

**(1997) 09 AHC CK 0240**

**Allahabad High Court**

**Case No:** Criminal Revision No. 654 of 1997

Ram Nandan and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Sept. 2, 1997

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 446, 446(1)
- Dowry Prohibition Act, 1961 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 304B, 498A

**Citation:** (1997) 21 ACR 990

**Hon'ble Judges:** P.K. Jain, J

**Bench:** Single Bench

**Final Decision:** Disposed Of

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**Judgement**

P.K. Jain, J.

Heard Sri Ajit Kumar Singh, learned Counsel for the revisionists and the learned A.G.A.

2. The revisionists, Ram Nandan and Ram Chandra stood sureties in a criminal case, State v. Rajesh and Ors. under Sections 498-A and 304B, I.P.C. and u/s 3/4 Dowry Prohibition Act, P.S. Nandganj, district Ghazipur, for accused Rajesh. Rajesh did not appear on the date fixed. Therefore, notices were issued to the sureties. In the meantime father of accused Rajesh moved an application before the Magistrate concerned apprehending murder of accused Rajesh and praying for direction to the police to conduct enquiry. Another application u/s 156(3), Code of Criminal Procedure was moved by father of accused Rajesh on which learned C.J.M. passed an order directing the police concerned to register and investigate the case. The sureties sought time for production of the accused but ultimately they did not produce the accused. Therefore, by an order dated 15.11.96 the learned Magistrate forfeited the surety bonds and directed the sureties (the revisionists) to deposit the

amount of the bond within fifteen days failing which, he directed that the recovery proceedings may be initiated against them.

3. An appeal was filed against this order which was dismissed by the appellate court by order dated 8.5.97. Both these orders are challenged in this revision mainly on the ground that there is no compliance of the mandatory provisions of Section 446, Code of Criminal Procedure. It is also contended that since the learned Magistrate had directed registration and investigation of the case regarding murder of Rajesh, the learned Magistrate ought to have waited till the result of the investigation.

4. There is substance in the arguments of the learned Counsel for the revisionists. It is not disputed that on the application of Shyam Lal Gupta, father of accused Rajesh, the learned C.J.M. was pleased to pass an order directing registration of the case and investigation. Allegations in the application u/s 156(3), Code of Criminal Procedure were that the applicant apprehended murder of Rajesh Kumar. If Rajesh Kumar was killed or murdered, then the bonds shall stand automatically discharged and the case against Rajesh Kumar shall stand abated. Therefore, till the result of the investigation was known, the bonds could not be forfeited for default of accused Rajesh.

5. Even if the bonds were forfeited, the learned Magistrate was bound to follow the procedure provided u/s 446(1)(2), Code of Criminal Procedure. He was required to issue notice to the sureties to deposit the amount of penalty or show cause why amount of penalty may not be recovered from them. In case the sureties furnished any explanation, the same must be disposed of by the learned Magistrate and it is only after the disposal of the cause that the learned Magistrate could have initiated the recovery proceedings. Section 446(1), Code of Criminal Procedure provides that "where a bond under this Code is for appearance...that the bond has been forfeited...the court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid.

Thus, the order that can be passed after forfeiture of bonds is to direct the sureties to deposit the amount of bond or to show cause why it should not be paid. There is a catena of pronouncements holding that these requirements of law are mandatory and any direction for initiating recovery proceedings without issuing show cause notice is Invalid. Therefore, second part of the order whereby the learned Magistrate directed that in case of failure to deposit Rs. 10,000 within fifteen days, recovery proceedings shall be initiated in accordance with law, is illegal.

6. The learned appellate court did not take notice of this aspect of the matter.

7. In the result, the revision succeeds and is hereby allowed. Impugned orders dated 15.11.96 and 8.5.97 passed by the Courts below are hereby quashed. In case the result of investigation has been brought to the notice of the Court, the court may proceed further taking into consideration the result of investigation on the

application u/s 156(3), Code of Criminal Procedure moved by the father of accused Rajesh.