

**Court No. - 88**

**Case :-** CRIMINAL APPEAL No. - 8338 of 2022

**Appellant :-** Syed Mohiuddin Ahmad

**Respondent :-** State Of U.P. And 2 Others

**Counsel for Appellant :-** Ghazala Bano Quadri, Maseeh Uddin

**Counsel for Respondent :-** G.A., Ankur Vishwakarma, Kapoor  
Chandra Vishwakarma, A/K1521

**Hon'ble Raj Beer Singh, J.**

1. Rejoinder affidavit, filed by the learned counsel for the appellant, is taken on record.

2. Heard learned counsel for the appellant, learned counsel for the respondent No.3 and learned A.G.A. for the State.

3. This criminal appeal has been preferred under Section 14-A (1) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'SC/ST Act') for quashing of charge-sheet dated 28.01.2021 and impugned cognizance/summoning order dated 24.03.2021, passed by the learned Special Judge, SC/ST Act, Allahabad in Special Trial No. 253 of 2021 (State vs. Mohiuddin Ahmad), arising out of Case Crime No. 766 of 2019, under Sections 323, 504, 506, 406 IPC and Section 3(1)Da, Dha of SC/ST (PA) Act, P.S. Jhusi, District Allahabad.

4. It has been argued by the learned counsel for the appellant that the respondent No.3 has lodged first information report of this case making false and baseless allegations. The dispute between the parties is civil in nature, which has been converted by the respondent No.3 into criminal case by concocting a false story. In the complaint made to the police and S.S.P regarding the incident, there were no allegations that the respondent No.3/informant was

abused by using caste indicative words. The first information report of this case has been got lodged by the respondent No.3 by moving an application under Section 156(3) Cr.P.C. Learned counsel submitted that in fact regarding the disputed sale-deed, the respondent No.3 has already received his due amount and he has lodged this case with mala fide intention.

5. It is further argued by the learned counsel for the appellant that by impugned order dated 24.03.2021 cognizance was taken and appellant was summoned and by the same order non-bailable warrants have been issued against the appellant, which is against the well settled position of law. It was also submitted that even as per version of first informant, the alleged incident of abusing took place inside the car and thus, it cannot be said that respondent No.3/informant was abused or humiliated on ground of his caste within public view. Referring to facts of the matter, it was submitted that no prima facie case is made out.

6. On the other hand, learned A.G.A and learned counsel for the respondent No.3 have opposed the appeal and argued that in view of allegations made in the first information report and material collected during investigation, a prima facie case is made out against the appellant. During investigation the informant and other witnesses have supported the prosecution version. It was submitted that there is no illegality or perversity in the impugned summoning order.

7. I have considered rival submissions and perused the record.

8. So far as the issuance of non-bailable warrants by impugned order dated 24.03.2021 is concerned, it may be seen that learned Special Judge (SC/ST Act), Allahabad has taken cognizance by

order dated 24.03.2021 and on the same date by same order, non-bailable warrants were issued against the appellant. It is clear that neither any summons have been issued to accused-appellant nor any bailable warrants were issued to accused appellant before issuance of non-bailable warrants vide impugned order dated 24.03.2021. The issue as to when non-bailable warrants are to be issued is well settled. In case of **Raghuvansh Dewanchand Bhasin v. State of Maharashtra and another 2012 (9) SCC 791**, it has been held that power and jurisdiction of court to issue appropriate warrant has to be exercised judiciously, striking a balance between the need of law enforcement on the one hand and the protection of citizen from highhandedness at the hands of the law enforcement agencies on the other. It was held:

*"Be that as it may, it is for the court, which is clothed with the discretion to determine whether the presence of an accused can be secured by a bailable or non-bailable warrant, to strike the balance between the need of law enforcement on the one hand and the protection of the citizen from highhandedness at the hands of the law enforcement agencies on the other. The power and jurisdiction of the court to issue appropriate warrant against an accused on his failure to attend the court on the date of hearing of the matter cannot be disputed. Nevertheless, such power has to be exercised judiciously and not arbitrarily, having regard, inter-alia, to the nature and seriousness of the offence involved; the past conduct of the accused; his age and the possibility of his absconding. (Also See: State of U.P. Vs. Poosu & Anr.)"*

