

(2003) 12 AHC CK 0163

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 7144 of 2003

Smt. Usha Devi Agrawal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-12-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204

Citation : (2004) CriLJ 2388

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

Bench : Single Bench

Advocate : S.P. Sharma, for the Appellant; A.N. Mishra, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

K.N. Ojha, J.—Instant Writ Petition has been filed by Smt. Usha Devi Agrawal, her husband Dr. Dinesh Chand Agrawal and one Dr. Anant Ram Gupta for issue of writ in the nature of certiorari for quashing the impugned summoning order dated 8-5-2002 passed by learned Additional Chief Judicial Magistrate, Jhansi in Criminal Case No. 4406 of 2001 Smt. Rekha Patel v. Smt. Usha Devi and others and order dated 31-1-2003 passed in Criminal Revision No. 251 of 2002 Smt. Usha Devi and Ors. v. State of U. P. by learned Additional Sessions Judge, Fast Track Court No. 3, Jhansi by which the petitioners were summoned u/s 204 of Code of Criminal Procedure to face the trial under Sections 420: 406: 452: 323: 504: 506 and 120B IPC.

2. Heard Sri S. P. Sharma, learned counsel for the petitioners, Sri A. N. Mishra, learned A. G. A. and have gone through the record.

3. The petition is finally disposed of at the admission stage.

4. The fact of the case is that Smt. Rekha Patel filed complaint under above mentioned sections in the Court of Chief Judicial Magistrate, Jhansi bearing case No. 4406 of 2001 Smt. Rekha Patel v. Smt. Usha Devi Agrawal and two others

containing the fact that her husband Dr. Chhavi Nath had retired from the post of Superintending Engineer. He wanted to establish a clinic of Homeopathy etc. and contacted the petitioners to provide a shop. The petitioners agreed to rent a shop at Rs. 600/- per month. In pursuance of the agreement, Dr. Chhavi Nath advanced Rs. 15,000/- and invested money in painting etc. of the shop. The shop was to be inaugurated on 19-1-2001. On 18-1-2001 at about 3.00 P. M. her husband along with other persons including Nand Kishore Jha, Bal Kishun Kushwaha and others reached the shop to decorate so that Pooja may be performed on 19-1-2001, but in the meanwhile the petitioners came, simple injuries were caused. Articles kept were thrown away and Dr. Chhavi Nath was turned out of the shop. Dr. Chhavi Nath had got published about the function of the inauguration in Daihik Amar Ujala after making payment of Rs. 1100/- and Dainik Jagaran after making payment of Rupees 1,680/- so all persons of his locality and well wishers came to know that function was to be held on 19-1-2001. Therefore, he felt so much humiliated that later on he expired. Aggrieved therefrom the complaint was filed under the above sections by his wife Smt. Rekha Patel. She examined herself u/s 200 Cr. P. C. and Nand Kishore and Virendra Singh u/s 202 Cr. P. C. After recording their statements the learned Magistrate passed the order dated 8-5-2002. Aggrieved therefrom, the petitioners preferred revision which was dismissed on 31-10-2003 by Additional Sessions Judge, Jhansi. Therefore, instant writ petition has been filed.

5. Learned counsel for the petitioners submits that it is a case of civil nature. Remedy, if any, could be sought for recovery of possession of the shop by Smt. Rekha Patel from the Court and complaint could not be filed. It is also submitted that application was moved by Sri Chhavi Nath before police station and allegation of giving threat to him on 18-1-2001 at 3.00 P. M. or causing hindrance, was lodged against Dr. Dinesh Chand Agrawal and another accused. It is submitted that there is contradiction in the application which was moved before the police and the complaint which was filed in the Court of Chief Judicial Magistrate, Jhansi, hence while summoning the petitioners to face the trial as accused this fact was to be considered by learned Addl. Chief Judicial Magistrate and subsequently by learned Additional Sessions Judge and Smt. Usha Devi and Dr. Anant Ram Gupta were not required to be summoned to face the trial as accused.

