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Mohammad Hussaln and ors. Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Jan-28-2004

Reported in : 2004CriLJ2694

Judge : K.N. Ojha, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 239 and 240; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 498A; [Dowry Prohibition Act, 1961](#) - Sections 3

Appeal No. : Crl. Rev. No. 252 of 2004

Appellant : Mohammad Hussaln and ors.

Respondent : State of U.P. and anr.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : S. Pratap Singh, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K.N. Ojha, J.

1. Heard Sri S. Pratap Singh, learned counsel for the revisionist, learned AGA and have gone through the record.

2. Instant revision has been preferred against the order dated 4-11-2003 passed by 1st Additional Chief Judicial Magistrate, Basti, in Criminal Case No. 2596 of 2003, State v. Lal Mohammad and Ors., police station Dudhara, district Sant Kabir Nagar, under Sections 498A, 323, 504, 506 I.P.C. and Sections 3/4 Dowry Prohibition Act by which the application of the revisionists has been rejected.

3. A perusal of the record shows that one Smt. Nazbu Nisha wife of Lal Mohammad, revisionist No. 2, moved an application against him and four other under Section 156(3) Cr. P.C. in the Court of 1st Additional Chief Judicial Magistrate, Basti, containing the fact that the demand for motorcycle being not satisfied she was beaten in October 1999 and was turned out by the revisionists from their house. The application was allowed and investigation was made and a charge-sheet under Sections 498A, 323, 504, 506 I.P.C. and Sections 3/4 Dowry Prohibition Act was submitted against the revisionist and two others. The revisionists were summoned and a date for charge was fixed. The accused revisionists did not appear in person before the Court and they moved application through their learned counsel for discharge. By impugned order the learned Additional Chief Judicial Magistrate, Basti, held that the charge-sheet was submitted after making investigation and collecting evidence, therefore, the application was rejected, hence this revision has been preferred.

4. Section 240 of Cr. P.C. contemplates that 'if, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.'

5. Section 239 of Cr. P.C. contemplates that 'if upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record its reasons for so doing.

6. Thus if charge is to be framed, there is no need to pass a detailed order and give reasons. Framing of charge itself means that the Magistrate is of the opinion that there is ground for presuming that the accused had committed the offence. If the accused is discharged speaking order containing the reasons should be passed. In instant case when an application has been moved by the victim herself, she is living at her father's residence and her case is that the demand for motorcycle being not satisfied she has been turned out from the house by her husband and his family members, there is sufficient evidence to presume that the revisionists exercised cruelty compelling Smt. Nazboo Nisha to live at her father's residence. If she and her parents and other family members have supported during investigation against the revisionists and on this basis charge-sheet has been submitted and the accused revisionists have been summoned, there is no illegality in the impugned order.

7. In instant case the revisionists were summoned. They did not appear in person before the Court nor bail-bonds were filed before the Magistrate. Therefore, their personal appearance was not exempted under Section 205 of Cr. P.C. In such circumstances to raise the plea that the accused are entitled for discharge while there is sufficient evidence to presume that they have committed the offence, is not maintainable.

8. Thus no jurisdictional error, illegality or material irregularity has been committed by the learned Magistrate in passing the impugned order dated 4-11-2003.

9. The revision is dismissed at the admission stage.