

(1998) 12 AHC CK 0003

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 4929 of 1998

Hazi Shafi

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 07-12-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302

Citation : (1999) 3 ACR 2650

Hon'ble Judges : Bhagwan Din, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Bhagwan Din, J.—Heard Sri Dharmendra Singhal, learned Counsel appearing for the applicants and the learned A.G.A.

2. A case was registered at the police station, Bilaspur. district, Rampur under Sections 147, 148, 149 and 302, I.P.C. vide Crime No. 178 of 1998 against the present applicants and another. Initially the case was investigated by the local Police but later on the investigation of the case was transferred to the C.B. C.I.D, U.P. Sector, Bareilly. After completing the usual investigation, the C.B. C.I.D. submitted a charge sheet against the applicants and another. The learned Magistrate, on receipt of the charge-sheet, passed an order on the order sheet that he perused the police case diary and the case diary furnished by the C.B. C.I.D. The cognizance of the case is taken. Register. The papers be sent to the police Copying Section. Summon the accused Nos. 1 to 6 for 30.9.1998.

3. The contention of the learned Counsel appearing for the applicants is that the learned Magistrate has not perused the case diary. Had he done so, he must have reached to a distinct conclusion. Therefore, the applicants moved two applications No. 2, 3-kha and 25-kha on different dates, bringing the infirmities in the notice of the Court, of the prosecution version and the evidence, recorded by the Investigating Officer, in support thereof, but the learned Magistrate did not

examine those infirmities and again in a very cryptic manner, passed the order on 7.11.1998, rejecting both the applications.

4. In a number of cases, this Court has required the Courts functioning as criminal courts to make speaking order while summoning the accused persons for trial. Speaking order does not mean the critical order, touching all the aspects of the case and also the defence version, if set out at that very stage, but to examine the "...jterial made available by the Investigating Officer along with the charge-sheet and satisfy himself, if the material evidence as such unchallenged is sufficient to prima facie make out the case against the accused persons. If he does so, definitely he applies his mind.

5. On the application of the above rule of law laid down by this Court, I find that the orders dated 17.9.1998 and 7.11.1998, are not made after application of the mind, but are mechanical one. They therefore, deserve to be quashed.

6. The application is allowed. The impugned orders are quashed. The learned Magistrate is directed to apply his mind and pass the order as directed above.