

Durga Prasad and Others Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Dec-06-2012

Judge : Het Singh Yadav

Appeal No. : Criminal Revision No. 234 of 2006

Appellant : Durga Prasad and Others

Respondent : State of U.P. and Another

Judgement :

Het Singh Yadav,J.This Criminal Revision has been preferred against the order dated 7.11.2005 passed by the learned Chief Judicial Magistrate (C.J.M.), Kaushambi in Criminal Case No. 130 of 2005 (Pawan Kumar Mishra Vs. Durga Prasad and Others) issuing process against the revisionists under Section 204 Criminal Procedure Code, 1973 (Cr. P.C.) on the complaint of the Respondent No.2

2. The facts of the case in nutshell are that the Respondent No. 2 filed a complaint in the Court of C.J.M., Kaushambi on 15.1.2005 disclosing therein that he is the Member of Gram Panchayat Pashchim Sarira, District Kaushambi. Since he opposed the allotment of plots to be made by the Land Management Committee, therefore, accused persons/revisionists bore enmity with him. On 26.12.2004 at about 4.00 p.m. the complainant was going to market. When he arrived near Sabji Mandi, all the accused persons already present there surrounded him and started

beating him with fists and kicks, and also with sticks. On his raising alarm, nearby shop-keepers arrived there and any how saved him. The complainant approached local police station to get lodged the F.I.R. The police did not lodge F.I.R. Then he also sent written report about the occurrence to the Superintendent of Police Kaushambi through the registered post dated 5.1.2005 but no action was taken by the police. Therefore, he moved the complaint in the Court of C.J.M..

3. The learned C.J.M. after having adopted the procedure as envisaged under Chapter XV Cr.P.C. had taken cognizance of offence on the complaint and ordered to issue process against the accused persons (the revisionists) which is under challenge in this revision.

4. Heard learned counsel for the revisionists and learned A.G.A. at a considerable length and also perused the record.

5. Learned counsel for the revisionists contended that summoning of any person as an accused in a criminal case is a serious matter and, therefore, criminal law cannot be set into motion as a matter of course. He pointed out that as per own version of the complainant the occurrence has taken place on 26.12.2004 in respect of which the complaint was lodged on 5.1.2005 before the C.J.M. The complainant neither in his complaint nor during his statement recorded under Section 200 Cr.P.C. has given any explanation about the delay. It is specifically mentioned in the complaint as well as in the statements of the complainant and the witnesses under Section 200 and 202 Cr.P.C. that the accused persons/revisionists committed " Maar Peet" with him with kicks, fist and also with the sticks causing injuries to him but no injury report has been filed on the record. It appears that the learned C.J.M. has not applied his mind to the facts of the case and the law applicable thereto. He, even, failed to consider that there is no sufficient ground for summoning the accused person. The learned C.J.M. has also failed to ascertain truthfulness and false-hood of the facts contained in the complaint. Learned C.J.M. at the time of recording of preliminary evidence before passing the impugned order remained as silent spectator. He, even did not put any question to the complainant seeking explanation about the huge delay caused in filing the complaint. The learned C.J.M. is also failed to put questions about injury

sheets alleged to have been caused to the complainant during the occurrence and also as to why the injury report has not been filed on record. Learned counsel submitted that from all these facts it is clear that the learned C.J.M. has failed to carefully scrutinise the evidence brought on record by the complainant and his witnesses. He also failed to find out the truthfulness of the allegations made in the complaint. Thus, he has committed gross error and illegality while passing the impugned order. Bare perusal of the complaint and the statement of the witnesses there appears no ground for summoning the accused persons. Thus, impugned order is absolutely illegal and not sustainable. For his submissions learned counsel for the revisionists placed reliance on Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and others (1998) 5 SCC 749. In this case the apex court held as under:-

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as 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. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to be 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."

