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Court : Allahabad

Decided On : Feb-07-1985

Reported in : 1985CriLJ1363

Judge : A.S. Srivastava, J.

Appellant : Jinendra Pratap Singh and ors.

Respondent : State of U.P. and ors.

Judgement :

ORDER

A.S. Srivastava, J.

1. By means of this petition, the petitioners have prayed for quashing of a complaint pending against them before the Special Judge (Anti-Dacoity), Jhansi on the ground that he has no jurisdiction to take cognizance of that complaint. The petitioners have also challenged the order dated 19-11-1983 by means of which they have been summoned on that complaint on the same ground i.e., the said order is without jurisdiction. The facts of this case may briefly be stated as under:

Ram Sahai, opposite party No. 2, filed a complaint on 5-10-1983 against the petitioners and Shanker, opposite party No, 3, under various sections, including Section 392 of the Penal Code in the Court of Munsif-Magistrate VIII, Jhansi which was registered there as Criminal Case No. 952 of 1983. After examining the said

complaint and the witnesses under Sections 200 and 202, Cr. P.C. the learned Magistrate summoned the petitioners and Shankar, opposite party No. 3, by an order dated 19-11-1983. On 7-11-1984, however, the case was transferred from the Court of Munsif-Magistrate VIII, Jhansi to the Court of Munsif-Magistrate VI, Jhansi where it was registered as Criminal Case No. 2230 of 1983. On the same day the Munsif-Magistrate transferred it to the Court of Special Judge (Dacoity Affected Areas), Jhansi who has fixed 7-2-1985 for the appearance of the petitioners.

2. It is contended that the Special Judge has no jurisdiction to entertain the said complaint against the petitioners because it was filed not before him but before the Magistrate. The Special Court (Anti-Dacoity), Jhansi could take cognizance on this complaint only if it was filed before it. It is not disputed' that one of the offences under which the complaint has been filed in a scheduled offence. Therefore, the Special Court could have taken cognizance of the complaint only if it was filed before it as provided in Section 7 of the U. P. Dacoity Affected Areas Ordinance, 1981 (hereinafter referred to as the Ordinance).

3. After hearing the counsel for the petitioners, I find myself unable to agree with the above contention. Section 7 of the Ordinance reads as under:

(1) A Special Court may take cognizance of any scheduled offence:

(a) Upon receiving a complaint of facts which constitute such offence;

(b) Upon a police report of such facts;

(c) Upon information received from any person other than a police officer, or upon its own knowledge that such offence has been committed...

It is no doubt true that the complaint the cognizance of which has been taken by the Special Judge was not filed before him. But Clause (a) of Section 7 states that a Special Court may take cognizance of any scheduled offence 'upon receiving a complaint of facts which constitute such offence.' The word 'receiving' in this clause is significant. This word leaves no room for doubt that the Special Judge could take cognizance of an offence on a complaint received by him even though

not filed by the complainant himself. The word 'receiving' in this case makes the intention of the legislature in this regard very clear. The only condition necessary is that such complaint received by the Special Judge must contain 'facts' which 'constituted such offence' on which cognizance can be taken by him. In other words, if the Special Judge receives a complaint of 'facts' which 'constitute an offence', Section 7(a) empowers him to take cognizance of that 'offence' irrespective of the source from where he received that complaint. In this clause it is nowhere mentioned that the Special Judge can take cognizance only upon receiving a complaint of facts which constitute an offence 'from the complainant' himself. If this would have been the intention of the legislature, it would have added the words 'From the complaint' after the word 'offence' in this clause. Therefore if the Special Judge has taken cognizance of the offence as disclosed by the facts alleged in the complaint received by him from the Court of Munsif-Magistrate VI, Jhansi, he has not acted beyond jurisdiction.

4. Even if it is assumed that the case of the petitioners is not covered by Clause (a) of Section 7, it will be covered by Clause (c) thereof. It cannot be denied that the complaint filed before the Magistrate contained 'information' that 'an offence has been committed'. On discovering that he had no jurisdiction, there was no bar for the Magistrate for passing on such information to the Special Judge. I do not agree with the counsel for the petitioners that the Magistrate is not a 'person' within the meaning of Clause (c) of Section 7 of the Ordinance. The word 'person' in this clause is of a general import and will include juristic person also. A Magistrate is certainly not a police officer and, therefore, he is a 'person' other than a police officer. When such a Magistrate transfers a complaint to the Court of the Special Judge after having discovered that he himself has no jurisdiction in the matter and the Special Judge takes cognizance of such an offence, he will be deemed to have taken cognizance 'upon information received from a person other than a police officer'. The only condition necessary in such a case is that the information received must disclose that an 'offence has been committed'. In this view of the matter also, the Special Judge had jurisdiction to take cognizance of the complaint received by him from a Magistrate. Consequently the complaint pending before him against the petitioners cannot be quashed on this ground.

5. I will now take up the second question raised by the counsel for the petitioners regarding legality of the order dated 19-11-1983 issued by the Magistrate for summoning the petitioners and Shankar when he had taken cognizance of the complaint filed by the complainant.

6. It is urged on behalf of the petitioners that since the Magistrate had no jurisdiction to take cognizance of the complaint, this order issued by him is without jurisdiction and, therefore, they cannot be produced before the Special Judge in this case in pursuance of the order of the Magistrate dated 19-11-1983. The Special Judge will have himself to examine the complainant and his witnesses as provided under Sections 200 and 202, Cr. P.C. before issuing processes against the petitioners. I do not agree with this contention of the petitioners counsel also. The provisions of Sections 200 and 202, Cr. P.C. are not applicable to a proceeding started by a Special Judge under Section 7 of the Ordinance. This is clear from the following proviso to Section 7 itself:

Provided that the special Court may, wherever necessary, perform the functions of a Magistrate under Section 207 of the said Code and proceed to try the case as if the case had been committed to Court of Session for trial under the provisions of such Code.

The above proviso empowers the Special Judge to (i) perform the functions of a Magistrate under Section 207, Cr. P.C. and (ii) proceed to try the case as if the case had been committed to Court of Session for trial. Therefore, in this case also the special Judge after taking cognizance has to proceed to try the same as if it has been committed to his court for trial. He could perform the functions of a Magistrate only under Section 207, Cr. P.C. and not under Section 200 or 202, Cr. P.C. This case shall be deemed to have been committed to his court for trial as sessions case. The Special Judge will, therefore, proceed in this case in accordance with the procedure Laid down in Chapter XVIII of the Cr. P.C. for trial before a Court of Session. Under Section 226 of this Chapter, the trial begins when the accused in the case either (a) appears or (b) is brought before the Court. Therefore, this section confers jurisdiction on the special Judge to proceed with the trial of the case against the petitioners if they either (a) appear or (b) are

brought before the Court. If for achieving this object of the commencement of the case before him, the special Judge depends upon a process issued by the Magistrate against the petitioners he cannot be held to have acted with any illegality. At the best it is an irregularity. In any case, it is not a case where there is abuse of process of court or any interference is needed to secure the ends of justice. When a trial is pending against the petitioners before the special Judge and they have received a process for appearance, they should rather obey the process and (sic) make an attempt to ignore the same on a technical ground. In such circumstances they cannot be permitted to contend that the balance of justice is on their side so as to warrant an interference by this Court by the exercise of its extraordinary and discretionary powers under Section 482, Cr. P.C.

7. For reasons given above, I do not consider it a fit case in which the prayers made by the petitioners can be granted.

8. The petition is accordingly rejected.