
(2003) 09 AHC CK 0013

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 8288 of 2002

Smt. Chhaya William and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 24-09-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 204(1), 482
Penal Code, 1860 (IPC) — Section 120B, 380, 454

Citation : (2004) 1 ACR 796

Hon'ble Judges : K.N. Sinha, J

Bench : Single Bench

Advocate : B.R. Singh and U.C. Mishra, for the Appellant; K.M. Misra, G.P. Dixit, V.S. Raghuvanshi and N.D. Kesari and A.G.A., for the Respondent

Final Decision : Allowed

Judgement

K.N. Sinha, J.—The application u/s 482, Cr. P.C. has been filed for quashing of the order dated 12.7.2002 passed by the Chief Judicial Magistrate, Etawah in Criminal Case No. 796/2002, Satyavir Singh v. Smt. Chhaya William and another, under Sections 454, 380 and 120B, Indian Penal Code.

2. The brief facts, giving rise to the present petition, are that Satyavir Singh Yadav, the Respondent No. 2, filed an application u/s 156(3), Cr. P.C. before the Chief Judicial Magistrate, Etawah, who treated the same to be a complaint and after recording statement under Sections 200 and 202, Cr. P.C., ordered for summoning of the accused applicants for the alleged offences. The Respondent No. 2 was working as a Ward Boy in the District Hospital, Etawah and on the day of occurrence, i.e., 28.1.2002, he along with his wife and children had gone out, the applicants broke open the lock, took the possession of the room of Respondent No. 2 stealing his articles. The Respondent No. 2 made effort to lodge an F.I.R., but did not succeed and the present application u/s 156(3), Cr. P.C. was moved, which was treated as complaint and after enquiring u/s 202, Cr. P.C., issued the process against accused.

3. The summoning order was challenged on the ground that allegations made in the complaint are totally baseless. The disputed quarter is situated in the Nurses' Mess and Respondent No. 2 cannot be permitted to occupy the same. It was allotted in the name of a nurse Smt. Mithlesh, who was posted in the District Hospital, Etawah and it was vacated by her when she was allotted a type-II quarter. Thereafter the Chief Medical Superintendent, District Hospital, Etawah allotted this quarter to applicant No. 1 by his order dated 20.12.2001. Smt. Mithlesh vacated the quarter but some articles remained inside the room, which was taken out and a list was prepared. The Chief Medical Superintendent was informed about the list of articles, which is Annexure-6 and allegations in the complaint are incorrect.

4. The Respondent No. 2 filed a counter-affidavit, in which the fact of filing of application u/s 156(3), Cr. P.C. treating it to be a complaint etc. have not been disputed. However, it was stated that Smt. Mithlesh, the previous allottee, had vacated the quarter on 11.9.2001 and the Respondent No. 2 was orally permitted to occupy the same. The Respondent No. 2 occupied the said quarter on 15.9.2001 in the capacity of Ward Boy of the hospital and the copy of order is Annexure-C.A.-3. The applicants broke open the lock of Respondent No. 2, when he was out along with his family. The Respondent No. 2, then informed the matter to Station Officer, Civil Lines Police Station and Senior Superintendent of Police and moved an application u/s 156(3), Cr. P.C., which was treated to be a complaint. On the date of occurrence, the Respondent No. 2 was in the actual possession of the said premise. He has denied the allotment of the premises in favour of applicant No. 1 and stated that the order dated 20.12.2001 was secured by misrepresentation. The articles did not belong to Smt. Mithlesh. It is further deposed that if there was any allotment order, the possession should have been taken through process of law.

5. The rejoinder-affidavit was filed on behalf of the accused applicants reiterating the stand taken in the application and further alleging that Respondent No. 2 was never allotted the said quarter, but he has forcibly and illegally put his some articles inside the quarter.

6. I have heard the learned Counsel for the parties and perused the affidavit, counter-affidavit, rejoinder-affidavit and the annexure therewith.

7. Learned Counsel for the Respondent No. 2 has submitted firstly that revision lies against summoning order and when some other remedy is available, the powers u/s 482, Cr. P.C. cannot be exercised. In support of his contention, he relied upon Ashok Kumar Srivastava v. State of U.P.³⁴ (1997) ACC 318 . The learned Counsel for the applicants relied upon Raj Kapoor and Others Vs. State and Others, , in which it has been held that High Court could not refuse to entertain the petition u/s 482, Cr. P.C. even against such order. The relevant portion of the above judgment of the Apex Court, runs as under:

In short, there is no total ban on the exercise of inherent power where abuse of

the process of the Court or other extra-ordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the Court in the face.

8. Thus, this argument of learned Counsel for the Respondent No. 2 that petition u/s 482, Cr. P.C. is not maintainable, is not correct.