6. On the other hand learned A.G.A. has contended that the scope of inquiry under Chapter XV Cr.P.C. by the Magistrate is extremely limited. The Magistrate has to ascertain the truthfulness or the false-hood of the allegations made in the complaint on the basis of statements of the complainant and the witnesses recorded under Section 200 Cr.P.C. and the material placed before him by the complainant. The preliminary enquiry under Chapter XV Cr.P.C. is to be

conducted for the limited purposes of finding out that whether a prima facie case for issuing process under Section 204 Cr.P.C. has been made out or not. In this case the complainant has established sufficient ground for issuing process for adducing preliminary evidence in support of his version disclosed in the complaint. Learned A.G.A. stressed much that there is no delay in filing the complaint before the Magistrate. It is specifically mentioned in the complaint, in the statements of the complainant and the witnesses that the complainant had made an attempt to get lodged the F.I.R. The police, however, did not lodge F.I.R. nor he was got examined by a doctor. The complainant also sent substance of information in writing by Registered Post to the Superintendent of Police, Kaushambi as per provisions of Section 154 (3) Cr.P.C. The complainant waited for sometime to know the fate of his written information so sent through Registered Post but no action was taken on his written information by the police. Thus the delay, if any, has been duly explained by the complainant. Learned A.G.A. further contended that a condition precedent for issuing process under Section 204 Cr.P.C. is the satisfaction of the Magistrate either by examination of the complainant and the witnesses or by the inquiry contemplated under Section 202 Cr.P.C. that there is sufficient ground for proceedings with the complaint. At this stage, a Magistrate is supposed to see that whether there is sufficient ground for proceeding with the case and not whether there is sufficient ground for conviction of the accused. The learned C.J.M., thus, committed no illegality either procedural or jurisdictional while passing the impugned order. The revision, thus, has no force and deserves to be dismissed.

7. I have given my thoughtful consideration to the arguments made by both the sides and have also perused the record. It may be mentioned that as per scheme of Chapter XV and Section 204 Cr.P.C. the scope of inquiry is very limited. Chapter XV Cr.P.C. relates to complaints to the Magistrates. It covers cases before actual commencement of the criminal proceedings in a Court or before a Magistrate. Scope of preliminary enquiry in Section 200 and 202 Cr.P.C. is very limited. At his stage, the limited purpose behind proceedings under Chapter XV Cr.P.C. is to see whether on a cursory perusal of the complaint and the statements recorded under Section 200 and 202 Cr.P.C., there is a prima facie evidence in support of allegations made against the accused. All that the learned Magistrate

has to see whether or not there is a sufficient ground for proceeding against the accused.

8. In *Kewal Krishan Vs. Suraj Bhan*, 1980 Supp SCC 499 : (AIR 1980 SC 1780: 1980 Cri LJ 1271 apex court held that at the stage of Chapter XV Cr.P.C. the Magistrate has to find out whether prima facie case made out against the accused or not. The Magistrate is not required to meticulously appreciate the evidence at the stage of 203/204 Cr.P.C. All that the Magistrate has to do-is to see whether on a cursory perusal of the complaint and the evidence recorded during preliminary enquiry under Section 200 and 202 Cr.P.C. that there is prima facie evidence in support of charge levelled against the accused. All that the Magistrate has to see whether or not there is sufficient ground for proceedings against the accused. The apex court further held that the Magistrate is not to weigh the evidence meticulously as if he was the trial Court. The procedure adopted by the Magistrate in examining the evidence is not the same, as the one which is to be kept in view of the framing charges.

