
(1990) 07 AHC CK 0040
In the Allahabad High Court
Case No : Criminal Revision No. 1012 of 1990

Kalawati

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 11-07-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 397

Citation : (1990) 07 AHC CK 0040

Hon'ble Judges : S.R.Bhargava, J

Final Decision : Allowed

Judgement

S. R. Bhargava, J.

1. This revision is directed against order dated 6.6.90 passed by Sri U. K. Khare, Special/Additional Sessions Judge, Fatehpur, in S.T. No. 448 of 1989 refusing to discharge the accused of the case. An order refusing discharge has been frequently held to be a final order and revisable u/s 397 Cr.P.C. u/s 227 Cr.P.C. accused can be discharged on the finding that there is not sufficient ground for proceedings against the accused. Absence of sufficient ground has been interpreted as absence of evidence to constitute prima facie case. When inspite of application u/s 227 Cr.P.C. the Sessions Judge refuses to discharge the accused, he must be satisfied with prima facie case against the accused. The order refusing discharge should be a speaking order and should briefly indicate the evidence consilulating prima facie case.

2. In the instant case while refusing discharge the Sessions Judge observed:

"I have carefully perused the case diary, statements of the witnesses recorded u/ Sec. 161 Cr.P.C. and other documents on record and I find that a prima facie case against the accused applicants has been made out under Section 498A, 304B and 302 read with Section 149 I.P.C. and the material placed before the Court disclose grave suspicion against the accused. Which have not been properly explained at this stage."

"Considering the broad probabilities of the case, the total effect of the evidence and documents produced before the Court, I am of the opinion that the charges against the accused persons were properly framed. The above view finds support in view of the principles laid down in A.I.R. 1979 Supreme Court page 366 referred by the learned counsel for the defence. At this stage, the Court is not expected to make a roving enquiry into the pros and cons of the matter and weigh the evidence as if the court was conducting the trial and so it is needless to mention the statements of the witnesses available on the record."

3. It is true that for determining prima facie case court need not weigh or sift the evidence or make roving enquiry. It need not give full statements of the witnesses. Evidently for a judicial speaking order it is necessary that the evidence constituting prima facie case should be briefly indicated and should not be substituted by vague words or by conclusion alone. It is not disputed that evidence in Sessions Trial has not yet commenced. In my earlier order I made it clear that if evidence has not commenced in the trial the accused may be discharged. In pursuance of that order the accused claimed discharge but it is unfortunate that his application has been disposed of by an order which can be termed as non speaking order.

4. For avoiding further delay I admit this revision and at this very stage I set aside the impugned order and direct the Sessions Judge concerned to dispose of application of the accused for discharge by any speaking order briefly indicating the evidence which constitutes prima facie case, after rehearing the party's counsel. Revision allowed.