law laid down by the Apex Court In the Madhu Limaye Vs. The State of Maharashtra, . It is to be noted that the case of Amar Nath v. State of Haryana (supra) decided by the Division Bench of the Apex Court has also been considered by this larger bench of three Hon''ble Judges of the Supreme Court in the aforesaid case. Hon''ble the Supreme Court has observed as follows :

As pointed out in Amar Nath's case (supra) the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding is to bring about expeditious disposal of the cases finally. More often than not, the revisional power of the High Court was resorted to in relation to Interlocutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing Sub-section (2) in Section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise Of the revisional power in relation to any interlocutory order, on the otherhand, the power has been conferred in almost the same terms as it was in the 1998 Code. On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include Subsection (2) of Section 397 also, "shall be deemed to limit or affect the inherent power of the High Court". But, if we were to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional power in such a situation what is the harmonious way out? In our opinion a happy solution of this problem would be to say that the bar provided in

Sub-section (2) Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one of the other principles enunciated above the inherent power will come into play there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between the High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his acquittal a second trial after proper sanction will not be barred on the doctrine of *autrefois acquit*. Even assuming although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused upto the end? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent power. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code. Even assuming, although not accepting that invoking the revisional power of the High Court is impermissible.

19. In view of the aforesaid observation of the Apex Court it cannot be accepted that the petition u/s 482 Cr. P. C. is not maintainable particularly when it is clear that the order has been passed by the trial Court without proper application of mind. It appears that the material is to show that the complaint is malafide, frivolous, vexatious. In the present case the absence of proof of the injury report, absence of producing independent witnesses and absence of proof of the receipt of purchase of shoes from Deep Shoes Shop go to show that the complaint is malafide, frivolous, vexatious and therefore, interference by this Court in exercise of the power u/s 482 Cr. P. C. in my opinion would be justified. This view has been expressed in the law laid down by the Apex Court in *Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others*, .

20. Even if it is accepted that the order of taking cognizance or issuing process is an interlocutory order it does not stand to reason to say that inherent powers of

the High-Court cannot be exercised for stopping criminal proceeding as early as possible instead of harassing the accused upto the land, the High Court in exercise of its power u/s 482 Cr. P. C. in my opinion may interfere in the present order to prevent abuse of the process of the Court and to secure the ends of justice.

21. Considering all the facts the present case undoubtedly falls for exercise of the powers of the High Court in accordance with Section 482 of the Cr. P. C. Thus the arguments of the counsel for the respondent no. 2 that the petition is not maintainable has no force.

22. In that view of the matter the petition is maintainable and the impugned order and the complaint are liable to be quashed.

23. The petition is, therefore, allowed. The impugned order dated 30.7.2005. Annexure 1 to the petition is hereby quashed and the criminal complaint No. 285 of 2005 is also quashed.