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Court : Allahabad

Decided On : Dec-23-2010

Judge : Naheed Ara Moonis, J.

Appeal No. : CRIMINAL REVISION No. - 2910 of 2003

Appellant : Jagdish Prasad and Others

Respondent : State of U.P. and Another

Advocate for Def. : Govt. Advocate; C.S. Jodaun, Advs

Advocate for Pet/Ap. : Brij Raj Singh, Adv

Judgement :

1. This revision is directed against the judgment and order dated 8.9.2003 passed in Misc. Case No. 211 of 2002, Smt. Kamlesh v. Jagdish Prasad and others whereby the accused/revisionists have been summoned under Sections 395, 420, 467, 468 and 471 I.P.C., P.S. Narkhi, district Firozabad by the Sessions Judge, Firozabad. List is revised. No one has appeared on behalf of the opposite party no.2.

2. Heard learned counsel for the revisionists, learned A.G.A. on behalf of the State and have gone through the entire record.

3. The opposite party no.2 lodged a first information report on 4.9.2001 against the revisionists that on 6.5.2001 at about 8 P.M. the accused/revisionists entered into the house and threatened her of dire consequences and looted the house hold belongings as they were trying to grab the house of the complainant on the basis of a forged will when her report was not lodged at the concerned police station she moved to the District Magistrate, Firozabad and under his direction the first information report was registered. It is submitted by the learned counsel for the revisionists that the aforesaid first information report was lodged on false and frivolous allegation that the revisionists were trying to grab the land in dispute. The will was duly executed by the husband of the opposite party no. 2 in his life time. A civil suit is already pending in respect of the same property restraining the opposite party no. 2 not to interfere in the peaceful possession who is contesting the same. After investigation the case was found to be false and as such the final report was submitted by the Investigating Officer and the report was also submitted to initiate proceedings under Section 182 Cr.P.C. for lodging false complaint against the revisionists but the learned court below rejected the final report and accepted the protest petition filed by the opposite party no.2. The court below has committed manifest error in discarding the final report and completely ignored the fact that the civil suit is also pending in respect of the same dispute. The court below has not adopted the correct procedure in passing the summoning order, therefore, the order passed by the court below suffers from manifest error of law and as such is liable to be quashed.

4. The learned A.G.A. has supported the judgment and order of the court below. From the version of the first information report prima facie case against the revisionists was made out and it has been contended that mere pendency of civil suit there is no bar for criminal prosecution, the learned court below has rightly taken cognizance exercising the power under Section 190 (1) (b) Cr.P.C. The Division Bench of this Court in Pakhando and others v. State of U.P. and others (2001) 43 ACC 1096 has held that the Magistrate may adopt of the following procedure; (I) he may agreeing with the conclusion arrived at by the police, accept the report and drop the proceedings. But before so doing, he shall give an opportunity of hearing to the complainant; or (II) He may take cognizance under Section 190 (1) (b) Cr.P.C. and issue process straightway to the accused without

being bound by the conclusions of the investigating agency, where he satisfied that upon the facts discovered or unearthed by the police, there is sufficient ground to proceed; or (III) he may order further investigation, if he is satisfied that the investigation was made in perfunctory manner; or (IV) he may, without issuing process or dropping the proceedings decide to take cognizance under Section 190 (1) (a) upon the original complaint or protest petition treating the same as complaint and proceeded to act under Sections 200 and 202 Cr.P.C. and thereafter decided whether the complaint should be dismissed or process should be issued, therefore, the course adopted by the learned Magistrate is of issuing process straightway to the accused/revisionists under Section 190 (1) (b) Cr.P.C. without being bound by the conclusion of the investigating agency as such there is no illegality in the order passed by the court below, hence the revision is liable to be rejected.

5. Having considered the submissions of the learned counsel for the parties and from the perusal of the first information report itself it is clear that the accused/revisionists have assaulted and looted the belongings of the opposite party no.2 with the sole object to misappropriate the property, which was left by the husband of the opposite party no.2 but the investigating officer colluded with them and submitted a false report, therefore, the opposite party no. 2 had to file a protest petition against the final report.

6. In my considered view the court below is empowered to take cognizance of an offence under Section 190 (1) (b) of the Code even if the police report is to the effect that no case is made out against the accused/revisionists. In the instant case the learned Magistrate had taken into account the statements of the witnesses examined by the police during the investigation and has taken cognizance of the offence complained of and the process was issued against the revisionists.

7. In view of the aforesaid decision of this court and the various decisions of the Apex Court in *M/s. Carat India Private Limited v. State of Karnataka*, AIR 1989 SC 885 and *M/s. SWIL Limited v. State of Delhi*, AIR 2001 SC 2747 it is well settled that the cognizance is taken of the offence and not of the offender, therefore, the

order passed by the court below is perfectly just and legal and there is no need to interfere with the order passed by the court below. It would be open to the revisionists to approach the learned Magistrate for appropriate relief and in case any such application is preferred the same shall be considered and appropriate order be passed accordingly. The revisionists would be at liberty to canvass all the points as canvassed before this court. The present revision is devoid of any merit and is accordingly rejected. The interim order dated 15.10.2003 is hereby vacated and the court below is directed to proceed in accordance with law. However, it is made clear that any observation touching the merit of the case would not effect the mind of the court below in deciding the case.

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