
(2013) 07 AHC CK 0006

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No's. 3223, 1020 and 6197 of 2013

Smt. Kalpana Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 203, 399(2)
Penal Code, 1860 (IPC) — Section 120B, 406, 409, 420, 467

Citation : (2013) 7 ADJ 293 : (2013) 82 ALLCC 774

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Advocate : Dilip Kumar and Krishna Agarwal, for the Appellant; S.N. Pandey, Siddharth Singh and Himanshu Pandey, for the Respondent

Judgement

S.C. Agarwal, J.—Since all the three cases arise out of the same proceedings, as such, they are being disposed of by a common order. For the sake of convenience, writ petition No. 3223 of 2013 is treated as a leading case.

Heard Sri Dilip Kumar, learned counsel for the petitioners - Smt. Kalpana Gupta and Rakesh Gupta, Sri B.R.J. Pandey, learned counsel for the applicant - Anand Sharma in Application u/s 482, Cr.P.C., learned A.G.A. for the State as well as Sri Siddharth Singh, learned counsel for the complainant.

The aforesaid petitioners and the applicant are the accused in complaint case No. 9946 of 2010 under Sections 420, 406, 409, 467, 477-A and 120-B IPC, P.S. Nawabad, District Jhansi (Vinay Bhushan Sood v. Rakesh Kumar Gupta and others) pending in the Court of Chief Judicial Magistrate, Jhansi. The allegations made in the complaint are not relevant for the disposal of the aforesaid three cases. Suffice it to say that the said complaint was dismissed u/s 203 Cr.P.C. vide order dated 22.9.2011. Feeling aggrieved, the complaint - Vinay Bhushan Sood preferred criminal revision No. 249 of 2011 before Sessions Judge, Jhansi, which was allowed vide judgment and order dated 27.9.2012 passed by Additional Sessions Judge/Special Judge (E.C. Act), Jhansi. The order dated 22.9.2011

passed by Chief Judicial Magistrate, Jhansi was set aside and the Magistrate was directed to reconsider the evidence available on record and to pass orders in accordance with law. The said revisional order dated 27.9.2012 is under challenge in writ petition No. 3223 of 2013.

2. In pursuance of order dated 27.9.2012 passed by the revisional Court, learned Chief Judicial Magistrate, Jhansi vide order dated 1.12.2012 reconsidered the matter and summoned the accused Rakesh Kumar Gupta, Kalpana Gupta, Anand Sharma, N.S. Kushwaha and R.L. Garg to face trial under Sections 420, 406, 409, 467, 477-A and 120-B IPC. The summoning order as well as the entire proceedings have been challenged by accused Anand Sharma by means of Application u/s 482 Cr.P.C. No. 1020 of 2013.

3. The revisional order dated 27.9.2012 as well as summoning order dated 1.12.2012 alongwith order dated 3.4.2013 passed by Chief Judicial Magistrate, Jhansi issuing non-bailable warrant of arrest against accused persons have been challenged by accused Rakesh Kumar Gupta by means of writ petition No. 6197 of 2013.

4. Learned counsel for the petitioners and the applicant submitted that after dismissal of the complaint u/s 203 Cr.P.C., a valuable right accrued in favour of the petitioners and the applicant and revision was allowed by learned Additional Sessions Judge without issuing notices to the petitioners and the applicant and without giving them any opportunity of hearing. It was contended that the complainant had not even impleaded the petitioners and the applicant as opposite parties in the revision before the Sessions Judge and learned Additional Sessions Judge allowed the revision in violation of Section 401(2) Cr.P.C.

5. Learned A.G.A. as well as learned counsel for the complainant supported the impugned orders. It was submitted by learned counsel for the complainant that the petitioners as well as the applicant, in collusion with Bank officials, usurped the properties of the complainant. Since the accused persons were not summoned by the Magistrate, there was no necessity for impleading them as opposite parties in criminal revision No. 249 of 2011, as they had no right of hearing and learned Additional Sessions Judge rightly set aside the order passed by the Chief Judicial Magistrate, Jhansi dismissing the complaint u/s 203 Cr.P.C. A preliminary objection was also raised that writ petition is not maintainable to challenge the summoning order passed by the Magistrate and the revisional order was challenged after 90 days without explaining the delay.

