
(2011) 12 AHC CK 0253

Allahabad High Court

Case No: Criminal Revision No. 5288 of 2011

Suman

APPELLANT

Vs

State of U.P. & Another

RESPONDENT

Date of Decision: Dec. 22, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 200, 202, 245(2)
- Penal Code, 1860 (IPC) - Section 34, 376, 379

Hon'ble Judges: Naheed Ara Moonis, J

Final Decision: Disposed Of

Judgement

Naheed Ara Moonis, J.

Heard the learned counsel for the revisionist, learned A.G.A. and perused the record.

The instant revision has been filed by the revisionist challenging the order dated 23.9.2011 passed by the Additional Civil Judge (Junior Division)/Judicial Magistrate, Jyotiba Phule Nagar whereby the application moved under Section 245 (2) Cr.P.C. has been rejected in complaint Case No. 180 of 2011, under Sections 379, 376/34 I.P.C.

It is contended by the learned counsel for the revisionist that the opposite party no. 2 moved an application under Section 156 (3) Cr.P.C. on 13.6.2007 about commission of rape upon her by the husband of the revisionist and other accused person in the house of the revisionist she was detained by them. She was also robbed of her valuables cash and ornaments etc. On the basis of the aforesaid application, the first information report was lodged against the revisionist and other accused persons under Sections 392, 342, 323, 376 and 506 I.P.C. in which after investigation final report was submitted. Thereafter a protest petition was filed by the opposite party no.2, which was treated as complaint and on the basis of the statement of the complainant and witnesses Vijay Vir, Kuldeep and Shiv Raj as P.W.1, P.W.2 and P.W.3 recorded under Sections 200 and 202 Cr.P.C. respectively the summoning order was passed 13.1.2009, under Sections 379, 376/34

I.P.C. against the revisionist and other accused persons. It is contended by the learned counsel for the revisionist that frivolous allegations have been made that she was also involved along with other accused persons in the offence of rape and had extended help to the other accused persons in concealing her in her house and in the field. The learned court below has illegally rejected the application claiming discharge on irrelevant consideration.

Per contra the learned A.G.A. has supported the order passed by the court below as there is no procedural illegality in rejecting the application for claiming discharge. There is ample evidence against the revisionist regarding her involvement in the offence which cannot be brushed aside at the initial stage. The order passed by the court below suffers from no error hence the revision is liable to be dismissed.

I have considered the submission made at the bar. The details account of the prosecution case need no repetition.

The controversy as raised by the learned counsel for the revisionist whether the learned Judge is under obligation to record the reasons when he forms an opinion that there is sufficient ground for framing of charges, this question has been decided in the case of *Munnalal Gupta Vs. State of U.P.* 2009 ACC P.266 in the following manner :

"If the learned Judge arrives at conclusion that the accused is liable to be discharged as there is no sufficient ground for proceeding against him, he has to record his reasons for doing so, but if he forms an opinion that there is sufficient ground for proceeding against the accused, he is not suppose to record any reason for proceeding further as for that limited purpose he has to form opinion only on the basis of prima facie satisfaction as to whether the case against the accused has been made out or not."

The Apex Court also in the case of *Kanti Bhadra & Another Vs. State of West Bengal* 2000, 40 ACC 441 SC, has considered the same question and held that, it is pertinent to point out that even in a trial before a court of Sessions, the Judge is required to record reasons only if he decides to discharge the accused, but if he is to frame the charge he may do so without recording reasons for showing why he framed the charge. Thus in view of the aforesaid legal position, in the instant case on the basis of material available before the Magistrate, he was satisfied that there is sufficient material for framing charges, the detailed discussion of those materials by the Magistrate is not required. It cannot be open to challenge the order, rejecting the discharge application that no satisfaction has been shown or there is no detailed discussion of the material. In the case of *State of Orissa Vs. Devendra Nath Paddhi* 2005 (51) ACC P.209, the Hon"ble Apex Court has held that, at the stage of framing of charge roving and fishing inquiry is impermissible, if the contention of the accused is accepted there would be a mini trial at the stage of framing of charge, that would defeat the object of the Code. Thus, it is well settled that at the stage of framing of charge the defence of the accused cannot be put forth.

Therefore, in the light of the aforesaid discussions this Court is of the view that the Magistrate or the Judge is not under obligation to record any reason for his satisfaction for framing charges, if he proceeds for framing of charge it is always assumed that there are sufficient materials with the prosecution to frame the charges, each and every material is not required to be discussed by the learned Magistrate/Judge at this stage. Therefore, I do not find error in the order passed by the court below. Hence the revision lacks merit and it is accordingly dismissed.

The court below is directed to proceed with the case in accordance with law expeditiously since the matter is quite old.

The revisionist is directed to surrender before the court below within 30 days and apply for bail, the same shall be heard and disposed of by the court concerned, if possible, on the same day in view of the law laid down in Smt. Amrawati and another Vs. State of U.P. 2005 Cr.L.J. 755, which has also been approved by the Apex court in Lal Kamlendra Pratap Singh Vs. State of U.P. 2009 (3) ADJ 322 (SC).