

(2008) 03 AHC CK 0006
In the Allahabad High Court
Case No : Criminal R. No. 738 of 2008

S.K. Singh, Director, S.K.S. Power Private Ltd.

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 203, 203(4), 204, 204(4), 397
Penal Code, 1860 (IPC) — Section 420

Citation : (2008) 2 ACR 1677

Hon'ble Judges : Shiv Charan, J

Bench : Single Bench

Advocate : Arun Kumar Singh, for the Appellant; A.G.A., for the Respondent

Judgement

Shiv Charan, J.—Heard learned Counsel for the revisionist and perused the record. The instant revision has been instituted after being aggrieved from the judgment dated 11.2.2008 passed by A.S.J. Court No. 12, Bulandshahr in Criminal Revision No. 250 of 2004, Hoti Lal v. State of U.P.

2. The narration of the chequered history of this case is essential. The perusal of the file shows that Hoti Lal instituted a Criminal Case No. 7485 of 2004, Hoti Lal v. S.K. Singh u/s 420, I.P.C., P.S. Kotwali Dehat, district Bulandshahr. The learned Magistrate vide order dated 29.6.2004 dismissed the complaint u/s 203, Cr. P.C. And against the order dated 29.6.2004 of A.C.J.M., Bulandshahr, Criminal Revision No. 250 of 2004, Hoti Lal v. State was instituted. And the revision was allowed by the A.S.J. Court No. 12, Bulandshahr vide order dated 11.2.2008. And by this judgment and order the revision was allowed and the order of the A.C.J.M. dated 29.6.2004 was set aside and the trial court was directed to pass a fresh order of summoning of the accused in the light of the observation made in the body of the judgment. The present revisionist filed Writ Petition No. 272 of 2006 (Annexure-8) copy of the order. And this petition was finally disposed of with the direction to the Court concerned to provide an opportunity of hearing to the Petitioner, as provided u/s 398, Cr. P.C. and pass a fresh and proper order in

accordance with law within a period of two months. And in pursuance of the direction of this Court the revisional court passed the judgment and order dated 11.2.2008 after affording an opportunity of hearing to the revisionist. And now this revision has also been instituted after being aggrieved from the judgment of the revisional court.

3. Learned Counsel for the revisionist argued that there is no proper compliance by the Sessions Judge of the order dated 12.1.2006. I have perused the order of this Court dated 12.1.2006 and also the judgment and order of the revisional court dated 11.2.2008. The direction of this Court was only to provide an opportunity of hearing to the Petitioner as provided u/s 398, Cr. P.C. and then pass a fresh order. And the perusal of the judgment shows that the opportunity was provided to the revisionist for hearing by the revisional court, i.e., Additional Sessions Judge. And in my opinion this is a proper compliance of the direction of this Court and now as the order of dismissal of the complaint u/s 203, Cr. P.C. was set aside and a fresh order is to be passed by the Magistrate for summoning in the light of the observation made in the body of the judgment of the revisional court. The main emphasis of learned Counsel for the revisionist is that this part of the judgment of the revisional court is unjustified and the Magistrate is expected to pass a proper order on the basis of evidence available on the file. But in my opinion the revisional court can also make certain observation if it is necessary for guidance of the trial court and the trial court will have to carry out the compliance of the direction of the revisional court as the direction of this Court was followed by the revisional court by A.S.J. There is no abnormal thing in it.

4. Although the matter of providing an opportunity of hearing to the revisionist stand finalised. But even then it is material to be seen whether Section 398, Cr. P.C. is applicable to the facts of the case. Because the order dated 12.1.2006 is a short order and the proper position of the law has not been considered in the order dated 12.1.2006. It has been provided in Section 398 which is as under :

398. Power to order inquiry.-On examining any record u/s 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed u/s 203 or Sub-section (4) of Section 204, or into the case of any person accused of an offence who has been discharged:

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

5. In the present case, the proviso of Section 398, Cr. P.C. is material and it is material to be seen whether this proviso is applicable in the case when a complaint was dismissed u/s 203 or Sub-section (4) of Section 204. In the

present case there was no case of dismissal of the complaint under Sub-section (4) of Section 204 for want of steps. The learned Magistrate dismissed the complaint u/s 203, Cr. P.C. And it has also been provided in Section 398, Cr. P.C. that when any person accused of an offence who has been discharged. Hence the case of such a person is also covered u/s 398, Cr. P.C. who has been discharged by the Magistrate. And it is material whether the proviso of Section 398, Cr. P.C. is applicable in all the matters mentioned in Section 398, i.e., 203 Sub-section (4) or only in the case of any person accused of an offence who has been discharged. It will be material to make it clear that at the time of passing order u/s 203 the accused is not expected to participate in the proceeding. The order is to be passed under this provision by the Magistrate after considering the evidence of the complainant. And prior to passing the order of summoning the accused has no say. But where the accused is who was discharged of an offence then it means that he had already been summoned but on the application of the accused or due to any other reason he has been discharged. And the proviso provides that what is to be done if an order is to be passed in a case in which the accused persons were discharged.

6. The proviso provides that Court shall not make any direction in this section for enquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made. And the bare reading of this provision shows that it is applicable when the accused were discharged. Then an order in this connection shall be passed after providing an opportunity of being heard. And the provision made it amply clear that it is not applicable when the complaint was dismissed u/s 203 or Sub-section (4) of Section 204. But considering the argument of learned Counsel for the Petitioner a direction was given to the Additional Sessions Judge for providing an opportunity of hearing to the Petitioner/revisionist. When the complaint was dismissed and against the order of dismissal a revision was instituted then the revisionist had no right of hearing in revision. Because there was no order against him, the position of law was not correctly placed before the Court while order dated 12.1.2006 was passed. This provision was applicable when the accused were discharged and not when the complaint was dismissed u/s 203, Cr. P.C. But even then the learned Sessions Judge had already provided an opportunity of being heard and proper compliance had already made. And the learned Sessions Judge afterwards allowed the revision of the complainant and directed the Magistrate to pass a proper order in this case.

7. For the reasons mentioned above, I have come to the conclusion that there is no illegality or irregularity in the order of the revisional court. The present revision is devoid of any merit and the same is liable to be dismissed.

8. The revision is dismissed summarily.