

AFR

Neutral Citation No. - 2024:AHC:84294

Judgment Reserved on 12.04.2024

Judgment Delivered on 10.05.2024

Court No. - 38

Case :- APPLICATION U/S 482 No. - 42855 of 2023

**Applicant :-** Shishupal Singh And 4 Others

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** Raghuvansh Misra

**Counsel for Opposite Party :-** G.A.,Prashant Kumar Singh

**Hon'ble Ms. Nand Prabha Shukla,J.**

1. Heard Sri Raghuvansh Misra, learned counsel for the applicants, learned A.G.A. for the State of U.P. and Sri Prashant Kumar Singh, learned counsel for the opposite party no. 2.

2. Perused the record.

3. The present application under Section 482 Cr.P.C. has been filed to quash the order dated 25.01.2023 as well as the summoning order dated 26.05.2023 passed by the Chief Judicial Magistrate, Kanpur Dehat in Complaint Case No.803 of 2023 (Manju Shukla vs. Shishupal Singh Katiyar) under Sections 147, 308, 323, 504, 506 IPC, (Case Crime No.58 of 2022), Police Station Gajner, District Kanpur Dehat as well as the entire proceedings of the aforesaid complaint case pending in the Court of Chief Judicial Magistrate, Kanpur Dehat against the applicants.

4. Learned counsel for the applicants submitted that the opposite party no.2 Smt. Manju Shukla moved an application dated 25.03.2022 under Section 156 (3) Cr.P.C. on the basis of which a First Information Report dated 02.04.2022 was registered as Case Crime No. 58 of 2022, under Sections 147, 308, 323, 504 IPC, Police Station Gajner, District Kanpur Dehat alleging that on 15.03.2022 her two sons Gopal Shukla and Ram Shukla were going to their fields on a motorcycle and were ambushed by the applicants near the house of village Pradhan Rekha Singh (wife of applicant no.1 Shishupal Singh). Shishupal Singh hit an axe on the head of Gopal Shukla and Ram Shukla was assaulted with sticks. Upon hearing about the incident,

her other two sons Govind Shukla and Chhotu Shukla went to rescue the injured and found them lying unconscious. At the place of occurrence, a Milk Dairy was situated owned by Bhanu Pratap Singh, whose employee, namely, Shubham Shukla fired with a country made pistol of 315 bore causing injury to Akanshu.

5. On 15.03.2022, Gopal Shukla was medically examined at District Hospital, Kanpur Dehat. A lacerated wound of 6x5 cm was found on the head with irregular margins and complaint of pain in right thumb. All the injuries were found to be simple in nature. A CT Scan of the head of Gopal Shukla was conducted on 15.03.2022 and soft tissue scalp injury was noted with no intra-cranial abnormality. The injured was discharged in a satisfactory condition on 17.03.2022.

6. After the registration of the FIR, the investigation was conducted and the Closure Report/Final Report dated 26.04.2022 under Section 173(2) Cr.P.C. was prepared and submitted before the concerned Court. Against the said Closure Report/Final Report the opposite party no. 2 moved a protest petition which was treated as a complaint case vide order dated 25.01.2023 passed by Judicial Magistrate, Court No. 2, Kanpur Dehat and after examining upon oath the complainant and the witnesses under Sections 200 and 202 Cr.P.C., the Chief Judicial Magistrate, Kanpur Dehat vide order dated 26.05.2023 summoned the accused/applicants to face trial.

7. Learned counsel for the applicants have assailed the aforesaid order dated 25.01.2023 passed by the Judicial Magistrate, Court No. 2, Kanpur Dehat and order dated 26.05.2023 passed by the Chief Judicial Magistrate, Kanpur Dehat on following grounds :-

(i) The impugned orders have been passed without application of mind.

(ii) The learned Trial Court committed a manifest error in treating the protest petition as a complaint case and rejected the Closure Report/Final Report without adverting to the material collected during investigation and followed the procedure of complaint case mechanically.

(iii) The opposite party No. 2 Smt. Manju Shukla, in order to settle the score and to mount pressure for compromise against the cross case, i.e. FIR bearing Case Crime No. 47 of 2022, under Sections 34/307, 323, 504 IPC at Police Station Gajner, District Kanpur Dehat, lodged the impugned criminal proceedings against the applicants.

(iv) Injured Ram Shukla was though alleged to have been assaulted but no medical report was produced.

(v) The independent eye-witness Jaipal Singh, in his statement under Section 161 Cr.P.C. stated that while Gopal Shukla was fleeing from the spot, his legs went inside the drain and his head hit at the wall which resulted in head injury.

(vi) That no offence as alleged took place and the injuries were not to be grievous to attract punishment under Section 308 IPC.

8. It was thus submitted that as no such incident took place as alleged, therefore after conclusion of investigation, a Final Report/Closure Report dated 26.04.2022 was submitted. But the learned Trial Court without application of mind had rejected the Final Report/Closure Report. The Protest Petition moved by the opposite party no.2 was treated as a complaint case and the accused/applicants have been summoned to face trial without any reasoned and speaking order and, therefore, it is liable to be set-side. The learned Trial Court recorded a wrong finding which was not based on the material recorded under Sections 200 and 202 Cr.P.C., therefore, the findings recorded by the Trial Court was perverse and was liable to be set-aside.

