
(1997) 09 AHC CK 0128
In the Allahabad High Court
Case No : Criminal Revision No. 1266 of 1991

Gangs Pandey and Others	Vs	APPELLANT
State of U.P.and Another		RESPONDENT

Date of Decision : 19-09-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 204

Citation : (1997) 09 AHC CK 0128

Hon'ble Judges : G.S.N.Tripathi, J

Final Decision : Allowed

Judgement

G.S.N. Tripathi, J.—This is a revision under Section 397, Cr. P.C. directed against the judgment and order dated 16/9/1991 passed by the then IX Additional Sessions Judge, Varanasi in Revision No. 245 of 1989, Smt. Indrawati Pandey v. State and others. That revision had arisen out of order dated 17/1/1989 passed by the then III Munsif Magistrate, Varanasi in Criminal Case No. 1829 of 1987, Smt. Indrawati Pandey v. Chandrama Pandey and others, whereby the learned Magistrate directed that only accused Chandrama Pandey and Ram Lochan Pandey be summoned to face the charge under Section 494/109, I.P.C. and he discharged accused Nos. 2,3,4,5,7 and 9 in absence of proper evidence on record. Accused No. 6 had died pendente lite,

2. Smt. Indrawati Pandey is admittedly the wife of Chandrama Pandey whose marriage had taken place on 7/5/1974. Smt, Indrawati Pandey filed a complaint before the learned Magistrate alleging illtreatment, demand of dowry, misbehaviour etc. at the hands of opposite parties. Smt. Indrawati Pandey also alleged that her husband Chandrama Pandey had remarried with another lady Manju Pandey with the help of the other members of the family. The remarriage of Chandrama Pandey makes out an offence under Section 494, I.P.C. and, therefore, the family members were arrayed as accused in the case by Smt. Indrawati Pandey.

3. After recording statements under Sections 200/202, Cr. PC., the learned

Magistrate came to the conclusion that a prima facie case against Chandrama Prasad Pandey and Ram Lochan Pandey has only been made out and no case has been made out against the remaining accused and, therefore, they were let off. This order dated 17/1/1989 was the subjectmatter of Criminal Revision No. 245 of 1989 before the Sessions Judge, Varanasi preferred by complainant Smt. Indrawati Pandey.

4. After hearing learned Counsel for the parties the learned Sessions Judge found that prima facie case against all accused persons had been made out. Therefore, the learned Sessions Judge directed the learned Magistrate to summon all these accused who were let off and proceed with the case in accordance with law. This order passed by the learned Sessions Judge has been challenged by the accused persons by filing the instant revision in this Court.

5. The learned Counsel for the revisionists submits that this is the stage of admission and the direction of the learned Sessions Judge for summoning all the accusedrevisionists is unwarranted. He should not have issued the direction to the learned Magistrate. The direction was that the learned trial Court shall summon Ganga Pandey, Daya Pandey, Rajendra Pandey sons of Raj Nath Pandey, and Smt. Manju Pandey daughter of Ram Lochan Pandey and the wife of Ram Lochan Pandey to face the trial for the offence under Section 494 read with Section 109, I.P.C.

6. I have heard the learned Counsel for the parties and have gone through the evidence on record. I find that the direction given by the learned Sessions Judge is without jurisdiction. This portion of the order is struck off. As regards the remaining prima facie case is made out. I find that the entire matter is to be reconsidered by the learned trial Court in accordance with directions and the evidence on record. The order of the learned Magistrate suffers from glaring mistake that there was no good case against the remaining accused. The learned Magistrate had to proceed on the premise (on the basis) of the evidence on record whether prima facie case is made out or not. If this standard is applied, and prima facie case is made out, he may pass suitable order.

7. The revision is allowed with the direction that the learned Magistrate shall rehear the case on the basis of material on record. If any case is made out against the accusedrevisionists who have filed this revision in this Court, the direction given by the learned Sessions Judge to summon all the accused shall be considered. The parties are directed to appear before the learned Magistrate on 14/10/1997. The record be sent to the Magistrate concerned immediately.

Revision allowed.