

(2010) 05 AHC CK 0267
In the Allahabad High Court

Subroto Paul @ Yash Paul and another	APPELLANT
Vs	
State of U.P. & others	RESPONDENT

Date of Decision : 26-05-2010

Acts Referred:

Citation : (2010) 05 AHC CK 0267

Hon'ble Judges : V.K.Shukla, J

Final Decision : Disposed Of

Judgement

V.K. Shukla, J.—Present application under Section 482 Cr.P.C. has been filed for quashing the charge sheet dated 21.07.2007 and entire proceedings in case crime No. C101 of 2007, subsequently converted into Criminal Case No.4633 of 2007, under Sections 323 and 504 I.P.C., Police Station Chetganj, District Varanasi, pending in the court of Special Chief Judicial Magistrate, Varanasi.

2. Brief background of the case is that an application under Section 156(3) Cr.P.C. was filed before the Chief Judicial Magistrate, Varanasi, alleging therein that the applicants and few others tried to grab the land of Hari Prasad Chaurasiya, on 01.08.2005 at about 10 P.M. in the night and in furtherance of the said objective abusive language was used. The Special Chief Judicial Magistrate, acting on the said application of Hari Prasad Chaurasiya, vide its order dated 01.05.2007, directed the Station House Officer of the concerned police station to lodge First Information Report. On 19.06.2007 F.I.R. was lodged which gave rise to case crime No.C101 of 2007 under Sections 147,452, 323, 504, 506, 427, 354 and 392. The police after investigating the matter submitted charge sheet under Section 323 and 504 I.P.C. and the concerned court took cognizance of the charge sheet and has been proceeding with the matter. At this juncture, present petition under Section 482 Cr.P.C. has been filed with the prayer noted above.

3. Sri Rjajiv Lochan Shukla, Advocate appearing with Sri Subhash Gosain, Advocate, contended with vehemence that in the present case F.I.R. was lodged disclosing therein cognizable offence, and after investigation report had been

made by the police officer reporting therein commission of noncognizable offence, as such in view of the provisions as contained in Explanation to Section 2 (d) of the Code of Criminal Procedure, said report has to be treated as complaint and the police officer by whom such report had been made has to be deemed as complainant, and under this legal fiction, the case has to be treated as complaint case, then the procedure, as envisaged under Chapter XV of the Code, which deals with complaint case and obligates the Magistrate to make examination of the witnesses under Section 200 Cr.P.C., has to be adhered to. In the absence of there being any examination of the complainant or the witnesses under Sections 200 and 202 Cr.P.C., respectively, cognizance could not have been taken, as has been done in the present case. In this view of the matter entire proceedings are liable to be quashed.

4. Countering the said submissions, learned A.G.A., on the other hand, contended that the examination as is envisaged under Section 200 and 202 Cr.P.C. was not at all required. When complaint is made by a public servant acting or purporting to act in discharge of official duties, then no examination is necessary under this Section and his examination is exempted, as such action of the concerned Magistrate taking cognizance of the offence is rightful action and same warrants no interference by this Court.

5. Section 2 (d) of the Code of Civil Procedure, 1973, has to be looked into.

6. Relevant extract of the said provision is being quoted below:

"2 (d) "complaint" means an allegation made orally or in writing to a magistrate, with a view to his taking action under this Code, that some persons, whether known or unknown, has committed an offence, but does not include a police report.

Explanation. A report made by a police officer in a case which discloses, after investigation, the commission of a noncognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant."

7. Section 190 of the Code enumerates various modes of taking cognizance by the Magistrate upon receiving complaint of the fact which constitutes such offence. Section 200 relates to examination of complainant, relevant portion of which reads as under:

"200. Examination of complainant. A magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

8. Provided that, when the complaint is made in writing, the magistrate need not examine the complainant and the witnesses

(a) If a public servant acting or purporting to act in the discharge of his official duties or a court has made the complaint;

(b) XXXXXXXXXXXX

9. The term "public servant" is not defined in the Code. However, Section 2 (y) of the code provides that words and expressions used but not defined in the Code will have the meaning assigned to them under the Indian Penal code. Section 21 I.P.C. defines "public servant", the relevant portion of which is extracted below:

"21.. "Public servant. The words "public servant" denote a person falling under any of the descriptions hereinafter following: namely,

Seventh, Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth. Every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience."

