

(2010) 10 AHC CK 0034
In the Allahabad High Court
Case No : Criminal Misc Case No. 3958 of 2010

Shiv Bhushan Mishra and Another	Vs	APPELLANT
The State of U.P. and Another		RESPONDENT

Date of Decision : 26-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 203, 482
Penal Code, 1860 (IPC) — Section 120B, 419, 420

Citation : (2010) 10 AHC CK 0034

Hon'ble Judges : Raj Mani Chauhan, J

Bench : Single Bench

Judgement

Raj Mani Chauhan, J.—Heard learned Counsel for the petitioners, learned A.G.A for the State as well as perused the documents available on record.

2. This petition u/s 482 Code of Criminal Procedure (hereinafter referred to as Code) has been filed by the petitioners against the order dated 27.08.2008, passed by the learned Additional District Judge/FTC-II, Court No. 11, Sultanpur in Criminal Revision No. 219 of 2008; Mahendra Pratap Singh v. State of U.P., whereby the learned Additional District Judge has allowed the revision and set aside the order dated 17.2.2008, passed by the learned Additional Chief Judicial Magistrate, Sultanpur in Complaint No. 1457 of 2008 and remanded the matter back to the learned Additional Chief Judicial Magistrate, Sultanpur with a direction to pass afresh order after giving due opportunity of hearing to the complainant-revisionist. The learned Additional Chief Judicial Magistrate on the basis of order passed by the learned Additional District Judge has summoned the accused petitioners, vide order dated 3.5.2010. The petitioners have prayed for quashing the summoning order.

3. The facts giving rise to the present petition in brief are that the opposite party No. 2 Mahendra Pratap Singh filed a complaint before the learned Additional Chief Judicial Magistrate, Court No. 18, Sultanpur against the accused-petitioners and others inter-alia with the allegation that the accused Shiv Bhushan Mishra

(petitioner) who was a man of criminal nature and was a junior teacher became lecturer in Janta Inter College situated in Village Belahari, Police Station Motigarpur, District Sultanpur by manipulation. He also became the Acting Principal of the College. He illegally appointed Sanjay Kumar Tripathi, Santosh Kumar Dubey and Surendra Kumar as Class IV employee of the College. The learned Magistrate recorded the statement of the complainant u/s 200 of the Code and the statements of witnesses, namely, Kesh Narain Singh as P.W.1 and Prathipal Singh as P.W.2 u/s 202 of the Code and on the basis of statements of the complainant and the witnesses, he found that no, prima-facie, case was being made out against the accused petitioners, consequently, he dismissed the complaint vide order dated 17.2.2008. The complainant being aggrieved by the order passed by the learned Additional Chief Judicial Magistrate filed a Criminal Revision No. 219 of 2008 before the learned Sessions Judge, Sultanpur which was allowed by the learned Additional Sessions Judge/ FTC-II, Court No. 11, Sultanpur, vide impugned judgment and order dated 27.8.2008 and remanded the matter back to the learned Additional Chief Judicial Magistrate with the direction to pass fresh order after affording an opportunity of hearing to the complainant-revisionist. The learned Additional Chief Judicial Magistrate in pursuance of the order passed by the learned Additional Sessions Judge thereafter summoned the accused petitioners by impugned order dated 3.5.2010. The accused-petitioners feeling aggrieved by the impugned orders passed by the learned Additional Sessions Judge and learned Additional Chief Judicial Magistrate has preferred the present petition u/s 482 of the Code.

4. The learned Counsel for the petitioners submits that the complainant being aggrieved by the order dated 17.2.2008, passed by the learned Additional Chief Judicial Magistrate dismissing his complaint, filed a revision before the learned Sessions Judge, Sultanpur without impleading the accused as party while they were necessary party to the revision. The revision was, therefore, defective and liable to be dismissed only on this ground alone. Learned Counsel for the accused petitioners further submits that after dismissal of the complaint filed by the complainant-opposite party No. 2 by the learned Additional Chief Judicial Magistrate, a valuable right had accrued in favour of the accused and if the same order was challenged by the complainant-opposite party No. 2 in revision, the accused were required to be impleaded as party in revision as well as to be heard as they were necessary party to the revision. The revision was allowed by the learned Additional Sessions Judge/FTC-II, Court No. 11, Sultanpur who remanded the case back to the learned Additional Chief Judicial Magistrate for passing fresh order. The impugned judgment and order passed by the learned Additional Sessions Judge is, therefore, illegal and is liable to be set aside.

