
(1999) 03 AHC CK 0137
In the Allahabad High Court
Case No : Criminal Revision No. 1553 of 1982

Ori Harijan

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 16-03-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 200, 202
Penal Code, 1860 (IPC) — Section 323, 384

Citation : (1999) 1 ACR 687

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Advocate : A.D. Giri, for the Appellant; P.N. Singh and A.G.A., for the Respondent

Judgement

B.K. Sharma, J.—The facts leading to this revision are that in State v. Subrati and Ors. Crime No. 109 of 1981, u/s 384/323. I.P.C. Police Station Dheberuwa. district Basti, the police submitted a final report after investigation and after that the complainant Ori Harijan, who is now revisionist before this Court, filed a protest petition accompanied by affidavits of certain witnesses and the learned Magistrate came to the conclusion that the Investigating Officer did not record the correct statements of the witnesses in the case diary and considering that it was fit and proper to" summon the accused Subrati and Ors. for the offences u/s 384/323. I.P.C., directed their summoning by his order dated 26.11.1981.

2. The aforesaid order dated 26,11.1981 was challenged before the Court of Session in revision by accused persons, namely, Subrati, Bhola, Kayar and Dhorey. The revision was registered as Subrati and Ors. v. State, CrI. Revision No. 56 of 1982. The revision came up for disposal before Sri Rajendra Nath, the then Vth Additional Sessions Judge, Basti. He, after referring to the provision of Section 190 of the Code of Criminal Procedure and relying on an authority of this Court, observed that if the Magistrate did not agree with the final report submitted by the police, he can either order reinvestigation by the police or could

record the statement u/s 200, Code of Criminal Procedure, or could have made further enquiry himself or got It done by any other person and that it was only then that if he was satisfied that there was sufficient ground for summoning the accused he could order them to be summoned. On this ground, he allowed the revision and set aside the impugned order dated 26.11.1981. Being aggrieved by the same, the complainant Ori Harijan preferred the present revision.

3. I have heard Use learned Counsel for the parties. In this case, the learned Additional Sessions Judge, Basti while quashing the summoning order, ought to have passed consequential order directing the Magistrate to adopt the two alternative courses open to him. Under these circumstances, though the order of the learned Additional Sessions Judge, Basti dated 21.5.1982 is upheld, the learned Judicial Magistrate concerned is directed either to direct reinvestigation by the police in the case or take recourse to the procedure provided Under Sections 200 and 202, Code of Criminal Procedure and then pass further orders in the matter according to law. To this extent, this revision stands allowed.

4. Let a copy of this judgment be sent by the office to the Sessions Judge concerned within a week from today for communication to the Judicial Magistrate concerned for compliance of this order.