

PETITIONER:
SURENDRA GUPTA

Vs.

RESPONDENT:
BHAWAN DEVI (SMT) AND ANOTHER

DATE OF JUDGMENT 05/04/1994

BENCH:
SAHAI, R.M. (J)
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SAHAI, R.M. (J)
HANSARIA B.L. (J)

CITATION:
1996 AIR 509 1994 SCC (4) 657
1994 SCALE (2) 625

ACT:

HEADNOTE:

JUDGMENT:
ORDER

1. The only question that arises for consideration in this appeal is if the High Court was justified in dismissing the application filed under Section 482, Code of Criminal Procedure, (hereinafter referred to as 'CrPC') by the appellant against order directing to file complaint under Sections 200/202/295/167/34, Indian Penal Code on the ground that the impugned order was appealable under Section 341 CrPC.

2. Proceedings for declaring vacancy under Section 12 of U.P. Urban Buildings Act were initiated by the landlord against his tenant. They were decided in favour of the landlord. In appeal the order was set aside and the appropriate authority was directed to decide the application afresh. The tenant apart from pursuing his remedy under the Act filed an application before the Additional District and Sessions Judge under Section 340 CrPC for filing complaint against the Rent Control and Eviction Officer, the landlord and other authorities. The application was dismissed on 17-2-1977 as it was not pressed. It was further observed that even otherwise no prima facie case was made out. Later on the tenant moved another application. It was decided on 1-6-1981 after decision of the appeal under the Rent Control Act. The order is extracted below :

"Called out - Shri Dayanand Swaroop is present. Opposite party was not informed regarding the application for fixing early date so from O.Ps no one turned up. Heard Shri Dayanand Swaroop. That this court being an appellate court has already decided the Appeal No. 82 of 1975 Bhagwan Dei v. Surjeet Kaur, hence it would be proper to send this file to the court of Rent Control and Eviction Officer, Bulandshahr for filing complaint against the abovesaid five persons under

Sections 200/202/245/197/34 IPC or in any other proper section."

The applicant approached the High Court against this order by way of revision under Section 482 CrPC. The High Court did not enter into merits as, according to it, the order being appealable under Section 34 1, the revision was not maintainable.

Section 341 of CrPC reads as under:

"341. (1) Any person on whose application any court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of Section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195, and the superior Court may thereupon, after notice to the parties concerned, direct withdrawal of the complaint, or, as the case may be, making of the complaint which such former Court might have made under Section 340, and, if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order under Section 340, shall be final and shall not be subject to revision."

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The language of the section is plain and simple. The right of appeal is conferred against filing of complaint. What is a complaint is clear from clause (d) of Section 2 which reads as under:

"2. (d) 'complaint' means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report;"

A complaint thus could be filed only before the Magistrate. From the order dated 1-6-1981 it is clear that it only sent the file to the Rent Control Officer to file the complaint. The appellant had approached the High Court against this order. The application under Section 482 CrPC was not filed against filing of complaint but against direction to file complaint. It could not be treated as complaint. Further Section 340(3) of CrPC requires that a complaint made under the section could be signed in cases other than the one filed by the High Court by the presiding officer of that court. The order of the Additional District and Sessions Judge thus could not be construed as complaint. No appeal could be filed against it under Section 341 CrPC.

3. In the result this appeal succeeds and is allowed. The order of the High Court is set aside. The matter is remitted back to it for deciding the application under Section 482 afresh on merits in accordance with law.

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