5. Learned Counsel for the petitioners in support of his arguments has placed reliance on the case of Raghu Raj Singh Rousha Vs. Shivam Sundaram Promoters (P) L and Another, decided by the Hon"ble Apex Court. Leaned counsel submits that the facts of the present case are squarely covered with the decision of the Hon"ble Apex Court, therefore, the petition deserves to be allowed on this

ground alone.

6. Learned A.G.A. although supported the order passed by the learned Additional Sessions Judge but he on the basis of law laid down by the Hon''ble Apex Court in the above cited case very fairly accepts that the accused-petitioners were necessary party to the revision filed by the complainant before the learned Sessions Judge, Sultanpur.

7. I have given thoughtful consideration to the submissions of learned Counsel for the petitioners and learned A.G.A.

8. I agree with the submissions of the learned Counsel for the accused petitioners.

9. In case of Raghu Raj Singh Rousha (supra), the complainant had moved an application u/s 156(3) of the Code before the learned Additional Chief Metropolitan Magistrate, New Delhi at Patiala House for directing the Station House Officer of police station concerned to register and investigate the case which was treated as complaint by the learned Additional Chief Metropolitan Magistrate and the complainant was asked to lead pre-summoning evidence. The complainant being aggrieved by the order passed by the learned Additional Chief Metropolitan Magistrate, filed revision before the Delhi High Court without impleading the accused as party which was allowed by the Delhi High Court and order passed by the learned Additional Chief Metropolitan Magistrate was set aside. The court remanded the matter back to the learned Additional Chief Metropolitan Magistrate with the direction to call report from the police authorities regarding allegations made by the complainant in the application. It was also ordered that the police authorities will hold preliminary inquiry on the basis of complaint made by the complainant and submit report before the learned Additional Chief Metropolitan Magistrate within three weeks. The accused being aggrieved by the order passed by Delhi High Court filed SLP before the Hon''ble Apex Court. The Hon''ble Apex Court allowing the SLP held that a valuable right had accrued in favour of the accused when the application moved by the complainant was treated as complaint by the learned Additional Chief Metropolitan Magistrate after applying his judicial mind. Therefore, the accused were necessary party to be heard before the revision was finally heard. In this case, the learned Additional Chief Judicial Magistrate after going through the statement of the complainant recorded u/s 200 of the Code and the statements of the witnesses recorded u/s 202 of the Code, did not find, prima-facie, case against the accused, consequently, he, vide order dated 17.2.2008, dismissed the complaint u/s 203 of the Code. After dismissal of the complaint, a valuable right had accrued in favour of the accused, therefore, in view of law laid down by Hon''ble the Apex Court in the above cited case, the accused were necessary party to the revision. The complainant had filed revision without impleading the accused as party, therefore, the revision itself was defective for non-joinder of necessary party. Consequently, the impugned order passed by the learned Additional Sessions Judge is illegal and is liable to be quashed. The petition

deserves to be allowed and the matter needs to be remanded back to the learned Additional Sessions Judge with a direction that he shall direct the revisionist to implead the accused-petitioners as opposite parties in the revision, then he will dispose of the revision accordingly after hearing the parties.

10. The petition is, therefore, allowed. The impugned order dated 27.08.2008, passed by the learned Additional District Judge/FTC-II, Court No. 11, Sultanpur in Criminal Revision No. 219 of 2008, Mahendra Pratap Singh v. State of U.P. and the order dated 3.5.2010, passed by the learned Additional Chief Judicial Magistrate, Room No. 18, Sultanpur in complaint case No. 395 of 2008; Mahendra Pratap Singh v. Shiv Bhushan whereby the learned Additional Chief Judicial Magistrate has summoned the accused petitioners under Sections 419, 420, 120-B I.P.C. are hereby set aside. The matter is remanded back to the learned Additional Sessions Judge with a direction that he shall direct the revisionist to implead the accused-petitioners as opposite parties in the revision, then he will dispose of the revision on merit after hearing the parties.