

CASE NO.:
Appeal (crl.) 177 of 2007

PETITIONER:
Anuran Rastogi & Ors

RESPONDENT:
State of U.P. and Anr

DATE OF JUDGMENT: 07/02/2007

BENCH:
Dr. ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of SLP (Crl.) NO. 3675 OF 2006)

Dr. ARIJIT PASAYAT, J.

Leave granted.

Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Allahabad High Court. The High Court by the impugned order partly accepted the challenge made by the respondent no.1, the informant, in Crime no.53 of 2005.

Factual background in a nutshell is as follows:

On the basis of the information given by respondent no.2 case of alleged commission of offence punishable under Section 498-A, 323, 504 of the Indian Penal Code, 1860 (in short the 'IPC') read with Sections 3 and 4 of the Dowry Prohibition Act, 1961 (in short 'Dowry Act') was registered. After investigation charge sheet was filed against the appellants. The magistrate took cognizance of the offences and issued summons to the accused persons. The offences are triable by Magistrate, First Class. The informant filed an application before the concerned Magistrate to the effect that on the basis of evidence collected by the investigating officer, cognizance ought to have been taken for offence punishable under Sections 406 and 307 IPC. The magistrate was of the view that after evidence is adduced, commission of the offence punishable under Sections 406 and 307 IPC is made out, then the prayer of the informant could be considered. Respondent no.2 filed a petition before the High Court stating that the materials collected by the investigating officer and contained in the case diary itself justified trial under Sections 307 and 406 IPC. It was pointed out that by addition of these sections, the case should be tried by the Court of Sessions while on the basis of cognizance taken the case is triable by the Magistrate. The High Court was of the view that the Magistrate had not applied his mind to the merits of the points raised by the informant. The Magistrate was not bound by the description in the police report and while taking cognizance it could make variation if there was sufficient material before him. The High Court felt that when the informant claimed that the materials contained in the case diary indicated commission of certain offences which make it case triable exclusively by the Court of Sessions, the Magistrate should at the time of framing charges consider and decide points so that unnecessary proceedings

are not taken up if the case is to ultimately go before the Sessions Judge. After having so held the High Court held that proper stage is the stage of framing charge. Direction was given to consider and decide the matter afresh.

Learned counsel for the appellants submitted that the approach of the High Court is clearly erroneous. It rightly held that at the time of framing charge the Magistrate could consider as to what are the offences for which accused persons have to be tried. Having held so, the High Court could not have found fault with the Magistrate's observations to similar effect.

We find that the High Court has unnecessarily made certain observations which lead to contrary conclusions. Having held that the proper stage for consideration is stage of framing charge, there was no necessity for further observations and/or directions. It rightly held that the Magistrate is not bound to take cognizance of the offences indicated in the police report. That being so, the ultimate directions of the High Court materially differ from its earlier conclusions.

The Magistrate has to consider material at the time of framing charge. Needless to say he will pass necessary orders if according to him the case is triable by the Court of Sessions.

The appeal is accordingly disposed of.