9. The learned Counsel for the Respondent No. 1 has relied upon *Uma Kant Pandey v. Additional Chief Judicial Magistrate, Karvi, Banda and Ors.* 1996 ACR 888 : (33)1996 ACC 879, in which it has been held that interference in the summoning order in revision should be in rarest of rare cases, when the Court finds that there was absolutely no point to permit the case to proceed. Section 202, Cr. P.C. provides to postpone the issue of process against the accused and to inquire into the case himself... for the purpose of deciding whether or not there is sufficient ground for proceeding. In view of Section 202(2), the Magistrate, if he thinks fit, may take evidence of witnesses on oath. The inquiry is only to find out sufficient ground.

10. The Apex Court in *Nagawwa v. Veeranna Shivalingappa Nonjalgi and Ors.* (13) 1976 ACC 224 (SC), has laid down the principle that the enquiry u/s 202, Cr. P.C. is limited only to ascertainment of truth or falsehood of the allegations made in the complaint--firstly, on the material placed by the complainant and secondly, for limited purpose of finding out whether a prima facie case for issuing of process is made out or not.

11. In *S.W. Palanitkar and others Vs. State of Bihar and another*, , the term "sufficient ground" has been explained to mean the satisfaction that a prima facie case is made out against the accused and not sufficient ground for the purposes of conviction.

12. The learned Counsel for the Respondents further relied upon *Mohinder Singh Vs. Gulwant Singh and others*, , in which it has been held as follows:

During the course of the enquiry u/s 202 of the Code, the Enquiry Officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and no detailed enquiry is called for during the course of such enquiry.

13. As against it, learned Counsel for the applicant No. 1 relied upon *M/s. Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors.* (36) 1998 ACC 20, in which it has been held as follows:

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

14. I have carefully gone through the law laid down by Hon'ble the Apex Court. No doubt, on one hand, the inquiry conducted u/s 202, Cr. P.C. does not need to be detailed enquiry or scrutiny of evidence to that extent which is required for the purposes of the trial or conviction, but at the same time, the Court has not to sit as a silent spectator. It must apply its mind while passing order for the issue of summonses u/s 204(1) of the Code of Criminal Procedure.

15. The evidence and facts of the present case have to be scrutinized on the above backgrounds and the legal position.

16. There is no dispute about this fact that previously this quarter was allotted to one nurse, Smt. Mithlesh and she was allotted later on a type-II quarter. The quarter fell vacant on account of vacation by Smt. Mithlesh. According to applicants, it was allotted to applicant No. 1, but according to Respondent No. 2, he was orally permitted to occupy the said premise. The applicants have filed Annexure-5, the order dated 30.4.2001, passed by the Chief Medical Superintendent, District Hospital, Etawah, which shows that applicant No. 1 was permitted to live in the said quarter and key be handed over to her, against which, there is nothing on record to show any order in favour of Respondent No. 2. Sri Satyavir Singh Yadav, the Respondent No. 2 has, no doubt, given an application for allotment to District Magistrate, Etawah, who had marked his application to Chief Medical Superintendent, Etawah, which is Annexure-2. There is absolutely nothing on record to show that Respondent No. 2 was permitted by the Chief Medical Superintendent to occupy the said premise. The applicant No. 1 has filed a copy of letter, showing that the said premise was allotted to her (applicant No. 1) but the key was not handed over to her by the Matron. This letter further shows that the key was given to Ward Boy Satyavir Singh Yadav, who had kept his belongings in the said premise. This act of Matron or Respondent No. 2 was not according to law. The allotment order by the Chief Medical Superintendent was in favour of the applicant No. 1 and the Matron was directed to handover the key to applicant No. 1. In this context, Respondent No. 2 has no right to occupy the said quarter as there is nothing on record to suggest that the quarter was ever allotted to him. There is totally no case of theft as Annexure-6 to the application shows that the quarter was got vacated from Smt. Mithlesh but some belongings were yet inside the premise, which Smt. Mithlesh

disowned and the applicant No. 1, in the presence of other nurses, prepared the list of articles and sought direction from Chief Medical Superintendent, District Hospital, Etawah, in respect of above articles. It appears that Smt. Mithlesh had permitted the Respondent No. 2 to keep those articles, before vacation of the premises. Moreover, if there was any such intention of stealing, list showing the articles could not have been prepared, specially when the quarter was got vacated in the presence of Smt. Mithlesh, the pervious allottee, as is apparent from the letter (Annexure-6).

17. Thus, from the evidence, no prima facie case is made out against the applicants. There is nothing to show that Respondent No. 2 was ever allotted or permitted to occupy the quarter in question. There is also nothing to show that any theft has been committed by the applicant. Thus, the Magistrate while passing the order u/s 204(1), Cr. P.C. did not apply its mind nor scrutinised the evidence, but passed the order in a mechanical way. This is a clear case of abuse of the process of the Court.

18. The application u/s 482, Cr. P.C. is, therefore, allowed. The order dated 12.7.2002, passed by the Chief Judicial Magistrate, Etawah in Satyavir Singh v. Chhaya William and Anr. Criminal Case No. 796/2002, under Sections 454, 380 and 120B, Indian Penal Code, summoning the accused applicants is hereby quashed.