

Riyasat Ali Vs. State of U.P.

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Court : Allahabad

Decided On : Jul-30-1991

Reported in : 1992CriLJ1217

Judge : B.P. Singh, J.

Acts : Indian Penal Code (IPC) - Sections 149, 323, 406, 504 and 506; ;Code of Criminal Procedure (CrPC) , 1974 - Sections 200, 202 and 204

Appeal No. : Criminal Revision No. 1871 of 1990

Appellant : Riyasat Ali

Respondent : State of U.P.

Advocate for Def. : M. Islam, A.G.A.

Advocate for Pet/Ap. : Vinod Prasad, Adv.

Disposition : Petition allowed

Judgement :

ORDER

B.P. Singh, J.

1. This is an application for revision against the judgment and order dt. 31-8-1990 passed by the Sessions Judge, Budaun, in Criminal Revision No. 95 of 1990 (Smt.

Rashida Begum v. Riyasat Ali).

2. A complaint under Sections 323, 149, 406, 504 and 506, I.P.C. was filed by Riyasat Ali (the applicant) against Smt. Rashida Begum.

3. The case of the complainant was that he was married to Smt. Rashida Begum, daughter of Badrul Hasan. Upon the advice of his wife and in-laws, Riyasat Ali had taken separate residence from his parents. He also deposited Rs. 10000/- 10 tolas of gold and 1/2 kgs silver ornaments with his in-laws. The entrustment of the money and ornaments was only by way of security on 21-10-1989, Riyasat Ali went to his in-laws to demand the money and ornaments. He was asked to come back on the next evening. When he went again on the next evening, his in-laws refused to return the money and ornaments and gave him a cane beating. His brothers Ibadat Ali and Fasahat Ali and witnesses Duleh Khan and Dilawar Khan came there. Badrul Hasan, Rahat and Farhat had assaulted the complainant and Smt. Rashida Begum had abetted and sided with them.

4. A report of the occurrence was lodged in the Police Station concerned on 24-10-1989 and the complainant was medically examined.

5. The learned Magistrate examined the witnesses under Sections 200 and 202, Cr. P.C. and thereafter summoned the five accused persons for the offences under Section 323/149/504/506/406, I.P.C.

6. Aggrieved by the summoning order, Smt. Rashida Begum went in revision before, the Sessions Judge, Budaun and her revision --Criminal Revision No. 95 of 1990 -- was allowed and the summoning order was quashed.

7. Aggrieved by the order of the learned Magistrate, Riyasat Ali has come in revision.

8. I have heard the learned counsel for the parties and I have gone through the record of the case.

9. After recording the statements of the witnesses examined by the complainant under Section 202, Cr. P.C. the Magistrate under Section 204, Cr. P.C. is

empowered to summon the accused persons if he is of the opinion that there are sufficient grounds for taking cognizance of the case against the accused persons. The Magistrate is to be satisfied whether upon the allegations made in the complaint and the statements of the witnesses recorded under Sections 200 and 202, Cr. P.C. there was a prima facie case for proceeding against the accused persons in respect of the offence alleged to have been committed by them. It is well settled that while issuing summons under Section 204, Cr. P.C. the Magistrate is concerned with the allegations made in the complaint and the evidence which has been adduced by the complainant in support of the said allegations. The Magistrate has simply to be satisfied if a prima facie case has been made out and there are sufficient grounds for proceedings against the accused. It may be noted that only summons for appearance are issued initially in such cases. Of course, if the allegations made in the complaint do not disclose any offence, the Magistrate cannot summon the accused persons, but when the allegations contained in the complaint disclose an offence and the same allegations have been substantiated by the evidence of the witnesses examined under Sections 200 and 202, Cr. P.C. and the Magistrate is satisfied that there are reasons to proceed against the accused persons, the order of the Magistrate should not be interfered with lightly. It is the subjective satisfaction of the learned Magistrate after taking an objective view of the allegations made in the complaint and in the evidence of the witnesses examined by the complainant. The learned Sessions Judge while exercising revisional power was not expected to find discrepancy in the case of the complainant. The allegations in the complaint and the evidence of the witnesses are to be taken at their face value. As pointed out by the Supreme Court in the case of *Khacheru Singh v. State of U.P.*, AIR 1982 SC 784 (2): (1982 Cri LJ 629 (2)), the Magistrate could himself discharge or acquit the accused if the accused after appearing before him satisfied the Magistrate in this regard.

In the present case, it cannot be said that the allegations in the complaint and the evidence of the witnesses do not disclose an offence.

Under the circumstances, the application for revision is allowed. The order of the learned Sessions Judge dt. 31-8-1990 is hereby set aside.

