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**(2010) 08 AHC CK 0254**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous W.P. No. 14443 of 2010

Jai Gopal @ Bhinda and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

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**Date of Decision :** 09-08-2010

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Penal Code, 1860 (IPC) — Section 308, 323, 504, 506

**Citation :** (2010) 08 AHC CK 0254

**Hon'ble Judges :** S.C.Agarwal, J

**Final Decision :** Dismissed

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## **Judgement**

S.C. Agarwal, J.

1. Heard learned Counsel for the petitioners and learned ACA for the State.

This writ petition has been filed with a prayer to issue writ, order or direction in the nature of certiorari for quashing the impugned order dated 27.7.2010 passed by learned Sessions Judge, Mathura, in Criminal Revision No. 306 of 2010 and order dated 3.5.2010 passed by C.J.M., Court No. 1, Mathura in Case No. 520 of 2009, State v. Murlidhar.

2. Learned Counsel for the petitioners submitted that police submitted chargesheet against the petitioners under sections 323, 504 and 506, IPC. On the same facts, a criminal complaint was filed on which the petitioners were summoned under sections 323, 504, 506 and 308, IPC. Both the cases were clubbed under section 210, Cr. P.C. The Magistrate directed the petitioner to obtain bail under section 308 IPC. The contention is that since the complaint case has merged in the State case, the State case would prevail and the petitioners cannot be tried under section 308, IPC. Subsection (2) of section 210, Cr. P.C. provides that:

"(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any

person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report".

3. The above provision clearly indicates that if there is a complaint case and police chargesheet in respect the same matter, they shall "be tried together as if both the cases were instituted on a police report. It does not mean that the complaint case is wiped out completely. It simple means that both the cases shall be tried as State case. Thus, I do not find any merit in the submissions advanced by learned Counsel for the petitioners and the writ petition is liable to be dismissed.

The writ petition is dismissed.

Learned Counsel for the petitioners made a prayer that the Courts below he directed to dispose of the application for bail on the same day.

4. Since the petitioners are already on bail under sections 323, 504, 506, IPC and 308 has been applied due to head injury, hut the aforesaid head injury is simple in nature, in these circumstances, it is directed that if the petitioners surrender before the Trial Court within three weeks from today and apply for bail, their bail application be disposed of by the Courts below on the same day, keeping in view the aforesaid facts and also the law laid down by Full Bench of this Court in case of Amrawati and another v. State of U.P., 2004 (57) ALR 290 as affirmed by Hon''ble Apex Court in Lal Kamendra Pratap Singh v. State of U.P. 2009 (67) ACC 966 (SC) = 2009 (84) AIC 84 (SC).

For the period of three weeks, no coercive steps snail be taken against the petitioners

Direction Issued.