

**(2001) 04 AHC CK 0112****Allahabad High Court****Case No:** Criminal Revision No. 1050 of 1988

Jagdish Chand Latha and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

**Date of Decision:** April 25, 2001**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 197, 200, 202, 204
- Penal Code, 1860 (IPC) - Section 394, 397

**Citation:** (2001) 2 ACR 1863**Hon'ble Judges:** Bhagwan Din, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Bhagwan Din, J.

This criminal revision is directed against the order dated 16.6.1988 passed by the II Ird Additional Sessions Judge/Special Judge (D.A.A.) Farrukhabad, holding that the commission of the offence punishable under Sections 394/397, I.P.C. is *prima facie* made out and the accused be summoned.

2. All the three revisionists were posted as Deputy Jailors in District Jail, Fatehgarh. It is alleged that on 11.4.1988 at about 6.30 p.m., all the three Deputy Jailors caused bodily injuries and looted the belongings of the convict, Ishrat Meer Khan. The incident was witnessed by the other convict, Mangal Khan and Kailash Nath Dubey. The injuries sustained by the convict, Ishrat Meer Khan were examined by Dr. A. K. Bhardwaj who was then posted as Medical Officer Incharge of District Jail, Fatehgarh. An application to the Superintendent, Jail was filed by the victim on 12.4.1988. When no action was taken against the erring officers, the convict filed a complaint before the Special Judge (D.A.A.) under Sections 394/397, I.P.C. against the above Deputy Jailors.

3. The Special Judge recorded the statement of the complainant/ convict, Ishrat Meer Khan u/s 200, Cr. P.C. and that of the witnesses, Mangal Khan and Kailash Nath Dubey u/s 202, Cr. P.C. The complainant also examined Dr. A. K. Bhardwaj who had examined his injuries and prepared his injury report. The learned Judge summoned the accused persons u/s 204, Cr. P.C. Aggrieved of this order, the present revision has been filed.

4. List revised. None responds for the revisionists.

5. On perusal of the impugned order, it is evident that the court below recorded the statement of the two witnesses, Mangal Khan and Kailash Nath Dubey u/s 202, Cr. P.C. They have supported the allegations made in the complaint that the revisionists/accused assaulted the complainant, Ishrat Meer Khan on 11.4.1988 at 6.30 p.m. The complainant also examined Dr. Bhardwaj who examined his injuries. The Jail Superintendent, Sri S. K . Singh was also examined as witness u/s 202, Cr. P.C. Thus, *prima facie* the incident stood proved.

6. As far relates to the restriction imposed u/s 197, Cr. P.C. that no public servant shall be tried for any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, the trial court took care of it and summoned the Jail Superintendent and recorded his statement also to ascertain whether the Deputy Jailors may in discharge of their official duty, cause bodily injury, humiliation or harassment to any convict inside jail. The Jail Superintendent informed on oath that no such authority has been conferred on the Deputy Jailors. In exercise of the power conferred u/s 48 of the Prisoners Act, only the Jail Superintendent has power to award punishment to the convict, if he does such an act which is in violation of the Rules and discipline inside jail. The trial court was of the view, there was sufficient material to *prima facie* make out the offences punishable u/s 394/397, I.P.C. by the accused persons. At the stage of summoning u/s 204, Cr. P.C. the evidence adduced by the complainant is not scrutinised in such a manner that it was sufficient for recording the conviction of the accused. I am, therefore, of the view that the trial court has committed no error in summoning the accused persons.

7. The revision is without merit. It is accordingly dismissed.