

Madan Kishore and Others. Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Oct-22-2010

Judge : S.C. Agarwal, J.

Appeal No. : Criminal Revision No. 4032 of 2010

Appellant : Madan Kishore and Others.

Respondent : State of U.P. and Another

Judgement :

1. This revision under Section 397/401 Cr.P.C. has been preferred against order dated 25.8.2010 passed by the C.J.M., Agra in Misc. Case No. 299 of 2008, subsequently numbered as Criminal Case No. 5945 of 2010, arising out of case crime no. 231A of 2008, P.S. Hariparvat, District- Agra, whereby final report submitted by the police was rejected, cognizance was taken and revisionists were summoned to face trial under Sections 147, 323, 452, 504, 506, 427 IPC.

2. Heard Sri R.P. Dwivedi, learned counsel for the revisionists, learned AGA for the State and Sri O.P. Singh, learned Senior Advocate assisted by Sri Gopal Srivastava, learned counsel for opposite party no. 2.

3. On request of learned counsel for the parties, the case was finally heard at admission stage on the basis of material available on record and is being finally disposed of by this judgment.

4. In brief the facts are that on 14.5.2008 at 13 : 10 hours, FIR was lodged at P.S. Hariparvat against 20 persons including revisionists in respect of an incident, which took place on 19th April, 2008 at 11 :30 a.m. The FIR was registered at case crime no. 231A of 2008 under Sections 147, 323, 452, 504, 506, 427 IPC. It was a cross case. After investigation, police submitted final report. Learned Magistrate issued notice to the complainant who filed protest petition. After hearing, learned counsel for the complainant and perusal of police report and the protest petition, the learned Magistrate vide impugned order dated 25.8.2010 rejected the final report, accepted the protest petition, took cognizance of the offence under Section 190 (1) (b) and summoned the revisionists to face trial under Sections 147, 323, 452, 504, 506, 427 IPC. Hence this revision.

5. Learned counsel for the revisionists submitted that the order passed by the C.J.M. suffers from serious illegality, infirmity and is unjustified. After investigation, final report was submitted, which was rejected earlier and further investigation was directed. Subsequently, again final report was submitted by the police and the Magistrate was not justified in taking cognizance of the offence. The contention is that summoning order has been passed not on the basis of material available in the case diary but on the basis of surmises and conjectures and also on basis of extraneous material provided by the complainant alongwith the protest petition.

6. Learned AGA and learned counsel for the complainant supported the impugned order and submitted that the summoning order has been passed by the Magistrate on the basis of material available on the case diary and the order has not been passed on any extraneous material.

7. In *Pakhando & others v. State of U.P. & another*, 2001 (43) ACC 1096 a Division Bench has held that on receipt of final report submitted by the police and protest petition having been filed by the complainant, the Magistrate has the following four courses open to him.

(1) He may agreeing with the conclusions 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

(2) He may take cognizance under Section 190 (1) (b) and issue process straightway to the accused without being bound by the conclusions of the investigating agency, where he is satisfied that upon the facts discovered or unearthed by the police, there is sufficient ground to proceed ; or

(3) he may order further investigation, if he is satisfied that the investigation was made in a perfunctory manner ; or

(4) he may, without issuing process or dropping the proceedings decide to take cognizance under Section 190 (1) (a) upon the original complaint or pretest petition treating the same as complaint and proceed to act under Sections 200 and 202 Cr.P.C. and thereafter decide whether complaint should be dismissed or process should be issued.

8. It has been mentioned in the impugned order that during investigation, oral and documentary evidence collected by the investigation officer and the statements of witnesses recorded by the Investigation Officer supported the complainant's case and therefore there was prima-facie case for trial against the accused persons. The order also mentions that objections filed by the complainant (protest petition) was also considered. On this basis, the contention of learned counsel for the revisionists is that extraneous material was considered by the Magistrate and the Magistrate ought to have adopted procedure prescribed for complaint cases.

9. I do not agree with the contention raised by learned counsel for the revisionists. The order simply mentions that on the basis of statements of witnesses recorded by the Investigating Officer during investigation and the documents collected by the Investigating Officer and in the light of facts mentioned in the protest petition, cognizance was taken. Learned Magistrate did not refer to any document which may have been filed by the complainant during hearing on the final report, nor the procedure for complaint cases was adopted. It is, therefore, obvious that the cognizance has been taken on the basis of material available on the case diary i.e. the statements of witnesses recorded under Section 161 Cr.P.C. and documentary evidence collected by the Investigating Officer.

10. In these circumstances, the order passed by the learned Magistrate is squarely covered by Section 190 (1) (b) Cr.P.C. as it is based on the material available in the case diary.

11. The impugned order is in consonance with the decision of the Davison Bench of this Court in Pakhandu (supra) and does not require any interference by this Court.

12. Having regard to the facts and circumstances of the case and also keeping in view the fact that it is a cross case and the accused in the cross case have already been granted bail by the Court, the revision is disposed of with a direction that if the revisionists surrender before the Magistrate concerned within three weeks from today and apply for bail, their prayer for bail be considered and disposed of by the courts below on the same day keeping in view Full Bench decision of this Court in the case of Amrawati and another v. State of U.P. 2004 (57) ALR 290 as affirmed by Hon'ble Apex Court in Lal Kamendra Pratap Singh v. State of U.P. 2009 (3) ADJ 322 (SC).

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