
(2011) 09 AHC CK 0151

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 18636 of 2011

Vijay Sharma and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 02-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2012) 1 ACR 259 : (2011) 10 ADJ 79 : (2012) 1 AWC 226

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble S.C. Agarwal, J.—Heard learned counsel for tire applicants and learned AGA for the State.

2. The instant application u/s 482 Cr.P.C. has been filed with a prayer to quash the order dated 2.5.2011 passed by the Addl. Sessions Judge, Court No. 2, Etawah in S.T. No. 271 of 2005 (State v. Vijay Sharma and others), under Sections 498A, 304B IPC and D.P. Act, P.S. Bakewar; District- Etawah, whereby the application to summon 19 defence witnesses mentioned in the application, were directed to be issued dasti to the accused applicant and learned Trial Judge refused service of summons through police.

3. The order passed by the learned Addl. Sessions Judge is discriminatory and cannot be sustained. There cannot be one yard stick for the prosecution and another for the defence. Both sides have to be treated equally. On one side the prosecution is given liberty to serve summons through agency of police, then same facilities cannot be denied to the accused persons. The Court cannot compel the defence to obtain dasti summons from the Court and serve the same themselves. When an application for summoning is moved either by the prosecution or by the defence, the Court is duty bound to issue process to ensure the presence of the witnesses.

4. But this fact cannot be over looked that a long list of 19 defence witnesses has been submitted by the defence without indicating the purpose for which these witnesses are sought to be summoned. The application does not disclose as to what fact, each of them is supposed to depose before the Court. Before issuing summons to the defence witnesses, the trial Court has to ensure that the witnesses so summoned are relevant for disposal of the case.

5. In these circumstances, the application is allowed and the order dated 2.5.2011 is set aside. The applicants are directed to furnish before the trial Court a summary of the facts, these 19 witnesses are supposed to depose before the trial Court and on the basis of such summary, the trial Court shall decide as to which of the witnesses are relevant for decision of the case and summons shall be issued by the trial Court through agency of police and the case shall thereafter be decided in accordance with law.