**9. In case of Vikas v. State of Rajasthan 2014 (3) SCC 321**, wherein the trial court while allowing an application under Section 319 of the Cr.P.C., directly issued non-bailable warrant for securing attendance of accused, which was affirmed by the High Court, setting aside order of trial court and High Court and emphasizing the need to secure the attendance of accused by first issuing summons/bailable warrant, their Lordships of the Supreme Court held as under :

*".....This could be when firstly it is reasonable to believe that the person will not voluntarily appear in court; or secondly that the police authorities are unable to find the person to serve him with a summon and thirdly if it is considered that the person could harm someone if not placed into custody immediately. In the absence of the aforesaid reasons, the issue of non-bailable warrant a fortiori to the application under Section 319 of the Cr.P.C. would extinguish the very purpose of existence of procedural laws which preserve and protect the*

*right of an accused in a trial of a case. The court in all circumstances in complaint cases at the first instance should first prefer issuing summons or bailable warrant failing which a non-bailable warrant should be issued....."*

**10.** The Constitution Bench of Hon'ble Supreme Court in the matter of **State of U.P. v. Poosu and another** **1976 (3) SCC 1** has on an occasion to consider the question of securing the attendance of accused person while granting special leave against an order of acquittal by holding as under:

*"The attendance of the accused respondent can be best secured by issuing a bailable warrant or non-bailable warrant is a matter which rests entirely in the discretion of the Court. Although, the discretion is exercised judicially, it is not possible to computerise and reduce into immutable formulae the diverse considerations on the basis of which this discretion is exercised. Broadly speaking, the Court would take into account the various factors such as, "the nature and seriousness of the offence, the character of the evidence, circumstances peculiar to the accused, possibility of his absconding, tampering with evidence, larger interest of the public and State."*

**11.** The issue as to when non-bailable warrants can be issued, has been succinctly dealt with by Hon'ble Apex Court in case of **Inder Mohan Goswami and Another vs. State of Uttaranchal and Others, [(2007) 12 SCC 1]**, by emphasizing that arrest or imprisonment means deprivation of rights to individual and, thus, the courts have to be extremely careful before issuing non-bailable warrant of arrest. In the said case, the Supreme Court observed:-

*"53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:*

*it is reasonable to believe that the person will not voluntarily appear in court; or the police authorities are unable to find the person to serve him with a summon; or it is considered that the person could harm someone if not placed into custody immediately.*

*54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.*

*55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from*

*issuing non-bailable warrants.*

*56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.*

*57. The Court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant."*

**12.** Bearing in mind the statutory provisions and the principles of law laid down by Hon'ble Supreme Court in above-stated cases, it would appear that power and jurisdiction of trial court to issue appropriate warrant of arrest has to be exercised judiciously and sparingly with utmost circumspection striking a proper balance between the personal liberty guaranteed under Article 21 of the Constitution of India and societal interest and in order to secure attendance of the person accused, the court should first issue summon simplicitor or bailable warrant to accused and only thereafter, if he does not appear after service, as a last resort, non-bailable warrant of arrest should be issued to secure the presence of the accused person.

**13.** In the instant case, it is clear that due procedure of law has not been followed while issuing non-bailable warrants against appellant and thus, the impugned order so far as it relates to issuance of non-bailable warrants against appellants-accused, is not in accordance with law.

