

**Varun Sharma 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. 4207 of 2010

**Appellant :** Varun Sharma and Others

**Respondent :** State of U.P. and Another

**Judgement :**

1. This revision under Section 397/ 401 Code of Criminal Procedure is directed against the order dated 3.8.2010 passed by the C.J.M. Hathras (Mahamaya Nagar) in F.R. No. 407/12/2010, Ved Pal v. Varun Sharma & others arising out of case crime no. 112 of 2010, P.S. Sasni, whereby final report submitted by police was rejected and cognizance was taken under Section 190 (1) (b) Cr.P.C. and the revisionists were summoned to face trial under Sections 323, 325, 504, 506, 394 IPC and 3(2) (5) SC/ST Act.

2. Heard Sri R.S. Saroj and Sri Navin Kumar, learned counsel for the revisionists, learned AGA for the State, Sri Promod Dubey, learned counsel for opposite party no. 2 and perused the material available on record.

3. The facts are that an application under Section 156 (3) Cr.P.C. was moved by opposite party no. 2 on 23.3.2010 before the C.J.M. Hathras against the revisionists alleging therein that on 22.3.2010 the complainant, accompanied by

his brother Virendra, was returning from Hathras to Sasni by a moter-cycle at about 4 p.m. The accused persons namely, Varun Sharma, Brijesh Sharma, Sudhir and Ajay Jain stopped their motor-cycle, abused them and assaulted them with kicks, fists and shoes. Sudhir took out a hockey from the Bollero car and beat the complainant and his brother with hockey. The accused persons also abused them by caste related words like chamrake. They also threatened the complainant and his brother with death if the property in dispute was not transferred in their name. A sum of Rs. 3000/- kept in a cloth bag was also looted by Varun Sharma. Learned Magistrate directed registration of the FIR and accordingly crime no. 112 of 2010 was registered by the police. After investigation, final report was submitted.

4. Opposite party no. 2 filed protest petition against the final report. After hearing learned counsel for the complainant, learned Magistrate rejected the final report and summoned the revisionists to face trial. Hence this revision.

5. Learned counsel for the revisionists submitted that the complainant did not move any application before the concerned police station and therefore order passed by the Magistrate under Section 156 (3) Cr.P.C. was not warranted. Opposite party no. 2 was medically examined on 24.3.2010 at 10.25 a.m. and he did not receive any grievous injury. He was discharged from hospital on 26.3.2010. The statements recorded by the Investigating Officer do not support the FIR version and no offence against the revisionist was made out. It was further submitted that the Magistrate did not consider evidence on record and summoned the revisionists on the basis of protest petition. The procedure prescribed for complaint cases was not adopted and the trial court was not justified in passing the summoning order.

6. Learned AGA and learned counsel for opposite party no.2 supported the impugned order and submitted that there was no need for the Magistrate to adopt the procedure prescribed for complaint cases as there was sufficient material on the case diary in the shape of statements of the complainant and his brother recorded under Section 161 Cr.P.C. and also the injury report of the complainant which was part of the case diary and the summoning order does not require any

interference.

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 is obvious that once protest petition has been filed against the accused, learned Magistrate has power to pass summoning order under Section 190 (1) (b) if there is sufficient material in the case diary to summon the accused or if the investigation was not conducted in proper manner, he may order further investigation, or if the Magistrate is satisfied with the final report, he may accept the final report and reject the protest petition, or he may treat the protest petition as a complaint and may adopt procedure prescribed under Sections 200 and 202 Cr.P.C.

9. In the instant case, learned Magistrate found sufficient material on the case diary to summon the revisionist. Learned Magistrate has observed that the

statements of complainant Ved Pal Kanodia and his brother Virendra, eye witness Keshav Singh Solanki and Suresh @ Suvesh Tomar recorded in the case diary fully supported the FIR version. The statements of other eye witnesses Vijai Kumar Sharma and Pappu recorded under Section 161 Cr.P.C. as well as the injury report of the complainant fully supported the complainant case. Doctor found two contusions on left side skull and right side back respectively, an abrasion on left forearm and complaint of pain with difficulty in hearing on left side. The complainant was referred to E.N.T. surgeon for medical opinion. Since there was loss of hearing, therefore, it may amount to grievous injury.

10. In my considered opinion there was sufficient material on the case diary to summon the accused for having committed offence under sections 323, 325, 504, 506, 394 IPC and 3 (2) (5) SC/ST Act. The Magistrate had sufficient ground for proceeding against the accused. I do not find any error or illegality in the impugned order warranting any interference by this Court.

11. The revision is devoid of merit and is accordingly dismissed.

12. However, in the facts and circumstances of the case, it is directed that if the revisionists surrender before the Magistrate concerned within a period of three weeks from today and apply for bail, their prayer for bail be considered by the courts below expeditiously, if possible on the same day.

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