

Kuldeep Gupta Alias Kuldeep Kumar vs State Of U.P. And 7 Others on 31 January, 2025

Author: Raj Beer Singh

Bench: Raj Beer Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD

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Neutral Citation No. - 2025:AHC:14339

Court No. - 73

Case :- APPLICATION U/S 482 No. - 30905 of 2024

Applicant :- Kuldeep Gupta Alias Kuldeep Kumar

Opposite Party :- State Of U.P. And 7 Others

Counsel for Applicant :- Mithilesh Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh,J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. This application under Section 482 Cr.P.C. has been preferred against the order dated 19.07.2024, passed by learned Chief Judicial Magistrate, Firozabad in Complaint Case No.350 of 2019 (Kuldeep Gupta Vs. Smt. Jyoti and Others), under Sections 380, 506 I.P.C., Police Station- Uttar, District- Firozabad, whereby the complaint filed by the applicant against the private opposite parties has been dismissed under Section 203 Cr.P.C.

3. It has been submitted by learned counsel for the applicant that impugned order is against facts and law and thus liable to be set aside. The private opposite parties were summoned by the learned Magistrate vide summoning order dated 22.03.2021. The private opposite parties have filed an application under Section 482 Cr.P.C. against that order, which was allowed vide order dated 27.09.2022 and the summoning order was quashed and matter was remanded back to the learned Magistrate. Thereafter, the complaint was dismissed under Section 203 CrPC vide impugned order dated 19.07.2024. It was submitted that the private opposite parties have filed an application for discharge before the trial Court on 17.08.2022 and the aforesaid application under Section 482 Cr.P.C. No.31223 of 2022 was filed by concealing that fact. Referring to facts of the matter, it was submitted that a prima-facie case is made out against the applicants.

4. Learned A.G.A. has opposed the application and submitted that there is no illegality or perversity in the impugned order.

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

6. Before proceeding further, it would be expedient to go through the provisions as enunciated under Sections 203 and 204 Cr.P.C., which reads as under :-

Section 203 Cr.P.C.

"Dismissal of complaint- If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing,"

Section 204 Cr.P.C.

"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."

7. Thus, it is clear that as per the procedure prescribed for proceedings with regard to the complaint case after recording the statements of the complainant and witnesses and the result of the inquiry or investigation (if any) under section 202 Cr.P.C., if the Magistrate is of the opinion that there is no sufficient ground for proceeding exist and he may dismiss the complaint. It is well settled that if a bare perusal of a complaint or the evidence led in support of it shows that essential ingredients of

the offence alleged are absent or that the dispute is only a civil nature or that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, the complaint could be properly dismissed under Section 203, Criminal Procedure Code.

8. What the Magistrate had to determine at the stage of issue of process was not the correctness of the probability or improbability of individual items of evidence on disputable grounds, but the existence or otherwise of a prima facie case on the assumption that what was stated could be true unless the prosecution allegations were so fantastic that they could not reasonably be held to be true.

9. In *S.N. Palanitkar v. State of Bihar and another*, AIR 2001 SC 12960 while examining the scope of section 203 of Code of Criminal Procedure Code, the Hon'ble Apex Court in paragraphs 15, 16 and 17 has held as under :

"15. In case of a complaint under Section 200, Cr.P.C. or IPC a Magistrate can take cognizance of the offence made out and then has to examine the complainant and the witnesses, if any, to ascertain whether a prima facie case is made out against the accused to issue process so that the issue of process is prevented on a complaint which is either false or vexatious or intended only to harass. Such examination is provided in order to find out whether there is or not sufficient ground for proceeding. The words 'sufficient ground' used under Section 202 have to be construed to mean the satisfaction that a prima facie case is made out against the accused and not sufficient ground for the purpose of conviction.

16. This Court in *Nirmaljit Singh Hoon v. The State of West Bengal and others*, (1993)(3)SCC 753, in para 22, referring to scheme of Sections 200-203 of Cr.P.C. has explained that "The section does not say that a regular trial of adjudging truth or otherwise of the person complained against should take place at that stage, for, such a person can be called upon to answer the accusation made against him only when a process has been issued and he is on trial. Section 203 consists of two parts. The first part lays down the materials which the Magistrate must consider, and the second part says that if after considering those materials there is in his judgment not sufficient ground for proceeding, he may dismiss the complaint. In *Chandra Deo Singh v. Prakash Chandra Bose* (1964 (1)SCR 639) where dismissal of a complaint by the Magistrate at the stage of Section 2092 inquiry was set aside, this Court laid down that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction, and observed (p.653) that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate forum at the appropriate stage and issue a process could not be refused. Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case."

17. In *Smt. Nagawwa v. Veeranna Shivalingappa Kongalgi* (1976(3) SCC 736) this Court dealing with the scope of inquiry under Section 202 has stated that it is extremely limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint (a) on the materials placed by the complainant before the Court (b) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; (C) for deciding the question purely from the point of view of the complainant without at all advert to any defence that the accused may have. It is also indicated by way of illustration in which cases an order of the Magistrate issuing process can be quashed on such case being "where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused."

10. Considering above-stated position of law, in the instant case perusal of record shows that applicant is husband of opposite party no.2 and remaining private opposite parties are family members of opposite party no.2. Thus, the impugned complaint has been lodged by the applicant against his wife, brother-in-law and other family members of his wife. The allegations made in the complaint are that on 21.04.2018 on the occasion of birthday of complainant, the said opposite parties have committed theft of jewellery and cash of Rs.42,000/- from the house of applicant. Apparently, the allegations are suffering from vice of improbability and it can not be believed that the wife of applicant along with her entire family members would indulge in commission of such incident of theft. It appears that there is matrimonial dispute between the parties and the complaint was filed by the applicant in order to settle score in matrimonial dispute. The complaint has been dismissed by the learned Magistrate by following the observations made by this Court vide order dated 27.09.2022 passed in Application under Section 482 Cr.P.C. No.31223 of 2022. Considering allegations of complaint and statement of complainant and of witnesses and all attending facts, this Court does not find any such material illegality or abuse of process in the impugned order so as to require any interference by this Court by invoking extraordinary power under Section 482 Cr.P.C. The application under Section 482 Cr.P.C. lacks merits and thus, liable to be dismissed.

11. Accordingly, the application u/s 482 Cr.P.C. is dismissed.

Order Date :- 31.1.2025 'SP'/-