



2026:AHC:124829

A.F.R.

Reserved on 02.04.2026

Delivered on 03.06.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 680 of 2025

Lala And Another

.....Petitioner(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Petitioner(s) : Moeez Uddin, Vikrant Gupta
Counsel for Respondent(s) : G.A., Gaurav Singh Chauhan

Court No. - 6

HON'BLE ANIL KUMAR-X, J.

1. This petition under Article 227 of the Constitution of India has been filed with a prayer to quash the order dated 18.12.2024 passed by Special Judge (E.C. Act)/Additional Sessions Judge Court No.14 Bulandshahar in Criminal Revision No.47 of 2024 (Mahesh and another Vs. State of U.P. and another) as well as order dated 20.01.2024 passed by Chief Judicial Magistrate, Bulandshahar in Complaint Case No.1871 of 2014 (Pradeep Vs. Lala and another) under section 302 I.P.C., Police Station Ahmadgarh, District Bulandshahar in Case Crime No.221 of 2013, under section 302 I.P.C., Police Station Ahmadgarh, District Bulandshahar.

Facts of the Case

2. The facts of the case, in brief, are that on 03.11.2013 at about 10:00 p.m., village Chaukidar Rajendra gave information at Police Station Ahmadgarh, District Bulandshahr, regarding the death of Rahul, son of Anokhe Lal. He stated that Rahul had allegedly consumed liquor and, after losing his senses, fell from the roof of Maharaj Singh. The villagers took him to a hospital at Bulandshahr for treatment, where he later died

due to his injuries. Thereafter, on the same day, Pradeep Kumar, the brother of the deceased Rahul, lodged an FIR in Case Crime No. 221 of 2013 under Section 302 IPC at Police Station Ahmadgarh, District Bulandshahr.

3. In the FIR, he alleged that at about 7:00 p.m., Rahul was murdered by Lala, son of Mahesh, and Mahesh, son of Dhoom Singh. According to the informant, the accused persons first made Rahul consume liquor at their house and thereafter assaulted him, causing injuries on his head. On receiving information about the incident, villagers took Rahul to the District Hospital, Bulandshahr, where he was declared dead.

4. The matter was investigated by the police. Upon completion of investigation, a final report was submitted concluding that no case was made out against the accused persons. Being dissatisfied with the final report, the informant filed a protest petition before the Magistrate. The protest petition was treated as a complaint case. During the inquiry proceedings, statements of seven witnesses were recorded in support of the complaint. After considering the material available on record, the Magistrate found sufficient grounds to proceed and summoned both petitioners/accused persons to face trial for the offence punishable under Section 302 IPC.

Submissions on behalf of the petitioners

5. Shri Vikrant Gupta, learned counsel for the petitioners submitted that the allegations made against the petitioners are wholly false and are not supported by any reliable evidence. It is argued that during investigation the Investigating Officer found that Rahul had consumed liquor and, in an intoxicated condition, accidentally fell from the roof, resulting in the

injuries which ultimately caused his death. On the basis of the material collected during investigation, a final report was submitted.

6. It is further submitted that Rajendra, the village Chaukidar, who had first informed the police about the incident and had stated that Rahul fell from the roof while intoxicated, has not been examined by the complainant. According to the petitioners, the non-examination of this material witness creates serious doubt regarding the prosecution version.

7. Learned counsel further contended that although statements of seven witnesses were recorded during the complaint proceedings, none of them claimed to have actually witnessed the occurrence. Their statements are based either on suspicion, hearsay, or information received from others. Therefore, there is no direct evidence connecting the petitioners with the alleged offence.

8. It is also argued that P.W.-2 Somveer, who is the brother-in-law of the informant Pradeep Kumar, stated that the petitioners had allegedly confessed before him that they had no intention to kill Rahul. According to learned counsel, even if such statement is accepted at its face value, it does not support the allegation of intentional murder and rather weakens the prosecution case under Section 302 IPC.

9. Learned counsel further submitted that the FIR is completely silent regarding any motive for the alleged murder. However, at a later stage, during the complaint proceedings, a new story was introduced that the petitioners had taken Rahul to their house with an intention to grab Rs.35,000/- allegedly possessed by him and thereafter killed him. It is argued that this material improvement was never mentioned in the FIR and appears to be an afterthought introduced to strengthen an otherwise

weak case.

10. On the strength of the aforesaid circumstances, learned counsel submitted that the statements of the witnesses are neither convincing nor reliable and suffer from material omissions and improvements. It is, therefore, argued that the summoning order has been passed without sufficient material and amounts to an abuse of the process of law, warranting interference by the Court.