6. As far as the maintainability of the writ petitions is concerned, the revisional order has been challenged by the petitioners alongwith the consequential orders passed by the Magistrate. Writ petition is maintainable against the revisional order and, therefore, preliminary objection in this respect is not maintainable.

7. As far as question of delay is concerned, the petitioners had no knowledge regarding dismissal of the complaint as well as of the fact that revision filed by the complainant was allowed as no notice was issued to the petitioners and the

applicant by the revisional Court. The petitioners and the applicant came to know about the proceedings only after process was issued against them and, therefore, there is no question of any laches on the part of the petitioners and the applicant.

8. Section 401(2) Cr.P.C. deals with the High Court's power of revision. Subsection (2) provides that no order under this section shall be made to the prejudice of the accused or the other person unless he has had an opportunity of being heard either by personally or by pleader in his defense. According to Section 399(2) Cr.P.C, provisions of Section 402 Cr.P.C. shall apply to revisions before Sessions Judge also.

9. In Raghu Raj Singh Rousha Vs. Shivam Sundaram Promoters (P) L and Another, , the Apex Court held that once Magistrate had refused to exercise its jurisdiction u/s 156(3) Cr.P.C., the opportunity of hearing is to be given to the accused in revisional proceedings by virtue to Section 401(2) Cr.P.C.

10. The aforesaid decision in Raghu Raj Singh Rousha's case again came into consideration of the Apex Court in Manharibhai Muljibhai Kakadia and Another Vs. Shaileshbhai Mohanbhai Patel and Others, , wherein it was held that -

We are in complete agreement with the view expressed by this Court in P. Sundarrajan, Raghu Raj Singh Rousha and A.N. Santhanam. We hold, as it must be, that in a revision petition preferred by complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint u/s 203 of the Code at the stage u/s 200 or after following the process contemplated u/s 202 of the Code, the accused or a person who is suspected to have committed crime is entitled to hearing by the revisional Court. In other words, where complaint has been dismissed by the Magistrate u/s 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the revisional Court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed crime have, however, no right to participate in the proceedings nor they are entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. We answer the question accordingly. The judgments of the High Courts to the contrary are overruled.

11. In the instant case, after dismissal of the complaint u/s 203 Cr.P.C, the accused persons were neither impleaded in the revision nor any notice was given to them. They were not provided any opportunity of hearing by the revisional Court and, therefore, revisional order dated 27.9.2012 is liable to be quashed. Since the revisional order ceases to exist, the subsequent summoning order

dated 1.12.2012 passed by Chief Judicial Magistrate, Jhansi as well as order dated 3.4.2013 issuing non-bailable warrants do not survive and these orders are also liable to be quashed and the matter has to be remanded to the revisional Court for a fresh decision in accordance with law after issuing notices to the accused persons. Both the writ petitions as well as the application u/s 482 Cr.P.C. are allowed.

Impugned orders dated 27.9.2012 passed by Additional Sessions Judge/Special Judge (E.C. Act), Jhansi in criminal revision No. 249 of 2011, the consequential summoning order dated 1.12.2012 as well as order dated 3.4.2013 issuing non-bailable warrants against the accused persons passed by Chief Judicial Magistrate, Jhansi in complaint case No. 9946 of 2010 are quashed and the matter is remanded to learned Additional Sessions Judge/Special Judge (E.C. Act), Jhansi for a fresh decision. Learned Additional Sessions Judge shall direct the complainant to implead the accused persons in the revision and notices will be issued to them and the revision shall be disposed of in accordance with law after giving an opportunity of hearing to all the accused persons irrespective of the fact that they have filed writ petitions and application u/s 482 Cr.P.C. before this Court or not.