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Court : Allahabad

Decided On : Sep-24-2010

Judge : Ashok Kumar Roopanwal,J.

Acts : Code of Criminal Procedure Section - 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 323, 354, 504, 506, 452,

Appeal No. : APPLICATION U/S 482 No. - 28971 of 2010.

Appellant : Abdul Rashid Ansari and anr.

Respondent : State of U.P.and anr.

Advocate for Pet/Ap. : A.K. Tripathi

Judgement :

1. This is an application under Section 482, Cr.P.C. for quashing the summoning order dated 16.7.10 passed by the Judicial Magistrate, IInd, Sant Ravidas Nagar, Bhadohi in Complaint Case No.121/2010, Mahrnunisha v. Abdul Rasid Ansari and another, under Section 323, 354, 504, 506, 452, IPC.

2. It appears from the record that an FIR was lodged by Mahrnunisha on 23.6.09 at P.S. Chauri, District Bhadohi alleging therein that the applicants after entering into her house on 27.5.09 at 9.00 a.m. tried to commit rape with her daughter-in-law named Jamila Bano. That FIR was investigated upon by the police and final report was submitted. Against the final report protest petition was filed by Mahrnunisha which was treated to be the complaint and the statements of the complainant

Mahrunisha and her daughter-in-law were recorded, after perusal of which the Judicial Magistrate IInd, Court No.12, Bhadohi, District Gyanpur summoned the applicants for the offences punishable under Sections 323, 354, 504, 506 and 452, IPC.

3. Heard Mr. Vinod Kumar Sahu holding brief for Mr. A.K. Tripathi, learned counsel for the applicants, learned AGA and perused the record. Mr. Sahu contested this petition on two counts. Firstly, that the FIR lodged by Mahrunisha was in retaliation to the Judgment dated 27.4.09 passed by the Judicial Magistrate IInd, Bhadohi in case no.787/06, under Section 323, 504, 506, IPC in which Aslam (husband of the complainant), Mohit and Shafiq were convicted. Secondly, that once F.R. was submitted by the police and no case was found to have been made out against the applicants the summoning order passed by the Magistrate dated 16.7.10 cannot be allowed to sustain.

4. A look at the record would reveal that in case no.787/2006 the husband of O.P. No.2, Smt. Mahrunisha was convicted by the concerned Magistrate on 27.4.09. He was convicted for maximum one year R.I., then, definitely, they would have been released on interim bail. The occurrence of the present case lodged by Mahrunisha is said to have been committed on 27.5.09 i.e. just within one month of the conviction, thus, this can also be possible that being aggrieved by the order of conviction, in order to take revenge, the occurrence would have been committed by the applicants, as alleged by O.P. No.2.

5. Therefore, in the circumstances of the case, it is not acceptable to me that it is a case where the present case would have been instituted purely on the basis of retaliation. So far as the second argument is concerned, in that regard it is the settled law that submission of F.R. by the police cannot bar the complaint by the aggrieved person and therefore, the complaint filed by O.P. No.2 cannot bar the complaint by the aggrieved person. Though, in the present case separate complaint was not filed, but the protest petition filed by O.P. No.2 was treated to be the complaint, the court was not satisfied with the investigation otherwise the final report would have been accepted.

6. That being so the court wanted to know the real facts on record and for that the statements of the complainant Mahrnunisha and the victim were recorded. These statements prima facie indicated about the formation of the offences punishable under Section 323, 354, 504, 506 and 452, IPC. Because only prima facie material was necessary to form an opinion at the time of passing the summoning order, hence, the meticulous examination of the witnesses was not necessary.

7. When there was prima facie evidence of these witnesses to indicate the aforesaid offences, the Magistrate was perfectly justified in summoning the applicants vide order dated 16.7.10. To me, it appears that the order of summoning is perfectly correct calling for no interference by this court. Petition is dismissed.

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