

Raj Kumar Agarwal Vs. State of U.P.

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Court : Allahabad

Decided On : Mar-24-1999

Reported in : 1999CriLJ4101

Judge : B.K. Rathi, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 190, 200 to 203, 204, 239, 240 and 397; Indian Penal Code (IPC) - Sections 420, 467 and 468

Appeal No. : Criminal Revn. No. 481 of 1999

Appellant : Raj Kumar Agarwal

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Arjun Singhal, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

B.K. Rathi, J.

1. This revision under Section 397 Cr.P.C. has been preferred against the order dated 9-2-99 passed by the 1st Additional Chief Judicial Magistrate, Meerut in

Criminal Case No. 305 of 1999.

2. I have heard the learned Counsel for the revisionist and the learned A.G.A.

3. It appears that a charge sheet was received against the applicant, which was submitted on the basis of the F.I.R. lodged by opposite party No. 2 for the offences under Sections 420, 467 and 468 IPC. On the basis of that charge sheet by the impugned order the case was registered and the applicant was summoned by non-bailable warrant returnable by 9-2-99. Aggrieved by it, the present revision has been preferred.

4. The contention of the learned Counsel for the revisionist is that the order has been passed without application of mind for the fact whether any offence has been committed. That before the issue of process, there must be prima facie satisfaction of the learned Magistrate regarding commission of offence, which is a pre-condition for taking cognizance and issue of process.

5. It is contended by opposite parties that the order is interlocutory and therefore, the revision is not maintainable and is covered by mischief of Clause (2) of Section 397 Cr.P.C. Regarding this the learned Counsel for the revisionist has referred to the Division Bench case of Umakant Pandey v. Addl. Chief Judicial Magistrate, Karvi, Banda 1996 ACC 879. This was a complaint case. After-considering the principle laid down by the Hon'ble Supreme Court in the case of 'Madhulmaya' and in other cases it was held that the order of summoning is not an interlocutory order. There is no hesitation in accepting the principle laid down by this Division Bench case and therefore, I find that the revision is maintainable.

6. Now coming to the merits, the learned Counsel for applicant has referred to the provisions of Section 204 Cr.P.C. which empower the Magistrate to issue process and provide that if the Magistrate is of the opinion that there is sufficient ground for proceeding, he may issue process. It is contended that the order does not show that the Magistrate has applied his mind to find whether there is sufficient ground to proceed.

7. The cognizance of the offences are taken by the Magistrate under Section 190 Cr. P.C. Clause (a) provide for the cognizance on receiving a complaint and Clause (b) provide for cognizance upon a police report. The procedure for taking cognizance upon complaint has been provided in Chapter-XV under Sections 200 to 203. A complaint may be dismissed under Section 203 Cr. P.C. after recording the reasons for doing so. If the complaint is not dismissed Under Section 203, the process are issued under Section 204 Cr. PC. Section 204 is in a different Chapter-XVI, but applies to complaint cases as well as to the cases instituted on police report, and this is the only provision under which the process are issued by the Magistrate in a case after taking cognizance. The procedure for trial of warrant cases has been provided in Chapter-XIX. In the present case the cognizance has been taken upon a police report and therefore, I confine myself to the cases instituted on a police report. Under Section 239 Cr. P.C. the Magistrate after considering the police report and the documents and after recording the statement of the accused and hearing the prosecution and the accused, can discharge the accused. If the accused is not discharged, the charge is framed Under Section 240 Cr. P.C. and after the evidence of prosecution and accused the final judgment is pronounced u/S. 248 Cr. P.C. As such there are three stages of a case. The first is under Section 204 Cr. P.C. at the time of issue of process, the second is under Section 239 Cr. P.C. before framing of the charge and the third is after recording the entire evidence of the prosecution and the defence. The question is whether the Magistrate is required to scrutinise the evidence at all the three stages and record reasons of his satisfaction. If this view is taken, it will make speedy disposal a dream. In my opinion the consideration of merits and evidence at all the three stages is different. At the stage of issue of process under Section 204 Cr. P.C. detailed enquiry regarding the merit and demerit of the cases is not required. The fact that after investigation of the case, the police has submitted the charge sheet, may be considered as sufficient ground for proceeding at the stage of issue of process under Section 204 Cr. PC., however subject to the condition that at this stage the Magistrate should examine whether the complaint is barred under any law, for example, it is barred for want of proper sanction for prosecution or is barred by limitation etc. At the stage of Section 204 Cr. P.C. if the complaint is not found barred under any law, the evidence is not required to be considered nor the

reasons are required to be recorded. At the stage of charge under Section 239 or 240 Cr. P.C. the evidence may be considered very briefly, though at that stage also, the Magistrate is not required to meticulously examine and to evaluate the evidence and to record detailed reasons.

8. A bare reading of Sections 203 and 204 Cr.P.C. shows that Section 203 Cr.P.C. requires that reasons should be recorded for the dismissal of the complaint. Contrary to it, there is no such requirement under Section 204 Cr.P.C. Therefore, the order for issue of process in this case without recording reasons, does not suffer from any illegality.

9. The revision has, therefore, no force and is hereby dismissed.

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