Submissions on behalf of respondents

11. Shri Prateek Tyagi, learned A.G.A. as well as Shri Gaurav Singh Chauhan, learned counsel for private respondent submitted that at the stage of summoning, the Court is only required to see whether a prima facie case is made out from the material available on record and not whether the prosecution case is likely to result in conviction. It was contended that the complainant, Pradeep Kumar, in his statement recorded under Section 200 Cr.P.C., has specifically stated that the deceased Rahul had returned from Orissa one day prior to the incident and was carrying Rs.35,000/- with him. According to him, on the morning of 02.11.2013, both petitioners came to his house and took Rahul along with them on the pretext of having tea at their house. Thereafter, Rahul was found seriously injured and ultimately died.

12. It was further submitted that the statements recorded under Section 202 Cr.P.C. lend support to the version of the complainant. P.W.-1 Pawan, P.W.-3 Sheetal, who is the wife of the deceased, and P.W.-4 Rekha have consistently stated that Rahul was called by the petitioners from his house and had gone with them. These witnesses have also stated that Rahul was carrying Rs.35,000/- at that time.

13. It was further argued that the evidence collected during the complaint inquiry discloses that although Rahul was carrying Rs.35,000/- when he left his house with the petitioners, the said amount was found missing thereafter. This circumstance, coupled with the fact that the deceased was last seen in the company of the petitioners and was later found dead, constitutes a strong incriminating circumstance against them.

14. It was contended that the reliability, truthfulness and evidentiary value of the witnesses cannot be examined in detail at the stage of summoning. The defence put forward by the petitioners and the conclusions drawn by the Investigating Officer in the final report are matters to be considered during trial. At this stage, the statements recorded under Sections 200 and 202 Cr.P.C. disclose sufficient grounds for proceeding against the petitioners.

15. On the aforesaid grounds, it was submitted that the Magistrate has passed the summoning order after considering the statements of the complainant and the witnesses and no illegality, perversity or jurisdictional error is made out warranting interference by this Court.

Conclusion and Findings of the Court

16. Having considered the rival submissions and carefully examined the material available on record, this Court finds that the impugned summoning order cannot be sustained.

17. At the outset, it is noticeable that the dead body of the deceased was found lying in front of the house of Maharaj Singh. Neither during investigation nor during the complaint proceedings has any satisfactory explanation been furnished as to how the deceased reached that place. The

complaint version seeks to suggest that the deceased was taken by the petitioners to their house, where he was allegedly assaulted and murdered. However, no witness has explained the circumstances in which the deceased was thereafter found at a different place. This missing link goes to the root of the matter and creates a serious gap in the prosecution story.

18. It is further significant that neither the FIR nor the protest petition contains any allegation that the deceased was carrying Rs.35,000/- with him when he accompanied the petitioners to their house. Likewise, there is no allegation in either of these documents that the petitioners had taken the deceased with them for the purpose of grabbing the said amount. These facts surfaced for the first time in the statements recorded under Sections 200 and 202 Cr.P.C. A protest petition, once converted into a complaint, becomes the foundational pleading of the complaint case and must contain all material facts constituting the accusation. Material facts omitted from the protest petition cannot ordinarily be supplied later through oral statements. Introduction of such facts for the first time during enquiry amounts to a material improvement and raises serious doubts regarding the genuineness of the accusation. Such improvements assume greater significance when they seek to provide motive where none existed in the original version.

19. Another circumstance which renders the complaint version doubtful is that the incident is alleged to have occurred within the village itself. The deceased, the petitioners, the informant and most of the witnesses belong to the same village. It is, therefore, surprising that none of the witnesses claims to have knowledge of the actual occurrence, despite the fact that the deceased allegedly sustained fatal injuries within the village and was thereafter taken to the hospital by villagers. The circumstances under

which the deceased was found injured and the identity of those who first reached the spot have remained unexplained.

20. Particular attention must be given to the testimony of P.W.-2 Somveer. In his statement under Section 202 Cr.P.C., he claimed that he had seen the petitioners assaulting the deceased in front of their house. According to him, he left the place out of fear and later informed his family members. However, the same witness also stated that the petitioners subsequently confessed before him that they had no intention to kill the deceased. The conduct attributed to the witness appears unnatural. If he was so frightened that he could not intervene or remain at the spot, it is difficult to comprehend how the petitioners would thereafter make a confession before him. Such inconsistencies strike at the credibility of the witness and require careful scrutiny before any reliance can be placed upon his statement.

