

---

**(2009) 06 AHC CK 0152**

**In the Allahabad High Court**

**Case No :** Criminal Miscellaneous Application No. 14664 of 2009

Vrinda Rana and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

---

**Date of Decision :** 23-06-2009

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202  
Penal Code, 1860 (IPC) — Section 363, 364, 452, 504, 506

**Citation :** (2009) 3 ACR 2477

**Hon'ble Judges :** Ravindra Singh, J

**Bench :** Single Bench

**Advocate :** R.P. Dwivedi, for the Appellant; Rajiv Shahney and A.G.A., for the Respondent

---

## **Judgement**

Ravindra Singh, J.—Heard learned Counsel for the applicants, learned A.G.A. and Sri Rajiv Shahney, learned Counsel for the O. P. No. 2.

2. This application has been filed with a prayer to quash the order dated 13.2.2009, passed by learned Addl. Sessions Judge, Court No. 13, Agra, in Criminal Revision No. 15 of 2009, whereby the revision filed by the O.P. No. 2, has been allowed and the matter has been remitted to the Court of Magistrate to pass a fresh order in accordance with the provisions of law, in the light of the observation made in the judgment and the order dated 6.4.2009, passed by learned Judicial Magistrate-I, Court No. 1, Agra whereby the learned Magistrate concerned has summoned the applicants under Sections 363, 511, 452, 504 and 506, I.P.C. in complaint Case No. 223 of 2007.

3. It is contended by learned Counsel for the applicants that O.P. No. 2, has lodged the F.I.R. in Case Crime No. 302 of 2007 under Sections 364, 511, 504 and 506, I.P.C., P. S. Jagdishpura, District Agra, after investigation final report dated 26.5.2007 has been submitted, the same was challenged by O.P. No. 2 by way of filing protest petition, protest petition filed by O.P. No. 2, has been treated as complaint, after recording the statement of the witnesses under Sections 200

and 202, Cr. P.C., the learned Magistrate concerned has taken the cognizance and summoned the applicants vide order dated 25.10.2008. The order dated 25.10.2008 has been challenged by O.P. No. 2, by way of filing Criminal Revision No. 15 of 2009 whereby the applicants have not been made necessary party as opposite parties, in which the opposite party was made by the State of U. P., only and without affording the opportunity of being heard, the criminal revision has been allowed on 13.2.2009 which is illegal. In pursuance of the order dated 13.2.2009 the learned Magistrate concerned has passed the order dated 6.4.2009 by which the applicants have been summoned, the same is also illegal. Therefore, both the impugned orders may be set aside.

4. In reply of the above contention, it is submitted by learned A.G.A. and learned Counsel for O.P. No. 2, that the order dated 6.4.2009 has been passed only on the basis of the allegation made against the applicants that prima facie offence under Sections 363, 511, 452, 504 and 506, I.P.C. is made out but the learned revisional court has committed the error by not affording the opportunity of being heard to the applicants.

5. Considering the submissions made by learned Counsel for the applicants, learned A.G.A., learned Counsel for the O.P. No. 2 and from the perusal of the record it appears that the impugned order dated 25.10.2008 by which the learned Magistrate concerned has taken the cognizance and summoned the applicants under Sections 504, 506 I.P.C. has been challenged by way of filing the Criminal Revision No. 15 of 2009, the memo of the criminal revision has been filed disclosing the fact that the applicants have not been made the necessary opposite parties whereas they were already summoned on 25.10.2008 and without affording of opportunity of being heard the impugned order dated 13.2.2009 has been passed by the revisional court whereby the learned Magistrate concerned has been directed to pass a fresh order in pursuance of the observation made in the impugned judgment. The learned revisional court has committed a procedural error in passing the impugned order dated 13.2.2009 by not providing the opportunity of being heard to the applicant, which is illegal, consequently the order passed by learned Magistrate concerned on 6.4.2009 is also technically illegal, therefore, both the impugned orders are hereby set aside. It is directed that learned Addl. Sessions Judge, Court No. 13, Agra shall pass a fresh order on the Criminal Revision No. 15 of 2009, after providing the opportunity of being heard to the applicants.

With this direction, this application is finally disposed of.