

P L D 2007 Supreme Court 9

Present: Iftikhar Muhammad Chaudhry, C.J., Mian Shakirullah Jan and Syed Jamshed Ali, JJ

NOOR MUHAMMAD---Petitioner

Versus

THE STATE and others---Respondents

Criminal Petition No.323 of 2005, decided on 5th April, 2006.

(On appeal from the judgment dated 12-7-2005 passed by Lahore High Court, Lahore in CrI. R. No.407 of 2005).

(a) Criminal Procedure Code (V of 1898)---

---Ss. 203 & 204---Private complaint---Prima facie case---Meaning---Issuance or non-issuance of process---Principles---Proceedings under S.204 or 203 Cr.P.C. depend upon existence or non-existence of sufficient ground which had been taken by Courts as the existence of prima facie case---Two expressions i.e. existence of sufficient ground and prima facie case have been construed by Courts interchangeably---If a complaint is made before Court, it is only to see existence of a prima facie case either on the basis of averments made in complaint and statement of complainant on oath or on the basis of inquiry, if the Court thinks fit to hold inquiry in order to ascertain truth or falsehood of the complaint.

Sher Singh v. Jatendranath Sen AIR 1931 Cal. 607 rel.

(b) Criminal Procedure Code (V of 1898)---

---S. 204---Private complaint---Issuance of process---Examination of material---Principles---Burden of proof---Court is not expected to examine material minutely at the stage of issuance of process; whereas at the stage of trial, Court appraises evidence thoroughly and records its findings on the basis of such appraisal and any benefit of doubt arising out of such inquiry should be given to accused---Preliminary inquiry is not the stage where a material available on record is assessed in depth but a prima facie case has to be made out to proceed further with the matter for issuance of the process---Burden of proof in preliminary inquiry for issuance of process is much lighter on the complainant as compared to the burden of proof on prosecution at trial of offence---Prosecution, during trial, is to prove case beyond reasonable doubt and at preliminary stage complainant is not required to discharge heavy burden of proof---Court cannot overstretch the proceedings as to convert preliminary inquiry or averments made in complaint to a stage of full-fledged trial of the case.

(c) Criminal Procedure Code (V of 1898)---

---S. 204---Issuance of process---Infringement of rights---Validity---Mere summoning of accused by Court to answer charges levelled against him was not tantamount to any infringement of ally right of a person, rather it was opportunity afforded to him to explain his position.

(d) Criminal Procedure Code (V of 1898)---

---Ss. 200 & 204---Private complaint---Possibility of acquittal---Effect---Possibility of accusation turning out to be false or frivolous at trial should not forbear the Court from issuing process, if material available, prima facie discloses case against accused.

(e) Criminal Procedure Code (V of 1898)---

---Ss. 200, 204 & 250---Private complaint---Frivolous accusations---Safeguards---Scope---Sufficient safeguard is provided under S.250 Cr.P.C., to accused against a false and frivolous accusation by complainant, which envisages that Court while acquitting accused at trial stage, holding charge brought against him, as false, frivolous or vexatious, has sufficient power to

award adequate compensation.

(f) Criminal Procedure Code (V of 1898)---

---Ss. 200, 202, 203, 204 & 439---Penal Code (XLV of 1860), Ss.302/109---Private complaint--- Issuance of process to accused---Revisional jurisdiction of High Court---Scope---On tentative assessment of the material placed before Trial Court, process was issued against accused persons---Such order of Trial Court was assailed before High Court---After detailed scrutiny of evidence, High Court in exercise of revisional jurisdiction, set aside the order passed by Trial Court---Plea raised by complainant was that High Court in exercise of revisional jurisdiction, could not enter into detailed scrutiny of evidence---Validity---High Court for arriving at conclusion had taken note of detailed reasoning advanced by parties touching merits of the case on the basis of appreciation of material on record very minutely---Such evidence was construed by High Court as evidence duly recorded in a trial of a case and also the reasoning advanced by Court itself for reaching such a conclusion by discussing the material in depth conveying an impression as deciding a case which was at its final stages determining guilt or innocence of accused on the criteria of evaluating evidence as to whether prosecution was able to prove its case beyond reasonable doubt or not and while giving such a benefit accused ought to be acquitted---Such an evaluation of evidence was beyond the scope of proceedings at the stage of issuance of process after making a complaint visualizing under Ss.200, 202, 203 and 204, Cr.P.C.---High Court, instead of correcting any illegality or irregularity committed by the Courts below, while exercising revisional jurisdiction had rather committed illegality itself by going beyond the scope of proceedings---Such stage was that of only summoning of accused and interference in the order of Trial Court while issuing process against accused was tantamount to stifling of proceedings/trial of the case, depriving the Court to adjudge the evidence to be produced by complainant and the right of accused to cross-examine the witnesses and to explain any incriminating evidence against him and enable the Court to arrive at a conclusion determining truth of the matter---Order of Trial Court, interfered with by High Court, was neither perverse nor arbitrary nor suffered from any illegality or irregularity but was quite in consonance with law and the principles laid down by Supreme Court---High Court had wrongly interfered with the order of Trial Court and the same was not maintainable and required reversal---Supreme Court converted petition for leave to appeal into appeal, set aside the order passed by High Court and remanded the case to Trial Court for proceeding afresh in accordance with law---Appeal was allowed.

Nazir Ahmed Bhutta, Advocate Supreme Court and Ch. Muhammad Akram, Advocate-on-Record for Petitioner.

Ch. Inayat Ahmed, Advocate Supreme Court for Respondents.

Date of hearing: 5th April, 2006.