The above view of the apex court was followed in its later decision in *Rosy and Another Vs. State of Kerala and Others*, 2000 CRI. L. J. 930

9. In *S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd. and Others* (2008) 2 Sec 492 the apex court held thus:-

"Chapter XV (Sections 200-2003) relates to Complaints to Magistrates and covers cases before actual commencement of proceedings in a Court or before a Magistrate. Section 200 of the Code requires a Magistrate taking cognizance of an offence to examine the complainant and his witnesses on oath. Section 202, however, enacts that a Magistrate is not bound to issue process against the accused as a matter of course. It enables him before the issue of process either to inquire into the case himself or direct an investigation to be made by a Police Officer or by such other person as he thinks fit for the purpose of deciding whether there is sufficient ground for proceeding further. The underlying object of the inquiry under Section 202 is to ascertain whether there is prima facie case against the accused. It thus allows a Magistrate to form an opinion whether the process should or should not be issued. The scope of inquiry under Section 202, is no

doubt, extremely limited. At that stage, what a Magistrate is called upon to see is whether there is sufficient ground for proceeding with the matter and not whether there is sufficient ground for conviction of the accused.

Then comes Chapter XVI (Commencement of proceedings before Magistrates). This Chapter will apply only after cognizance of an offence has been taken by a Magistrate under Chapter XIV. Section 204, whereunder process can be issued, is another material provision"

10. In *Shievjee Singh Vs. Nagrendra Tiwary and Others*, AIR 2010 SC 2261 the apex court held thus:-

"The object of examining the complainant and the witnesses is to ascertain the truth or falsehood of the complainant and determine whether there is a prima facie case against the person who, according to the complainant has committed an offence. If upon examination of the complainant and/or witnesses, the Magistrate is prima facie satisfied that a case is made out against the person accused of committing an offence then he is required to issue process. Section 202 empowers the Magistrate to postpone the issue of process and either inquire into the case himself or direct an investigation to be made by a police officer or such other person as he may think fit for the purpose of deciding whether or not there is sufficient ground for proceeding. Under Section 203, the Magistrate can dismiss the complaint if, after taking into consideration the statements of the complainant and his witnesses and the result of the inquiry/investigation, if any, done under Section 202, he is of the view that there does not exist sufficient ground for proceeding. On the other hand, Section 204 provides for issue of process if the Magistrate is satisfied that there is sufficient ground for doing so. The expression "sufficient ground" used in Section 203, 204 and 209 means the satisfaction that a prima facie case is made out against the person accused of committing an offence and not sufficient ground for the purpose of conviction. This interpretation of the provisions contained in Chapters XV and XVI of Cr.P.C. find adequate support from the judgements of this Court in *R.G. Ruia v. State of Bombay*, 1958 SCR 618 : (AIR 1958 SC 97), *Vadilal Panchal v. Duttatraya Dulaji Ghadigaonkar* (1961) 1 SCR 1: (AIR 1960 SC 1113), *Chandra Deo Singh v. Prokash Chandra Bose*

(1964) 1 SCR 639 : (AIR 1963 SC 1430), Nirmaljit Singh Hoon v. State of West Bengal (1973) 3 SCC 753- (AIR 1972 SC 2639), Kewal Krishan v. Suraj Bhan (1980) Supp SCC 499 : (AIR 1980 SC 1780), Mohinder Singh v. Gulwant Singh (1992) 2 SCC 213 :(AIR 1992 SC 1894: 1992 AIR SCW 2189) and Chief Enforcement Officer v. Vediocon International Ltd. (2008) 2 SCC 492 :(AIR 2008 SC 1213: 2008 AIR SCW 1203)."

11. This Court in Umrao Vs. State of U.P. and Others 2012 Cr.L.J. Page 2370 held as under:

" Thus, at that stage only disclosure of a prima facie case has to be looked into and nothing more. At that stage, Magistrate is not required to conduct a roving enquiry into various facets and disputed question of facts to fathom out a defence for the accused yet to be tried and scuttle the prosecution at it's very inception. Whether the witnesses are reliable or not, whether the prosecution allegations are reliable or not, whether the witnesses are credible and confidence inspiring or not, all these aspects are alien to the scope of enquiry at that stage. Magistrate cannot go into these aspect to aggrandize scope of enquiry to codswallop extent."

