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A.F.R.

Court No. - 37

Case :- CRIMINAL REVISION DEFECTIVE No. - 411 of 2020

Revisionist :- Rajbahadur Singh

Opposite Party :- State Of U.P. And 4 Ors

Counsel for Revisionist :- Anil Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Kaushal Jayendra Thaker,J.

1. Delay in filing the revision has been condoned vide order of the date passed on delay condonation application.
2. This revision has been preferred against the order dated 13.8.2018 passed by the Chief Judicial Magistrate, Moradabad in Complaint Case No. 10657 of 2012.
3. The factual matrix in short is that the complainant is a practising advocate and he complained to the Chief Judicial Magistrate, Moradabad about commission of offences under Section 379, 504 and 505 of Indian Penal Code, 1860 (hereinafter referred to as 'IPC'). His statement was recorded as per Section 200 of Code of Civil Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') and that of the witness under Section 202 of Cr.P.C. The Court issued summons to the accused. Against the summoning order, instead of appearing before the Court below one Jaibhagwan Singh, Sub Inspector preferred revision being Revision No.305 of 2016 which was rejected vide order dated 5.2.2018. Nonailable warrant also was issued on 29.11.2016. Unfortunately, the learned Judge predecessor to the one who passed the order on 13.8.2018 had even sent notices to the higher authorities to procure the presence of the accused which went in vain. The advocate fell sick namely the complainant and the learned judge below dismissed the complaint under Section 204 (4) of Cr.P.C. It is this order which is under challenge.

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4. I have heard learned A.G.A. for the State. Private respondents are deemed to have been served as even before the Court below they have not appeared and they seem to be head strong police officer as even after dismissal of their revision challenging the summoning order was passed they have not appeared before the learned Magistrate since 2012. Till 2016 the chronology of events would go to show that the learned Magistrate on 12.7.2016 wrote to the police authority at Moradabad by way of notice which had been annexed that the summons were not served on the accused though they were police officials. It is after this notice that the accused challenged the issuing summons order being Revision No.305 of 2016 (Jaibhagwan Singh, Sub Inspector Vs State of U.P. and others). The revision was rejected by the Court of Session on 5.2.2018 and despite that, the accused did not appear.

5. It is very strange that the learned Judge whose order is under challenge did not pass orders for procuring the presence of the accused. The summons was already issued which meant that Section 204 (4) of Cr.P.C. was already complied with.

Section 204 of Cr.P.C. reads as follows :

"204. Issue of process.

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summons- case, he shall issue his summons for the attendance of the accused, or

(b) a warrant- case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear

at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing every summons or warrant issued under sub- section (1) shall be accom- panied by a copy of such complaint.

(4) When by any law for the time being in force any process- fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees

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are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87."

6. The order dated 13.8.2018 goes to show that despite the fact that the accused lost before the appellate authority was successful in evading appearance and the complainant sought to be lodged by an advocate was dismissed. It is very strange that instead of procuring presence of the accused, the learned Magistrate dismissed the complaint under Section 204 (4). Once the summons was already sent, there was no necessity of paying further court fees. The non presence of the accused should have been sought to be procured by way of invoking procedure as per provisions of Section 87 of the Cr.P.C. Instead of that, the learned Judge has dismissed the complaint of the present revisionist which shows that the order is perverse. The said order is required to be quashed and set aside.

7. The respondents accused shall be forthwith dealt with by the learned Magistrate and their presence shall be procured even if it has to be procured by way of non bailable warrant to be served through Superintendent of Police.

8. The order passed by the learned Judge below dismissing the case is absolutely cryptic. The stage was for appearance of the accused who was evading summons and was aware that summoning order was passed. The accused is shield by Superintendent of Police, Moradabad as after notice, no action is taken by him. The revision filed by the accused was also dismissed on 5.2.2018. All these factual aspect ought to have been taken care of by the Magistrate. At stage of seeking the presence of accused, the presence of the complainant was not at all necessary.

9. In view of the above, this revision is allowed. The order impugned in this petition is set aside. The learned Magistrate shall

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proceed from the stage, summons was issued and accused is aware of the summons the presence of the accused be procured first and thereafter the presence of the complainant be insisted upon.

10. The learned Magistrate has the duty cast to see that there is no misuse of the Court proceedings. In this case, there is a clear misuse of process of law by the accused who even after coming to know that summons were issued against them and their revision were dismissed, did not appear before the Court below and strange enough the learned Magistrate dismissed that matter of the complainant at the stage of issuance of bailable warrant as accused had not appeared before it pursuant to the summons already issued. There was no question of affixing process fees and, therefore, the dismissal under Section 204 of Cr.P.C. is bad.

11. A copy of this order be sent to the Superintendent of Police, Moradabad who shall explain to this Court as to what action he had taken pursuant to the notice dated 12.7.2016.

12. This judgment be circulated to the Trial Court Judge not to insist for the presence of complainant at the stage of service of summons/warrants and/as their presence would not be required for any adjudicatory purpose.

13. Once the process fees has been affixed, it is the duty of the police authority through the Court to procure the presence of the accused unless orders otherwise are passed. The compliance be filed in the Registry of the High Court on or before 25.10.2020 by Superintendent of Police, Moradabad and the learned Magistrate concerned.

Order Date :- 22.9.2020
DKS

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(Ref : Civil Misc. Delay Condonation Application)

1. This is an application seeking condonation of delay in filing the revision.
2. Cause shown is sufficient.
3. Delay condoned.
4. This application, accordingly, stands allowed.

Order Date :- 22.9.2020

DKS