

Chhedi and ors. Vs. State of Uttar Pradesh and anr.

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Court : Allahabad

Decided On : Apr-09-1991

Reported in : 1991CriLJ3017

Judge : B.P. Singh, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 2, 156, 156(3), 190, 200 and 204; ;Indian Penal Code (IPC) - Sections 323, 394, 395 and 504

Appeal No. : C.R. No. 562 of 1989

Appellant : Chhedi and ors.

Respondent : State of Uttar Pradesh and anr.

Advocate for Def. : A.G.A. and ;V.P. Pathak, Adv.

Advocate for Pet/Ap. : Vinod Prasad, Adv.

Judgement :

ORDER

B.P. Singh, J.

1. Chhedi and others have filed this application for revision against the order dated 31st January, 1989, passed by Additional Chief Judicial Magistrate, Varanasi, in Criminal Case No. 2889 of 1988 (Badrin Bibi v. Chhedi) Under Section 395, IPC

summoning the applicant-revisionists for the offence under Section 395, IPC.

2. An occurrence took place on 14th September, 1988, at about 11 p.m. in which the applicant-revisionists from one side and Chhedi and others on the other were said to have been involved. An FIR of the occurrence was lodged by Haneef at P.S. Rohania on 15-9-1988 at 7-20 p.m. Under Section 323/504 against Umar and others. Regarding the same occurrence another FIR was lodged by Smt. Badrun Bibi (Respondent No. 2) against the applicants Under Section 323/504, IPC.

3. On 17th September, 1988, Smt. Badrun Bibi moved an application before the Additional Chief Judicial Magistrate, Varanasi, Under Section 156(3), Cr. P.C. praying that Police of P.S. Rohania be directed to lodge an FIR Under Section 394/395, IPC against Chhedi and others and thereafter to take proceeding against them in accordance with law. On this application the learned Additional Chief Judicial Magistrate made enquiry from P.S. Rohania if any case was or was not registered regarding the incident which was mentioned by Badrun Bibi in her application Under Section 156(3), of the Code of Criminal Procedure, hereinafter referred to as 'the Code'.

4. S.O. P.S. Rohania reported that the allegations of Badrun Bibi regarding the occurrence of dacoity were not substantiated. Thereafter, the learned Additional Chief Judicial Magistrate examined the witnesses produced by Badrun Bibi and summoned the applicants Under Section 204 of the Code. The applicants have challenged the summoning order on the ground that the police had submitted the charge-sheet Under Section 323/504, IPC regarding the occurrence Under Section 395, IPC. The learned Magistrate did not reject the charge-sheet, as no formal complaint was filed by Badrun Bibi in the court of the learned Magistrate. The order summoning the applicants was against the provisions of law. On the other hand, the contention of respondent No. 2 was that the learned Magistrate was fully justified in passing the order in question because the evidence led by her before him did make out a case for the offence Under Section 395, IPC against, the applicant-revisionists. I have heard the learned counsel for the parties.

5. It is not disputed that the basis of the summoning order in question was the application of Badrun Bibi and the statement of Govind Lal Rai and others

recorded by the learned Magistrate. It is also not disputed that no formal complaint was filed by Badrun Bibi before the learned Magistrate.

6. Section 156 of the Code deals with the powers of the Police Officer to investigate cognizable case. Under Section 156(3) of the Code any Magistrate empowered Under Section 190 may order for investigation in a cognizable offence by the Police Officer concerned. Chapter XV of the Code deals with the complaints to Magistrate and Section 200 specifically provides that a Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate. Thus, it is quite clear that Under Section 200 of the Code a Magistrate can take cognizance only if a complaint in this regard is made to him. Section 2(d) of the Code defines complaint and provides 'that 'complaint' means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report'. The Explanation to Section 2(d) provides that 'a report made by a police Officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.' Thus, it is obvious that only allegations made whether orally or in writing to a Magistrate with a view to his taking action under the Code can be termed as a complaint. Where the applicant moves an application before the Magistrate with the simple prayer that the police Officer concerned may be directed to register a case under a particular section and prayer for further direction is made that the police officer concerned may also proceed in accordance with law cannot be termed as 'complaint' as defined in Section 2(d) of the Code. The Magistrate has no power to proceed Under Section 200 of the Code upon such an application. Of course, the Magistrate can proceed under Chapter XV of the Code if a proper complaint is filed before him in which allegations are made with a view to his taking action under the Code that some persons have committed an offence.

7. In the present case, the learned Magistrate was not acting legally when he proceeded to examine Badrun Bibi and the witnesses Under Section 200 of the Code in the absence of any formal complaint in this regard from her or any one else. Thus, the summoning order passed by the learned Magistrate cannot be sustained.

8. The application for revision is allowed. The order dated 31-1-1939 passed by the Additional Chief Judicial Magistrate, Varanasi in Criminal Case No. 2889 of 1988 Badrun Bibi v. Chhedi and others is hereby set aside. Badrun Bibi is free to take recourse to law if any such right is available to her.

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