
(1997) 03 AHC CK 0174
In the Allahabad High Court
Case No : Criminal Revision No. 1304 of 1993

Smt. Rekha and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-03-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 319
Penal Code, 1860 (IPC) — Section 498A

Citation : (1997) 21 ACR 479

Hon'ble Judges : P.K. Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

P.K. Jain, J.—Heard Sri Jokhan Prasad, learned counsel for the revisionists, Sri Rajiv Gupta, learned counsel for opposite party No. 2 and learned A.G.A. for State. The revision is being finally disposed of at the admission stage with the consent of the parties' counsel.

2. It appears that a complaint was filed by opposite party No. 2 against the revisionist and order for punishing u/s 498A, I.P.C. On the same facts police also investigated the case and submitted charge-sheet on which cognizance was taken by the learned Magistrate. The complaint case appears to have been amalgamated with the case which proceeded on charge-sheet filed by the police. Before proceeding with the trial, the learned Magistrate on the basis of statement recorded u/s 200/202, Code of Criminal Procedure summoned the present revisionists against whom no charge-sheet was submitted by the investigating agency. It is this order which is being challenged by the revisionists.

3. Having heard learned counsel for the parties and having considered the provisions of Section 319, Code of Criminal Procedure, this Court is of the view that it is only after commencement of the inquiry or trial that order u/s 319, Code of Criminal Procedure can be passed by the court concerned. No inquiry or trial had yet started, the Magistrate had no power u/s 319, Code of Criminal

Procedure to summon the revisionists. He can do so only after the trial has started and it is in the course of trial if he finds that there is evidence against the revisionists to the effect that they have committed offence as alleged by the complainant.

4. The revision is allowed and the impugned order is set aside. The Magistrate may proceed in accordance with observation made in the body of the judgment.

5. Stay order dated 17.9.1993 is vacated.