

(2006) 02 AHC CK 0113

Allahabad High Court

Case No: Criminal Miscellaneous Application No. 1628 of 2006

Ram Swaroop and Smt. Ram Beti

APPELLANT

Vs

State of U.P. and Rajni

RESPONDENT

Date of Decision: Feb. 10, 2006**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 198, 482
- Penal Code, 1860 (IPC) - Section 120B, 376, 495

Hon'ble Judges: R.K. Rastogi, J**Bench:** Single Bench**Advocate:** Pankaj Kumar Shukla, for the Appellant; A.G.A., for the Respondent**Final Decision:** Allowed

Judgement

R.K. Rastogi, J.

This is an application u/s 482 Cr.P.C. for quashing the proceedings of S.T. No. 443 of 2004, State v. Ram Swaroop and Anr. under Sections 495/120B I.P.C. P.S. Jamunapar District Mathura.

2. The facts relevant for disposal of this application are that the complainant opposite party No. 2 had moved an application u/s 156(3) Cr.P.C. for taking action against the accused applicants under Sections 495/376/120B I.P.C. and on the basis of the order passed by the learned Magistrate the police investigated the case and submitted charge sheet against the accused persons under the aforesaid Sections. The case was committed to the court of Sessions and it was transferred to Addl. Distt. & Sessions Judge court No. 10, Mathura. The learned Addl. Sessions Judge, at the stage of framing charges, was of the view that only a charge u/s 495 I.P.C. was made out against the applicant No. 1 and charge under Sections 495/120B I.P.C. was made out against the accused applicant No. 2. and framed charges accordingly. Thereafter the accused applicants moved an application paper No. 10B before the Addl. Sessions Judge where the case was pending to the effect that the trial of the

case u/s 495 I.P.C. was barred by Section 198 Cr.P.C.... This application was rejected on the ground that since the charge sheet in the aforesaid case was submitted u/s 495/376 and 120B I.P.C., the trial was not barred by the said provision. Thereafter the complainant moved an application 18 B before the Vth Addl. Sessions Judge on 16.6.05 with these assertions that since the learned Addl. Sessions Judge had framed charges u/s 495/120B I.P.C. only, the case could not proceed without a complaint of the aggrieved party as provided u/s 198 Cr.P.C. and so the proceedings of the case I be dropped and the complainant be permitted to file a complaint. This application was not opposed by the learned Counsel for the accused applicants as is clear from their endorsement on its margin. Even then the Presiding Officer rejected the application on the ground that similar application earlier moved by the accused applicants had already been rejected and it proceeded to decide the case. Aggrieved with this order the accused applicants have filed this application u/s 482 Cr.P.C. for quashing the proceedings.

3. Heard the learned Counsel for the applicant and the learned A.G.A. for the State.

4. It is to be seen that in the present case the complainant opposite party No. 2 had already moved an application for dropping the proceedings in view of the provisions u/s 198 Cr.P.C. with permission to file a complaint and when that application was not opposed by the learned Counsel for the accused applicants, there was no justification for rejecting the above application and the order passed by the court below is in violation of the provisions of Section 198 Cr.P.C. and so that order can not be allowed to sustain and is liable to be set aside.

5. Accordingly, the application is allowed. The proceedings of S.T. No. 443 of 2004, State v. Ram Swaroop and Anr. under Sections 495/120B I.P.C. P.S. Jamunapar District Mathura are hereby quashed. The complainant opposite party No. 2 is permitted to file a complaint against the accused applicants in accordance with the requirement of Section 198 Cr.P.C.