
(2008) 10 AHC CK 0031
In the Allahabad High Court

Vijay Prakash and Others

APPELLANT

Vs

State of U.P. and Smt. Rani Devi

RESPONDENT

Date of Decision : 17-10-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 203, 204
Penal Code, 1860 (IPC) — Section 307, 323, 452, 504, 506

Citation : (2008) 10 AHC CK 0031

Hon'ble Judges : Vijay Kumar Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vijay Kumar Verma, J.—By means of this petition under Article 226 of the Constitution of India, order dated 10.01.2007 passed by the Additional Sessions Judge, Court No. 3 Farrukhabad, in Criminal Revision No. 16 of 2003 has been challenged.

2. By the impugned order, the court below has dismissed the revision, thereby confirming the summoning order dated 20.02.2002 passed by the Chief Judicial Magistrate Farrukhabad, in Complaint Case No. 5036 of 2001 (Smt. Rani Devi v. Vijay Prakash and Ors.), under Sections 323, 452, 504, 506 IPC.

3. Shorn of unnecessary details, the facts emerging from the record, leading to the filing of this petition, in brief, are that a complaint was filed by the complainant Rani Devi w/o Vinod Kumar (Respondent No. 2 herein) on 29.11.2001 in the court of Chief Judicial Magistrate Farrukhabad at Fatehgarh, against the petitioners (herein-after to be referred as "the accused"). On the basis of that complaint, Case No. 5036 of 2001 was registered. It was alleged in the said complaint that on 26.11.2001 at about 2.00 p.m., when the complainant was alone in her house and her husband had gone out in connection with his business affairs, the accused-persons named in the complaint entered into her house and began to abuse her. When she asked the accused-persons not to

abuse her, they began to assault her by means of fists and kicks.

4. The accused Vijay Prakash showing tamancha threatened the complainant that either you vacate the house or he would kill her. On hearing the noise of complainant, when her son Man Mohan came to save her, the accused persons began to assault him also. On hearing hue and cry, Ganesh Chandra s/o Ram Swaroop Verma, Kishan Swaroop s/o Shanti Swaroop, Mithilesh w/o Suresh Babu and Dilip Kumar s/o Kailash Nath came there who saw the entire incident and saved the complainant and her son from the accused persons. It was also alleged in the complaint that Vijay Prakash, Brijesh Raman and Ramesh Raman had fired shots from their tamanchas on the complainant on earlier occasion also, about which a case was got registered at Crime No. 465 of 1994 under Sections 323, 307 IPC, in which the said accused are on bail.

5. After recording the statement of the complainant Rani Devi u/s 200 and taking evidence u/s 202 Cr.P.C., the Chief Judicial Magistrate Farrukhabad summoned the accused persons for trial vide order dated 20.02.2002. That order was challenged by them in Criminal Revision No. 16 of 2003, which has been dismissed by the impugned order. Hence this petition.

6. The petition is being decided at the admission stage without issuing notice to the respondent No. 2 Smt. Rani Devi. I have heard Sri Anand Mohan Pandey, learned Counsel for the petitioners and learned A.G.A. for the State and perused the record.

7. It was contended by the learned Counsel for the accused that evidence led by the complainant in case No. 5036 of 2001 was not sufficient to summon the accused to face the trial and hence the Chief Judicial Magistrate Farrukhabad committed illegality in passing the summoning order dated 20.02.2002, which has been wrongly confirmed by the learned lower revisional court vide impugned order. It was also submitted that false complaint was filed by the complainant with a view to harass the accused persons.

8. On the contrary it was submitted by learned AGA that interference by this Court in the impugned order will not be justified, as at the time of passing the summoning order, it is only to be seen that prima-facie case to proceed against the accused is made out and at this stage, it is not to be seen whether the evidence led by the complainant is sufficient or not to base the conviction.

9. Having given my thoughtful consideration to the rival submissions made by the parties Counsel, I find no illegality in the impugned order.

10. I have already narrated the averments made by the complainant in her complaint. The allegations made in the complaint have been fully supported by the complainant Smt. Rani Devi in her statement recorded u/s 200 Cr.P.C. in Complaint Case No. 5036 of 2001. Her statement has been corroborated by the witnesses Smt. Mithilesh w/o Suresh Babu and Man Mohan s/o complainant in their statements recorded u/s 202 Cr.P.C.

11. On the basis of their statements, it is prima-facie established that on 26.11.2001, the accused persons (petitioners herein) had entered into the house of the complainant and they had assaulted him by means of kicks and fists and threatening was also given by the accused Vijay Prakash to kill her, if she would not vacate the house. From the evidence on record, it is also prima-facie established that the accused persons had hurled abuses with a view to insult the complainant.

12. Hence in view of the evidence led by the complainant, the learned Chief Judicial Magistrate was fully justified to summon the accused to face the trial, as there was sufficient ground to proceed against them.

13. It is settled legal position that at the stage of passing order u/s 203 or 204 Cr.P.C., only prima facie case has to be seen and not whether the evidence as adduced is to result in conviction of the accused persons. In the case of Nirmaljit Singh Hoon v. State of West Bengal and Anr. 1973 (10) ACC 181 , while considering the scheme of Sections 200, 203 Cr.P.C., it has been held by the Hon''ble Apex Court that Section 203 Cr.P.C. does not say that a regular trial for adjudging the truth or otherwise of the accusations made against the accused should take place at that stage. Section 203 consists of two parts. The first part lays down the materials which the Magistrate must consider, and the second part says that if after considering those materials, there is in his judgement no sufficient ground for proceeding, he may dismiss the complaint.

14. In the case of Chandra Deo Singh Vs. Prokash Chandra Bose and Another, , the Hon''ble Apex Court held that at the stage of enquiry u/s 202 Cr.P.C., the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction.

15. Again in the case of Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Ors. 1976 (13) ACC 225 , while considering the scope of enquiry u/s 202 Cr.P.C., the Hon''ble Apex Court has held that it is extremely limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint (a) on the basis of the materials placed by the complainant before the Court; (b) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; (c) for deciding the question purely from the point of view of the complainant without at all advertting to any defence that the accused may have. In that case, it has been held by way of illustration that the order of Magistrate issuing process can be quashed where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused.

16. In the case of S.W. Palanitkar and Ors. v. State of Bihar and Anr. (XLIV) 2002 ACC 168 , the Hon''ble Apex Court has held that at the stage of passing order u/s 203 Cr.P.C., searching sufficient ground to convict is not necessary.

17. In view of the legal position herein-above mentioned, it is clear that after the inquiry as contemplated under Sections 200 and 202 Cr.P.C., if the Magistrate is satisfied that there is sufficient evidence to proceed against the accused, he may issue summons or warrant as the case may be and at that stage the Court is not required to evaluate the evidence as if it was finally deciding the case.

18. Keeping in view the fore-going discussion, there is no scope to make any interference in the impugned order, as the said order does not suffer from any legal infirmity.

19. Consequently, the petition is dismissed.