

**Court No. - 77****Case :- MATTERS UNDER ARTICLE 227 No. - 7924 of 2019****Petitioner :- Natthu****Respondent :- State of U.P. and Another****Counsel for Petitioner :- Nagendra Kumar Singh****Counsel for Respondent :- G.A.****Hon'ble Ram Krishna Gautam,J.**

This proceeding under Article 227 of Constitution of India, has been filed by Natthu against State of U.P. and Ram Nath, with a prayer for setting aside impugned summoning order, passed in Criminal Complaint Case No. 2439 of 2014, Ram Nath Vs. Natthu and others, by Chief Judicial Magistrate IInd, District Badaun and order of Revisional Court dated 2.3.2019, passed in Criminal Revision No. 217 of 2015 (Natthu Vs. State of U.P. and others) along with entire criminal proceeding of above complaint case.

Learned counsel for the applicant argued that a criminal case, by way of FIR was filed on 25.5.2013 at 13:30 P.M. at Police Station Civil Lines, Badaun, by way of application moved under Section 156(3) of Cr.P.C. by complainant Ram Nath against Natthu, Devendra, Ashok and Jaiveer, for offence punishable under Section 147, 307, 506, 504, 120-B I.P.C., wherein investigation resulted submission of Final Report. A protest petition was filed by informant and the same was treated as complaint case, wherein complainant Ram Nath and his two witnesses Bheem Singh and Munna Lal, were examined under Section 202 of Cr.P.C. Informant, in his FIR as well as statement recorded under Section 161 of Cr.P.C., has said nothing about Natthu. Rather role of giving firearm shot was assigned against two other persons, that too, upon exhortation made by Om Prakash. Meaning thereby, Natthu was not assigned role of giving firearm shot over informant. But in statement recorded under Section 200 of Cr.P.C., he too, assigned the role of giving firearm shot and on the basis it, impugned summoning order has been passed. Trial Court failed to appreciate above aspect, for which criminal revision was filed before Court of Sessions Judge, Badaun and it ended in dismissal by impugned judgment of criminal revision passed by VIIIth Additional District and Sessions judge, Badaun, in criminal revision No. 217 of 2015. Hence, both of these subordinate Courts i.e. Magistrate as well as Revisional Court, Sessions Judge, failed to appreciate facts and law placed before it. Under general superintending power of this High Court, this application has been moved with above prayer.

Learned AGA has vehemently opposed the above prayer.

Having heard learned counsels for both sides and gone through the material placed on record, it is apparent that Nathhu was added as an accused in FIR. Cause of this offence was said i.e. love affair of Priya @ Pooja, resulting her marriage with Ram Nath and it was a criminal conspiracy entered in between accused persons, for giving lesson to Ram Nath, for which they committed this assault on above date, time and place, wherein firearm shot was extended, resulting injuries of Ram Nath and in medical report firearm shot injury was there. This FIR was got lodged for offence including Section 147 as well as 120-B of I.P.C. i.e. riot by unlawful assembly as well as criminal conspiracy, wherein, those accused persons were named and Nathhu was named therein. This investigation resulted submission of final report, against which protest petition was filed. Magistrate being empowered, took cognizance and registered it as a complaint case. Then after, he recorded statement of complainant Ram Nath, under Section 200 of Cr.P.C. and his two witnesses under Section 202 of Cr.P.C. On the basis of evidence collected by magistrate, including medical report, wherein firearm shot was there, impugned order of summoning for offence punishable under Section 307/149 of I.P.C. was passed. Meaning thereby, specific accusation of giving firearm shot by any of accused persons, was not taken into consideration. Rather, firearm shot in furtherance of common object by unlawful assembly punishable under Section 307/149 of I.P.C., was the section, for which accused persons were summoned and for it, there was sufficient evidence on record.

At the time of summoning, Magistrate is not expected to make meticulous and analytical analysis of factual aspects, because it is a question of trial, is to be seen at the time of summoning and that was there in present case, revisional Court appreciate all those factual and legal aspects, thereafter, resulted judgement of dismissal of Criminal Revision No. 217 of 2015, which was well within the jurisdiction and procedure prescribed for both of Courts below. There seems no ground for any indulgence in atrocity of general superintendence by this High Court in impugned order.

Accordingly, **dismissed**.

However, in view of the entirety of facts and circumstances of the case, it is directed that in case the applicant appears and surrenders before the court below within 30 days and no more from today and applies for bail, his prayer for bail shall be considered and decided in view of the settled law laid by this

Court in the case of *Amrawati and another Vs. State of U.P.* reported in *2004 (57) ALR 290* as well as judgement passed by Hon'ble Apex Court reported in *2009 (3) ADJ 322 (SC) Lal Kamlendra Pratap Singh Vs. State of U.P.* Till then no coercive measure shall be taken against the applicant.

With the aforesaid directions, this application is finally **disposed of.**

Order Date :- 18.11.2019

Kamarjahan