12. Having considered the scheme laid down in Chapter XV of the Cr.P.C. and in view of ratio laid down as above by the apex court and this Court, the scope of Section 200, 202, 203 and 204 may be summarised as under:

(i) On cursory perusal of the complaint and upon examination of the complainant and his witnesses under Section 200 Cr.P.C., if, the Magistrate is satisfied that there is prima facie evidence against the person, who according to the complainant has committed an offence, then the Magistrate is required to issue process against such person accused of committing offence after taking cognizance against him.

(ii) The object of examining the complainant and his witnesses is to ascertain the truth or false-hood of the complaint and determine whether there is prima facie evidence against person, who according to the complainant has committed an offence.

(iii) At this stage the Magistrate has to be satisfied whether there is a "sufficient ground" for proceeding and not whether there is sufficient ground for conviction.

(iv) "Sufficient ground" means the satisfaction of the Magistrate that the facts disclosed in the complaint prima facie constitute commission of offence and there is prima facie evidence against the person, who according to the complainant has committed the offence.

(v) The Magistrate may postpone the issue of process against the accused and may enquire into the matter himself or direct an investigation to be made by a Police Officer or by such other person as he thinks fit for the purposes of deciding whether or not there is "sufficient ground" for proceeding as envisaged under Section 203/204 Cr.P.C.

(vi) Where there is a prima facie evidence even though the person charged-of an offence in the complaint might have a defence, the matter has to be left to be decided by the appropriate forum at appropriate stage and the issue of process could not be refused.

(vii) Where the Magistrate finds that the evidence laid before him under Section 200, 202 Cr.P.C. is self-contradictory or intrinsically-untrust-worthy, process cannot be refused if that evidence makes out a prima facie case.

(viii) The standard to be adopted by the Magistrate in scrutinising the evidence at the stage of Section 203/204 of the Cr.P.C. is not the same as the one which is to be kept in view at the stage of framing charges.

(ix) A complaint can be dismissed only for the reason that no prima facie case is disclosed against the accused requiring his prosecution for a criminal charge.

13. I have examined and analysed the impugned order taking into consideration the above settled legal position. On a cursory perusal of the complaint it appears that the facts disclosed therein prima facie constitute commission of offence of which learned C.J. M. is competent to take cognizance. On perusal of statements of the complainant and the witnesses, recorded by the C.J.M. under Section 200 Cr.P.C, it appears that there is prima facie evidence against the accused

persons/revisionists, who according to the complainant have committed the offence. Thus, there is a sufficient ground for issuing process against the accused persons/revisionists under Section 204 Cr.P.C. At the stage of Section 203/204 Cr.P.C. the Magistrate has to see that a prima facie case is made out and there is a prima facie evidence against the person, who according to the complainant has committed the offence. The test is- Whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction. The apex court in the cases of Chandra Deo Singh, Nirmaljit Singh Hoon, R.G. Ruia and Vadilal Panchal, re-affirmed and upheld in the case of Shievjee Singh (Supra), held that the Magistrate at the stage of Chapter XV of the Cr.P.C. must consider whether there is a sufficient ground for proceeding and that whether there was prima facie evidence or not. Thus, the impugned order passed by the learned C.J.M. is absolutely within the four corners of law and finds full support from the case laws cited as above.

The arguments made on behalf of the learned counsel for the revisionists that the C.J.M. has failed to apply his mind as he has not considered the delay caused in filing the complaint are out of preview of Chapter XV and Section 204 Cr.P.C., inspire no attraction. The ratio laid down in M/s Pepsi Foods Ltd. (Supra) has no application to the facts and circumstances of this case. In M/s Pepsi Foods Ltd. complaint was filed under the Prevention of Food Adulteration Act (Since Repealed) by a purchaser of Lehar Pepsi product, which was found adulterated. Under the said Act a complaint can only be filed by the Food Inspector, who has taken the sample and the sample was found adulterated.

14. In view of above settled legal position, the revision has no force, accordingly, dismissed. Impugned order dated 7.11.2005 passed by the learned Chief Judicial Magistrate, Kaushambi (C.J.M.) is confirmed.

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