21. The present case also highlights an important aspect concerning the exercise of jurisdiction by a Magistrate while dealing with a final report and a protest petition. The law undoubtedly permits a Magistrate to treat a protest petition as a complaint and proceed in accordance with Chapter XV of the Code. However, such power must be exercised with great caution, particularly where allegations relate to grave offences such as murder.

22. Where the accusation concerns a serious crime and the true facts can be unearthed only through a thorough investigation involving collection of scientific, medical, forensic or circumstantial evidence, the Court must first consider whether conversion of the final report into a complaint case would genuinely advance the cause of justice. The primary object of

every criminal proceeding is discovery of truth. If that object cannot effectively be achieved through a complaint enquiry, the Court should consider directing further investigation rather than mechanically converting the final report into a complaint case.

23. Conversion of a final report into a complaint case should never become an empty formality. There may be cases where the police investigation is defective, incomplete or unfair. In such situations, further investigation may be the appropriate course. A complaint enquiry is not intended to substitute a full-fledged criminal investigation in cases where crucial facts can be established only through investigative processes. For example, where the prosecution case depends upon recovery of incriminating articles, scientific examination, electronic evidence, call records, forensic analysis, or reconstruction of the incident, a complaint enquiry may not be sufficient to ascertain the truth.

24. Even where the Magistrate is satisfied that conversion of the final report into a complaint case would serve the ends of justice, the Magistrate should not remain a mere spectator during the enquiry. The duty of the Court in such cases assumes greater importance because the Court itself becomes responsible for evaluating whether sufficient grounds exist for proceeding against the accused despite the police having found otherwise.

25. The Magistrate should therefore carefully examine each witness and, wherever necessary, put questions to test the credibility of the statements made. Merely recording statements under Sections 200 and 202 Cr.P.C. in a mechanical manner may not always serve the purpose of justice. Witnesses should be questioned regarding the source of their knowledge,

the circumstances in which they acquired such knowledge, any delay in disclosure, any omissions in earlier versions and other relevant facts having a bearing upon the reliability of their testimony.

26. Experience shows that there are cases where allegations are ultimately found to be false or where the investigating agency is unable to collect reliable evidence in support of the accusation. It often happens that after submission of a final report, a protest petition is filed and witnesses are produced in support thereof. While such witnesses may make statements sufficient to create a superficial appearance of a prima facie case, the Court must remain vigilant, particularly where the offence alleged is grave and carries severe consequences.

27. In cases involving serious offences, mere repetition of allegations by witnesses may not be sufficient. The Court should examine whether the testimony appears natural, whether it is consistent with the earlier version, whether it is supported by surrounding circumstances and whether independent corroboration is available. If the testimony itself requires scrutiny, the Court should put appropriate questions to the witnesses. If corroborative evidence appears necessary, the Court should explore whether such evidence exists before placing reliance upon the statements.

28. The Magistrate should also keep in mind certain additional principles. **Firstly**, where the police investigation has resulted in a final report, the reasons assigned by the Investigating Officer must be carefully considered and dealt with. **Secondly**, the Court should identify the specific material which persuades it to disagree with the conclusions of the investigating agency. **Thirdly**, improvements, omissions and contradictions appearing between the FIR, the protest petition and

statements recorded during enquiry should be examined with care. **Fourthly**, where the prosecution case rests upon circumstantial evidence, the circumstances relied upon should *prima facie* form a coherent chain pointing towards the accused. **Lastly**, the order summoning an accused for a grave offence must reflect application of judicial mind and should disclose the reasons which persuaded the Court to proceed against the accused.

29. In the present case, the material improvements regarding motive and possession of Rs.35,000/-, the absence of any such allegation in the FIR and protest petition, the unexplained circumstances regarding the place where the deceased was found, the doubtful and inconsistent testimony of the witnesses, and the failure to conduct a meaningful enquiry into these aspects render the impugned order unsustainable.

30. In view of the aforesaid discussion, this Court is of the view that the Magistrate failed to properly scrutinize the material placed before it before summoning the petitioners for an offence punishable under Section 302 IPC. Therefore, impugned summoning order suffers from non-application of mind and cannot be allowed to stand.

31. Accordingly, the petition is **allowed**. The impugned order dated 18.12.2024 passed in Criminal Revision No.47 of 2024 and order dated 20.01.2024 passed in Complaint Case No.1871 of 2014 arising out of Case Crime No.221 of 2013, under section 302 I.P.C., Police Station Ahmadgarh, District Bulandshahar, are hereby set aside.

(Anil Kumar-X,J.)

June 3, 2026
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