9. Learned counsel for the applicants in support of his submissions has relied upon the judgment rendered by the Hon'ble Supreme Court in ***Pepsi Foods Ltd. And Another vs. Special Judicial Magistrate and others, (1998) 5 Supreme Court Cases 749***, wherein it has been observed that:

*"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. 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 would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”*

**(Emphasis supplied)**

10. Per contra, learned A.G.A. as well as learned counsel for the opposite party no.2 vehemently opposed the above submissions of the learned counsel for the applicants and submitted that there is no illegality or perversity in the order impugned. The learned Trial Court on the basis of the material under Sections 200 and 202 Cr.P.C. has rightly summoned the applicants to face trial.

11. Having heard learned counsel for the parties and upon perusal of the record it transpires that the learned Trial Court has not applied its judicial mind while passing the impugned summoning order. The impugned order contains the substance of the examination of the complainant Smt. Manju Shukla on oath recorded under section 200 Cr.P.C., who is not an eye witness of the incident. There is no whisper of statement on oath of Gopal Shukla and Ramji Shukla two injured examined on oath who were the material witnesses. There is no description about the nature of injuries inflicted to the injured Gopal though from the perusal of the records, it transpires that it was simple in nature caused by hard and blunt object. The alleged injured witness Ramji Shukla was not even medically examined. There are certain other noticeable discrepancies. It appears that as an afterthought, the application under Section 156 (3) Cr.P.C. has been moved after a delay of about 10 days on the basis of false and fabricated injury report to mount pressure and to settle the score in the cross case, i.e., Case Crime No. 47 of 2022, under Sections 34, 307, 323, 504 IPC, P.S. Gajner, District Kanpur Dehat, which was registered prior

in point of time. The said injuries can be fabricated. After the investigation, the Police adverted to the filing of Closure Report/Final Report. However, the learned Trial Court without application of mind rejected the said Final Report and on the basis of the protest petition of opposite party No. 2 summoned the applicants to face trial in a cursory manner by taking cognizance obviously under section 190(1)(a) of the Cr.P.C. and proceeded against the applicants by issuing process under Sections 147, 308, 323, 504 and 506 IPC. Therefore, the summoning order is bad in the eyes of law.

12. At this juncture, it is imperative to quote paragraph-9 of the judgment rendered by Hon'ble the Supreme Court in ***Mukhtar Zaidi vs. State of Uttar Pradesh and another, 2024 SCC Online SC 553***, which reads as under:

*"44. We may also notice that in Veerappa v. Bhimareddappa [Veerappa v. Bhimareddappa, 2001 SCC OnLine Kar 447 : 2002 Cri LJ 2150] , the High Court of Karnataka observed as follows: (SCC OnLine Kar para 9)*

*"9. From the above, the position that emerges is this: Where initially the complainant has not filed any complaint before the Magistrate under Section 200 CrPC, but, has approached the police only and where the police after investigation have filed the 'B' report, if the complainant wants to protest, he is thereby inviting the Magistrate to take cognizance under Section 190(1)(a) CrPC on a complaint. If it were to be so, the Protest Petition that he files shall have to satisfy the requirements of a complaint as defined in Section 2(d) CrPC, and that should contain facts that constitute offence, for which, the learned Magistrate is taking cognizance under Section 190(1)(a) CrPC. Instead, if it is to be simply styled as a Protest Petition without containing all those necessary particulars that a normal complaint has to contain, then, it cannot be construed as a complaint for the purpose of proceeding under Section 200 CrPC."*

13. In the same sequel, it is necessary to cite the observations of Hon'ble the Apex Court in ***Mahmood UI Rehmand vs. Khazir Mohd. Tund (2016) 1 SCC (Cri) 124***, which reads as under:

*" That the cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which*

*constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered alongwith the statement recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course to set in motion the process of criminal law against a person in a serious matter."*

14. This Court is of the considered opinion that the mandate of provisions of Sections 200 and 202 Cr.P.C. has been clearly violated. Learned Trial Court should have carefully scrutinized the complete material to find out the truthfulness of allegations and the basis of prima facie satisfaction before summoning the applicants at the time of recording of preliminary evidence. Thus, the orders impugned dated 25.01.2023 and 26.05.2023 are not tenable.

15. Consequently, the present Application U/S 482 Cr.P.C. is **allowed.**

16. The order dated 25.01.2023 passed by Judicial Magistrate, Court No. 2, Kanpur Dehat and the summoning order dated 26.05.2023 passed by the Chief Judicial Magistrate, Kanpur Dehat in Complaint Case No.803 of 2023 (Manju Shukla vs. Shishupal Singh Katiyar) under Sections 147, 308, 323, 504, 506 IPC, (Case Crime No.58 of 2022), Police Station Gajner, District Kanpur Dehat, are hereby set-aside.

17. The matter is hereby remitted back to the Court concerned to pass a fresh order within a period of two months from the date of production of a certified copy of this order in the light of the observations made herein above.

**Order Date :- 10.5.2024**

Monika