6. A perusal of the judgment of both the Courts below shows that there is discussion of large number of rulings of this Court as well as of Hon'ble the Apex Court. In the case of Ranjeet Singh and Others Vs. State of U.P. and Another, decided by the Full Bench of this Court the position of law has been made clear that if any party is aggrieved from summoning order, he has to seek proper remedy as contemplated in the Code of Criminal Procedure. If an accused is summoned to face the trial he has to first appear, file bail bonds and thereafter at the stage of charge, the argument could be pressed by the accused that the case was not fit for charge being framed against him. Instead of doing so, the petitioners have filed this writ petition to show that there is infirmity in the order

summoning the petitioners as accused. The plea which is being raised in this writ petition is open to be raised by the petitioners when they appear in the Court at the appropriate stage as provided in the Code of Criminal Procedure. The impugned orders shows that orders for summoning the accused have been passed. Neither order for non bailable warrant nor for execution of process u/s 82/83 Cr. P. C. has been issued. If the complainant and her two witnesses, who are said to be eye-witnesses, stated on oath that particular occurrence had occurred, the learned Magistrate found prima facie case to summon the accused and there appears no illegality in the impugned order. In such circumstance, an alternative remedy is open to the petitioners to raise these pleas at the appropriate stage in the case before the Magistrate concerned.

7. Learned counsel for the petitioners has relied on Section 205 Cr. P. C. which contemplates that :

"(1) Whenever a Magistrate issues a summons, he may if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in the discretion, at any stage of the proceedings, direct the personal attendance of the accused, and if necessary, enforce such attendance in the manner hereinbefore provided. ,

8. When the case is proceeding in the Court of Magistrate, it is open to the petitioners to appear in person and move application before the learned Magistrate to dispense with personal attendance of the accused, if the learned Magistrate finds that justice requires so, the application may be disposed of accordingly. When this prayer was not sought for before the learned Magistrate and when the remedy is specifically provided u/s 205 Cr. P. C. it would be proper to make prayer in respect of exemption of attendance of the petitioners from appearing in person to the Court of Magistrate concerned.

9. The petitioners have also cited Sardar Amrik Singh Vs. State of Uttar Pradesh and Another, in which it was held by this Court that the dispute was purely of civil nature hence the contractor could not be held criminally liable and proceedings pending before the Magistrate was quashed. In instant case, the demand of the victim is not for return of the money given in respect of shop. The allegation is that the victim was cheated. Assurance was given that the shop would be given on rent. It was got completed and furnished. A date was fixed for inauguration of the shop and one day before, the victim was beaten, humiliated and insulted. Thus, in instant case, the liability is of criminal nature and not of civil nature.

10. Learned counsel for the petitioners have also cited Lt. Col. (Retd.) Propkar Singh and Others Vs. State of U.P. and Another, in which it has been held by this Court that when a petition is filed u/s 482 Cr. P. C. for quashing the complaint, power should be exercised sparingly and with circumspection and that too in rarest of rare cases. In this case, complaint has been filed and three witnesses

have been examined to support the occurrence. When there are three witnesses to support the complaint story prima facie case is made out. It would not be legal to dismiss the complaint on the ground that it contains false story or partly it is untrue.

11. While placing reliance on Lt. Col. (Retd) Propkar Singh's case as mentioned above, it is submitted that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set into motion as a matter of course. 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 consider whether the evidence would be sufficient for the complainant to succeed in bringing charge home to the accused and the Magistrate is not a silent spectator at the time of recording of preliminary evidence.

12. In Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, it has been held by Hon"ble the Supreme Court that "the scope of the inquiry u/s 202 Cr. P. C. is extremely limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint (i) on the materials placed by the complainant before the Court; (ii) for the limited purpose, of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all advertng to any defence that the accused may have. It is not the province of the magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its revisional jurisdiction which is very limited one. In proceedings u/s 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not."

13. No previous enmity of the victim is alleged with the petitioners. There is statement of three witnesses about offence being committed by the petitioners. In such circumstance if the learned Magistrate passed order for summoning the accused and is proceeding to decide the case in accordance with provisions of the Code of Criminal Procedure, no illegality has been committed causing injustice to the petitioners. If there is no sufficient evidence and some of the petitioners are entitled for being discharged from the prosecution or if some of the petitioners have some difficulty to appear before the Court of learned Magistrate, there is procedure contemplated in the Code of Criminal Procedure and the remedy may be sought for accordingly.

14. Therefore, instant writ petition has no force and is dismissed at the admission stage.