

A.F.R.

Neutral Citation No. - 2024:AHC:80897

Court No. - 80

Case :- MATTERS UNDER ARTICLE 227 No. - 3254 of 2024

Petitioner :- Kailash And Another

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Phool Singh

Counsel for Respondent :- G.A.

Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Sri Phool Singh, learned counsel for the petitioners and Sri Prem Prakash Tiwari, learned AGA-I appearing for the State-respondent.

2. The present petition has been filed seeking to assail the summoning order dated 05.05.2023 passed in Complaint Case No. 5683 of 2019 (Anar Singh Vs. Kailash and others), under Sections 307, 506, 34 IPC, and the subsequent order dated 22.12.2023 passed in Criminal Revision No. 75 of 2023 (Kailash Vs. Anar Singh and others), in terms of which the earlier order has been affirmed.

3. Counsel for the petitioners has sought to assail the orders by referring to the factual aspects of the case, and the defence which is to be set up on behalf of the petitioners.

4. Learned AGA-I submits that, as per the complaint version, the petitioner no. 1 has been assigned the role of firing with a pistol, and the petitioner No. 2 has been assigned the role of exhortation, as per the statement of the injured, and the complaint allegations have been supported by the statements under Section 200 and 202 Cr.P.C., and also that the medical report is indicative of the firearm injuries.

5. It is submitted that at the stage of summoning, the Magistrate is only required to record a *prima facie* opinion, based on the material on record, and is not expected to hold a mini trial or to examine the defence of the accused.

6. The procedure to be followed by the Magistrate upon taking cognizance, on a complaint, as per Sections 200, 202 and 204 of the Code and the degree of satisfaction to be recorded at this stage would be required to be referred to for the purpose of the controversy involved in the present case.

7. Section 200 provides that the Magistrate taking cognizance of an offence on a complaint shall examine upon oath the complainant and the witnesses present, if any, and that the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate. The object of such examination is with a view to ascertain whether there is a *prima facie* case against the person accused of the offence in the complaint, and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such person.

8. The object of section 202 is to enable the Magistrate to form an opinion as to whether the process is to be issued or not. The purpose of the investigation to be directed under this section is to help the Magistrate in arriving at a decision as to the issuance of process. The broad based inquiry by the Magistrate, as contemplated under this section, is with a view to enable him to arrive at a decision as to whether he should dismiss the complaint or whether he should proceed to issue process upon the complaint.

9. The provisions contained under sections 200, 202 and 204 of the Code and the degree of satisfaction required to be recorded at this stage by the Magistrate was subject matter of consideration in **S.W. Palanitkar and Others v. State of Bihar and Another**¹ and it was held that test which was required to be applied was whether there is "sufficient ground for proceeding" and not whether there is "sufficient ground for conviction". Referring to the earlier decisions in the case of **Nirmaljit Singh Hoon v. State of West Bengal and Another**², **Chandra Deo Singh v. Prokash Chandra Bose**³, and **Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Others**⁴, it was stated that the scope of inquiry under section 202 is limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint (i) on the material placed by the complainant before the court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.

10. The sufficiency of the material and the test to be applied at the stage of issue of process again came up for consideration in the case of **Nupur Talwar v. Central Bureau of Investigation and Another**⁵ and it was reiterated that the limited purpose of consideration of material at the stage of issuing process being tentative as distinguished from the actual evidence produced during trial, the test to be applied at the stage was whether the material placed before the Magistrate was "sufficient for

1 (2002) 1 SCC 241

2 (1973) 3 SCC 753

3 (1964) 1 SCR 639

4 (1976) 3 SCC 736

5 (2012) 11 SCC 465

proceeding against the accused" and not "sufficient to prove and establish the guilt".

11. The object of the inquiry under Section 202 is not akin to a trial, which can only take place after issuance of process. The inquiry made by the Magistrate, at this stage, is only with a view to ascertain the truth or falsehood of the complaint, with reference to the intrinsic quality of the statements made before him at the inquiry, which would mean the complaint, the statement on oath made by the complainant and the statements made by persons examined at the instance of the complainant. At the stage of issue of process under Section 204, the Magistrate is only to decide whether there exists sufficient ground or not for proceeding in the matter.

12. The aforementioned legal position has been considered in a recent decision of this Court in **Sanjay Singh and Another Vs. State of U.P. and Another**⁶ and followed in another decision in **Pinkal Singh @ Raghvendra Singh and Others vs. State of U.P. and Another**⁷.

13. In the case at hand, the allegations in the complaint have been found to be supported in the statement made on oath by the complainant during the course of examination under section 200 and also by the statements of the witnesses recorded during the course of inquiry made by the Magistrate under section 202. The order summoning the accused petitioners passed by the trial court indicates that the same has been passed taking due consideration of the material available on record. Reference has been made to the statements under Sections 200 and 202 and

6 2021 (117) ACC 479

7 2021 (3) ACR 2461

also the fact that the statements recorded support the complaint allegations. The order passed by the court below issuing process thus does not suffer from any infirmity so as to warrant interference by this Court. The order passed by the revisional court affirming the summoning order of the Magistrate, also cannot be faulted, for the same reason.

14. Counsel for the petitioners has not been able to dispute the aforesaid factual and legal position.

15. Having regard to the aforesaid, this Court is not inclined to entertain this petition in exercise of its supervisory power under Article 227 of the Constitution of India.

16. The petition stands **dismissed** accordingly.

Order Date :- 6.5.2024

Aiman/Arun K Singh

[Dr. Y.K. Srivastava, J.]