

Ramadhar Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Aug-02-2011

Reported in : 2012CrLJ117(NOC)

Judge : S.C. Agarwal

Appeal No. : CRIMINAL REVISION NO. 2989 OF 2011

Appellant : Ramadhar

Respondent : State of U.P. and Others

Judgement :

S.C. Agarwal,J.

Heard learned counsel for the revisionist and learned AGA for the State.

This is a complainant's revision against the order dated 28.6.2011 passed by Addl. District Judge-I, Auraiya in S.T. No. 1 of 2007 (State Vs. Pratap Narain and others), under Section 364 IPC, P.S. Auraiya, District- Auraiya.

At the stage of judgment in the Session Trial, learned Addl. Sessions Judge, on the application of state, found that all the witnesses were not examined by the Magistrate under Section 202 Cr.P.C. and, therefore, the case was remitted to the Magistrate for compliance of Section 202 Cr.P.C.

The contention of the complainant is that at the stage of judgment, summoning order and the order committing the case to the court of session cannot be questioned by any party and learned Sessions Judge has to pass final judgment in the session trial and after committal of the case, the same cannot be remitted back to the Magistrate except under Section 228 Cr.P.C. only on the ground that the case was not triable by court of session.

Session trial, once committed to the court of session cannot be remitted back or remanded back to the Magistrate on the ground that provisions of section 202 Cr.P.C. have not been fully complied with. The session case can only be remitted to the court of Magistrate only on the ground that no offence triable by court of session is made out. Learned Addl. Sessions Judge failed to notice that the summoning order and the committal order have not been challenged by the accused person at any stage. State or learned A.D.G.C. (criminal) has no business to challenge the summoning order or the committal order passed by the Magistrate.

The conduct of the A.D.G.C. (crl.) appears to be highly suspicious and it is doubtful whether he was acting in the interest of the State or at the behest of the accused persons. The District Magistrate Auraiya shall look into the matter and take appropriate action against the erring prosecutor and may also make a report to the State Government. The impugned order is patently illegal and malafide and deserves to be quashed.

The revision is allowed and the order dated 28.6.2011 is quashed. Learned Addl. Session Judge is directed to decide the session trial most expeditiously and positively within a month from the date, a certified copy of this order is produced before him. Office is directed to send a copy of this order to District Magistrate, Auraiya for necessary compliance.

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