

(1977) 01 AHC CK 0008
In the Allahabad High Court
Case No : Criminal Rev. No. 1230 of 1975

State of U.P.

APPELLANT

Vs

Raj Bahadur and Others

RESPONDENT

Date of Decision : 24-01-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207A, 207A(6), 209, 227, 251A
Penal Code, 1860 (IPC) — Section 395, 412
Criminal Procedure Code, 1973 (CrPC) — Section 207A, 207A(6), 209, 227, 251A
Criminal Procedure Code, 1973 (CrPC) — Section 207A, 207A(6), 209, 227, 251A
Penal Code, 1860 (IPC) — Section 395, 412
Penal Code, 1860 (IPC) — Section 395, 412

Citation : (1977) AWC 223

Hon'ble Judges : K.C. Agrawal, J

Bench : Single Bench

Advocate : G.P. Dixit, for the Respondent

Final Decision : Allowed

Judgement

K.C. Agrawal, J.—This revision has been filed by the State of U.P. against the judgment of the Ist Additional Sessions Judge, Etawah, dated 2-7-1975, discharging the opposite parties Nos. 1 to 3 as well as Raghuraj Singh and Mahesh of the charges under Sections 395 and 412 IPC.

2. It appears that on a charge sheet submitted by the police, the Magistrate committed five accused persons, viz., Raj Bahadur, Mukat Singh and Vishram Singh, opposite parties Nos. 1 to 3, as well as Raghuraj Singh and Mahesh, under Sections 395 and 412 IPC. In exercise of the powers conferred by Section 227 Code of Criminal Procedure, 1973, the learned Sessions Judge examined the record of the case and the documents submitted therewith and being of the opinion that no sufficient ground for proceeding against the live accused, named above, existed, he discharged them. Against this order the present revision has been filed against the opposite parties Nos. 1 to 3. This would show that the State of U.P. has not preferred any revision against the discharge of Raghuraj

Singh and Mahesh. I am, therefore, concerned with the correctness of the order of discharge against opposite parties Nos. 1 to 3 only.

3. As stated above, the opposite parties were committed to the Court of Session for trial under Sections 395 and 412 IPC. On a perusal of the evidence, the learned Sessions Judge discharged Raj Mahathir as there was only one witness Taley Singh who had identified him in the identification parade. Mukat Singh and Vishram Singh were, however, discharged by the learned Sessions Judge on the finding that they being residents of the neighbouring village could not have committed the dacoity in the house of the complainant.

4. The question that was raised by the learned Counsel for the State was that u/s 227 of the new Code of Criminal Procedure, the learned Sessions Judge did not have jurisdiction or power to scrutinise the evidence elaborately and record a finding on the truthfulness of the allegations on the basis of the materials which came before him at that stage. At this place it may be relevant to quote the provisions of Section 227 of the new Code, which reads as under:

If, upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

5. A reading of the aforesaid provision would indicate that a Sessions Judge can discharge an accused if, upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, he finds that there is no sufficient ground for proceeding against the accused. The finding required to be recorded by the Sessions Judge, therefore, has to be with regard to the fact as to whether sufficient ground exists in a particular case for discharging the accused or not. It is truism that the word "sufficient" is not the same word as and has not the same meaning as "conclusive". The fact is that the proper interpretation of the words depends upon the context in which they are placed, and I think one must find some context of a compelling nature before one decides that the word "sufficient" has the same meaning as "conclusive". In my opinion, the word "sufficient" is a relative term. It requires reference to some end or purpose. In the present controversy, it only means that the materials mentioned in Section 227 Code of Criminal Procedure must be such that they make out a prima facie case and the same must not be determinative in itself. It may be material to be noted that Section 227 of the new Code corresponds to Sub-section (2) of Section 251-A of the old Code. Section 251-A of the old Code has been the subject matter of interpretation in several cases by this Court and the Supreme Court. In this connection, reference may also be made to Sections 207-A and 209 of the old Code which entitled an accused to be discharged if sufficient ground did not exist. Under Sub-section (6) of Section 207-A of the old Code, a Magistrate could discharge an accused in a proceeding started on the basis of a

police report if he found that the documents mentioned therein did not disclose any ground for committing the accused, whereas u/s 209 of the old Code an accused was entitled to be discharged if there were no sufficient grounds for committing him for trial. These provisions have been interpreted by the Supreme Court in Rajpal Singh and Others Vs. Jai Singh and Another, . In this case, the Supreme Court held that the Magistrate at the stage of making enquiry has no power to evaluate the evidence for satisfying of the guilt of the accused. He is only required to find as to whether a prima facie case is made out. He should not undertake an elaborate and painstaking process of examination, in aid of which he brought to bear his own appraisal of inconsistencies, improbabilities etc. To my mind, although the provisions of Sections 207-A and 209 of the old Code apply to a case of enquiry whereas Section 227 of the new Code is meant for application at the stage of trial by the Court of Session, but the meaning of the words used in the two provisions cannot be different.

6. Accordingly, while exercising the power u/s 227 Code of Criminal Procedure as well, the learned Sessions Judge cannot enter into an elaborate examination of the evidence and the documents submitted by the police and discharge an accused on the basis that the evidence given by the prosecution is being improbable and inconsistent does not establish the guilt upto the hilt. He is only required to consider the case prima facie.

7. Applying the principles enunciated above, it appears to me that the learned Sessions Judge acted in excess of his jurisdiction in discharging the opposite parties Nos. 1 to 3. A reading of the judgment of the learned Sessions Judge would indicate that he did not keep in his mind the limited jurisdiction conferred upon him u/s 227 of the new Code and decided the case as if he was conducting a trial. Accordingly, the judgment of the learned Sessions Judge is liable to be set aside.

8. In the result, the revision succeeds and is allowed. The judgment of the learned Sessions Judge dated 2-7-1975 is set aside, and the case is sent back to him for considering the record of the case and the documents submitted therewith and to pass an order as required by Section 227 Code of Criminal Procedure. The applicants are on bail. They shall be taken into custody forthwith. Their bail bonds are cancelled.