**14.** So far the matter pertains to summoning of appellant under 323, 504, 506, 406 IPC, it may be observed that it is settled position that at the stage of cognizance and at the stage of issuing process to the accused, the Magistrate has to be satisfied that there is sufficient ground for proceeding. The court has to consider whether there is sufficient ground for proceeding and not whether

there is sufficient ground for conviction. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons, particularly when the cognizance is being taken on the basis of report filed by the police after investigation, under section 173(2) Cr.P.C. In *S.K. Sinha, Chief Enforcement Officer v. Videocon International Limited and Ors.* MANU/SC/7011/2008 : (2008) 2 SCC 492, it was held that taking cognizance has no esoteric or mystic significance in criminal law and it connotes that a judicial notice is taken of an offence, after application of mind. Taking of cognizance is thus a condition precedent for holding a valid trial. In *M/s. India Carat Pvt. Ltd. Vs. State of Karnataka* MANU/SC/0349/1989: 1989(26) ACC 280 (SC), the Supreme Court has observed that Magistrate can take into account statements of witnesses examined by Police during investigation, take cognizance of offence complained of, order to issue a process to accused.

**15. In *Mehmood Ul Rehman v. Khazir Mohammad Tunda and others* (2015) 12 SCC 420, it was held as under:-**

"21. Under Section 190(1)(b) Cr.P.C., the Magistrate has the advantage of a police report and under Section 190(1)(c) Cr.P.C., he has the information or knowledge of commission of an offence. But under Section 190(1)(a) Cr.P.C., he has only a complaint before him. The Code hence specifies that "a complaint of facts which constitute such offence". Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) Cr.P.C. The complaint is simply to be rejected."

**16.** Thus, in so far as taking cognizance based on the police report is concerned, the Magistrate/ court has the advantage of the charge sheet, statement of witnesses and other evidence collected by the police during the investigation. For issuance of process against the accused, only it has to be seen whether there is sufficient ground for proceeding against the accused. At the stage of issuance of

process, the Court is not required to weigh the evidentiary value of the materials on record. The Court must apply its mind to the allegations in the charge sheet and the evidence produced and satisfy itself that there is sufficient ground to proceed against the accused. The Court is not to examine the merits and demerits of the case and not to determine the adequacy of the evidence for holding the accused guilty. The Court is also not required to embark upon the possible defenses. Likewise, 'possible defences' need not be taken into consideration at the time of issuing process unless there is an ex- facie defence such as a legal bar or if in law the accused is not liable. In this connection a reference may also be made to *Nupur Talwar v. Central Bureau of Investigation and another* (2012)11 SCC465.

**17.** At this stage, it would be appropriate to quote the provisions of Section 3(1) Da/(r) and Dha/(s) of SC/ST Act, which reads as follows:-

Section 3(1)- whoever, not being member of a Scheduled Caste or a Scheduled Tribe,-

"Section 3(1)(r)- intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

Section 3(1)(s)- abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;"

**18.** In the instant case, perusal of record shows that the respondent No.3 has lodged first information report of this case by moving an application under Section 156(3) Cr.P.C. and it was alleged that the informant was in need of some money and that connection he met the appellant and thereafter he has executed the sale-deed at the instance of appellant and that in consideration amount, he was given one cheque of Rs. 5,50,000/- and another cheque of Rs. 6 lakhs but when he presented the same in bank, the same were

dishonored. It was further alleged that on 15.07.2019 the appellant has called the informant on pretext of providing said amount of sale-deed and the appellant and his associates forcibly dragged him into a car and assaulted and abused him by using caste indicative words and thereafter he was thrown out from the car. It is apparent from the above stated facts that alleged incident of abusing the informant took place inside the car. In view of facts of the matter and also considering the law laid down in case of Hitesh Verma vs. The State of Uttarakhand and another 2020 AIR (SC) 5584, it cannot be said that alleged incident of abusing inside the car took place within public view, thus, no offence under Section 3(1)(da), (dha) is made out. Further essentially the dispute between the parties is related to dispute over property and sale-deed.

19. In view of aforesaid, the summoning of accused-appellant under Section 3(1)(da),(dha) SC/ST Act is quashed. The non bailable warrants, issued against the appellants vide impugned order dated 24.03.2021, are also quashed. However summoning of accused appellant for offences, under Sections 323, 504, 506, 406 IPC is upheld. The impugned summoning order has been altered to that extent. The case under Section 323, 504, 506, 406 IPC shall proceed against the appellant/accused before the Competent Court in accordance with law.

20. The appeal is disposed of in above terms.

**Order Date :- 3.3.2023**

A. Tripathi