10. The object of Section 200 of the Code requires the complainant to be examined to find out whether there was sufficient ground for proceeding against the accused and/or to prevent issuance of process on complaints which are false or fictitious or intended to harass the person arrayed as accused. Where complainant is public servant or a court, clause (a) of the proviso to Section 200 Cr.P.C. raises an implied statutory presumption that the complaint has been made responsibly and bona fide and not falsely or vexatiously. Examination of such implied presumption where complainant is public servant, the statute exempts examination of complainant and the witnesses before issuing process. Hon'ble Apex Court in the case of National Small Industries Corporation vs. State (NCT of Delhi) and others, AIR 2009 SC 1284 has answered the question after considering the relevant provisions of the Code of Criminal procedure that where complainant is public servant, the provisions of clause (a) of the proviso to Section 200 Cr.P.C. will be attracted and consequently, the magistrate need not examine the complainant and the witnesses.

11. On the parameters as set out above, this fact in the present case is not at all disputed that in terms of 2 (d) of Code once investigation is carried out and it is found that noncognizable offence has been committed, then in such a situation as per explanation added to Section 2 (d) under the deemed provision said report has to be accepted as complaint of the police officer by whom such report is made has to be treated by fiction to be complainant. The police officer in the present case falls within the definition of public servant under Section 21 of the Indian Penal Code and by virtue of being public servant, the complaint made by him in the shape of the report under Explanation to section 2 (d), the Magistrate was not obliged to ask the police officer to record statement under Section 200 Cr.P.C. and 202 Cr.P.C., as such the complainant in the present case, who is no one else than a public servant, was exempted from examination of the

complainant and the witnesses before issuing process. Clause (a) of the proviso to Section 200 Cr.P.c. was clearly attracted in the facts of the case. Consequently, magistrate was not obliged to examine the complainant and the witnesses as has been canvassed before this Court. The argument advanced is totally devoid of substance. In the present case cognizance of the complaint/charge sheet has rightly been taken. There is no scope for quashing of the same. Once offence is disclosed, the Magistrate has rightly taken cognizance of the same, and the request made cannot be accepted.

12. At last, it has been contended that directives be issued for consideration of bail. Considering the facts, it is directed that in case applicant appears before the court concerned within 30 days from today and applies for bail, the same shall be heard and disposed of by the courts below in view of Smt. Amrawati and another Vs. State of U.P. 2005 Cr.L.J. 755.

13. The Full Bench of this court has held in the aforementioned case;

1. Even if a cognizable offence is disclosed in the FIR or complaint the arrest of the accused is not a must, rather the police officer should be guided by the the decision of the Supreme Court in Joginder Kumar Vs. State of U.P. 1994 Cr.L.J. 1981, before deciding whether to make an arrest or not.

2. The High Court should ordinarily not direct any Subordinate Court to decide the bail application the same day, as that would be interfering with the judicial discretion of the court hearing the bail application. However, as stated above, when the bail application is under section 437 Cr.P.C. ordinarily the Magistrate should himself decide the bail application the same day, and if he decides in a rare and exceptional case not to decide it on the same day, he must record his reasons in writing. As regards the application under section 439 Cr.P.C. it is in the discretion of the learned Sessions Judge, considering the facts and circumstances whether to decide the bail application the same day or not, and it is also in his discretion to grant interim bail the same day subject to the final decision on the bail application later.

14. The above view has been approved by the Hon''ble Apex Court in Lal Kamendra Pratap Singh Versus State of U.P. on 23.3.2009 in Criminal Appeal No. 538 of 2009.

15. With this direction, this petition is accordingly, disposed of.