
(2010) 06 UK CK 0135
In the Uttarakhand High Court

Rajendra Kumar Sethi and Another	APPELLANT
Vs	
State of Uttaranchal and Others	RESPONDENT

Date of Decision : 16-06-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 254, 255, 256, 257
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 498A, 506

Citation : (2010) 06 UK CK 0135

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dharam Veer, J.—This application moved by the applicant u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as Cr.P.C.), is directed with the prayer for quashing the FIR in Case Crime No. 799/1996 and charge sheet filed therein dated 23.10.1996 and also to quash the order dated 23.3.2002 passed by the Additional Sessions Judge/I FTC, Dehradun and drop the proceedings of CrI. Case No. 1458/1996 State v. Rajendra Kumar Sethi and Anr.

2. Heard learned Counsel for the parties and perused the material on record.

3. In brief, the facts of the case are that respondent No. 4-Ruchi Subedi lodged an FIR at P.S. Kotwali, District Dehradun on 1.9.1996 at 4:00 P.M. against the present applicants-Rajendra Kumar Sethi and Smt. Krishna Sethi, on the basis of which the case was registered as Case Crime No. 709/96 Under Section 498-A/506/323 IPC. Thereafter, the matter was investigated and the charge sheet was filed by the Investigating Officer in the court. Later on 30.4.1997, learned Chief Judicial Magistrate, Dehradun framed the charge against the present applicants u/s 498A/323/506 IPC and 3/4 Dowry Prohibition Act. The charges were read over and explained to them to which they pleaded not guilty and claimed to be tried. Thereafter, an application was moved by the applicants on 28.5.1998 before the trial court with a prayer to drop the proceedings against

them. On the said application, learned CJM, Dehradun vide order dated 5.9.1998 passed the order thereby allowing the application dated 28.5.1998 moved by the applicants and dropped the proceedings of the case against them and accordingly they were discharged. Against the said order dated 28.5.1998, the State preferred a criminal revision, which was registered and decided being CrI. Revision No. 129/1998 vide judgment and order dated 23.3.2002, by the Additional Sessions Judge/First FTC, Dehradun, thereby allowing the revision, quashing the order dated 5.9.1998 passed by the CJM, Dehradun and further directing that the record of the case be sent back to the trial court to proceed as per law after taking the evidence and also to give decision as per law. Now, the applicants, assailing the judgment and order dated 23.3.2002 passed by the revisional court, have come up in C482 petition before this Court.

4. Sri Arvind Vashisth, learned Counsel for the applicants argued that the revisional court has erred in law by setting aside the order passed by the trial court. He further submitted that the order of discharge was passed by the trial court as per law.

5. I do not find any force in this argument advanced on behalf of the counsel for the applicant. In the instant case, charges were framed by learned CJM on 30.4.1997 and therefore, the case ought to have been decided only after recording of the evidence. On 28.5.1998, the applicants moved an application before the trial court that the proceedings against them could not proceed inasmuch as the respondent No. 4-Smt. Ruchi stated in her application that the applicant No. 1-Rajendra Kumar Sethi was married earlier and was having two sons and the applicant No. 1 got married with the complainant by cheating her.

6. Now, the question to be decided is that after framing of charge, can the accused be discharged from the offences levelled against them and that too without recording of evidence. It is settled law that if the applicants/accused could have moved an application for their discharge before framing of charge praying therein that the charge may not be framed against them, in that case only, they could have been discharged. However, after framing of charge, there is no question of their discharge inasmuch as after framing of charge, the decision can be given only on the basis of the evidence. It is pertinent to mention here that the trial court in its judgment-dated 5.9.1998 recorded the findings that the accused/applicants cannot be convicted under these sections and, therefore, there is no necessity of wasting of time for evidence. The finding arrived at by the trial court is absolutely perverse and per se illegal and against the settled principle of law inasmuch as after framing of charge, the evidence ought to have been recorded and only after recording of evidence, the accused/applicants could have been convicted or acquitted. So far as the question of discharge arises, this situation arises before framing of charge and the accused could have prayed by moving an application that no charge is made out against them and they may be discharged accordingly. The above view taken by me stands fortified with a verdict of Hon"ble Apex Court in the case of Ratilal Bhanji Mithani Vs. State of

Maharashtra and Others, , wherein in paragraphs 28 and 30, it was held as under:

28. Once a charge is framed, the Magistrate has no power u/s 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 353 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry. After the framing of charges if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in Section 254 - 258, to a logical end. Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed u/s 349 and 562 of the Code of 1892 (which correspond to Sections 325 and 360 of the Code of 1973).

30. If after framing charges the Magistrate whimsically, without appraising the evidence and without permitting the prosecution to produce all its evidence, "discharges" the accused, such an acquittal, without trial, even if clothed as "discharge", will be illegal. This is precisely what has happened in the instant case. Here, the Magistrate, by his order dated December 12, 1962 framed charges against Mithani and two others. Subsequently, when on the disposal of the Revision applications by Gokhale, J. the records were received back, he arbitrarily deleted those charges and discharged the accused, without examining the "remaining witnesses" of the prosecution which he had in the order of framing charges, said, "will be examined after the charge.

7. Therefore, in view of the above-said dictum of the Hon"ble Apex Court as well as in view of the foregoing facts and circumstances of the case, I have no hesitation to hold that the learned CJM, Dehradun was not correct in passing the order of discharge of the applicants/ accused after framing of charge. As such, the judgment and order passed by the revisional court i.e. Additional Sessions Judge/First FTC, Dehradun dated 23.3.2002 is absolutely correct and justified and the same is as per the spirit of law.

8. For the reasons as aforesaid, the present C482 petition is devoid of merits and the same is accordingly dismissed. Judgment and order passed by the Additional Sessions Judge/First FTC, Dehradun in Criminal Revision No. 129/1998 State v. Rajendra Sethi and Anr. is affirmed. The trial court is directed to proceed as per law in light of the observations made in the body of judgment.