

(2010) 10 AHC CK 0290**Allahabad High Court****Case No:** Criminal Miscellaneous Case No. 3090 of 2008

Pappu alias Sunil and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Oct. 19, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 216, 482
- Dowry Prohibition Act, 1961 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 302, 304B, 498A

Hon'ble Judges: Raj Mani Chauhan, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Raj Mani Chauhan, J.

Heard learned Counsel for the Petitioners and learned A.G.A. for and State as well as perused the documents available on record.

2. This petition u/s 482 of Code of Criminal Procedure (hereinafter referred to as Code) has been filed by the Petitioners against the order dated 12.08.2008, passed by the learned Additional Sessions Judge/F.T.C. Court No. 7, Sitapur in Sessions Trial No. 445 of 2006 (State v. Pappu alias Sunil and Ors.), Crime No. 121 of 2006, under Sections 498A, 304B I.P.C. and Section 3/4 D.P. Act, Police Station Maholi, District Sitapur, whereby learned Additional Sessions Judge at the time of writing judgment found that on the basis of evidence adduced by the prosecution an alternative charge u/s 302 I.P.C. was required to be framed against the accused.

3. The submission of learned Counsel for the Petitioners is that on the written report of complainant Shree Ram Kishun, police of Police Station Maholi registered a case under Sections 498A, 304B I.P.C. and Section 3/4 D.P. Act against the accused for investigation. The Investigating Officer after investigation of the case has submitted charge sheet against the accused. Learned Chief Judicial Magistrate on the basis of

charge sheet submitted by the Investigating Officer committed the case to the court of Sessions for trial which gave rise to Sessions Trial No. 445 of 2006. The learned Sessions Judge had concluded the trial but at the time of writing judgment found that on the basis of evidence adduced by the prosecution an alternative charge u/s 302 I.P.C. was required to be framed. Learned Counsel for the Petitioners submits that the prosecution has led the evidence against the accused in support of charges which were framed against the accused. Accused could not be charged on alternative Section 302 I.P.C. which requires different standard of proof. The impugned order passed by the learned Additional Sessions Judge for framing alternative charge is illegal and liable to be quashed.

4. Learned A.G.A. opposed the petition and supported the order passed by the learned Additional Sessions Judge and argued that the learned Sessions Judge was fully competent u/s 216 of the Code to frame an alternative charge on the basis of evidence adduced by the prosecution. The court has accorded its satisfaction for framing of alternative charge. The accused will get opportunity for further cross examination of the prosecution witnesses after framing of alternative charge, therefore, accused are not prejudiced by the impugned order. The impugned order does not suffer from any illegality which does not call for any interference.

5. As per provision of Section 216 of the Code, the Court can alter or frame additional charge against the accused on the basis of evidence adduced by the prosecution. The court can frame alternative charge too on the basis of evidence adduced by the prosecution. In this case, the trial court on the basis of prosecution evidence has ordered to frame alternative charge u/s 302 I.P.C. which in my opinion does not suffer from any illegality. The petition is devoid of any merit and is liable to be dismissed.

6. The petition is, therefore, dismissed.

7. The trial court after framing of alternative charge will proceed according to law and conclude the trial expeditiously, preferably within a period of three months from the date of certified copy of this order is produced before it.