

A

ANURAN RASTOGI AND ORS.

v.

STATE OF U.P. AND ANR.

FEBRUARY 7, 2007

B

[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Code of Criminal Procedure, 1973:

C

ss.190 and 193—Cognizance of offence u/ss. 498A, 323 and 504 IPC and ss.3 and 4 of Dowry Prohibition Act by Magistrate—Application by informant that on the basis of evidence collected by Investigating Officer, case was triable by Sessions Judge under ss.406 and 307 IPC—Magistrate was of view that only after adducing evidence if offence u/ss.406, 307 is made out then cognizance under these sections would be taken—Aggrieved informant filed petition before High Court wherein it was held that Magistrate could consider offences for which accused has to be tried, at the time of framing charge and further observed that Magistrate had not applied his mind to merits of the points raised by informant—On appeal held, Magistrate not bound to take cognizance of offence indicated in the police report—High Court having held that proper stage is stage of framing charge, could not have found fault with the Magistrate's observation to similar effect.

D

E

On the basis of the information given by respondent no. 2, a case of alleged commission of offence punishable under ss. 498-A, 323, 504 IPC, 1860 read with ss. 3 and 4 of the Dowry Prohibition Act, 1961 was registered. The Magistrate took cognizance of the offences and issued summons to the accused persons.

F

G

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 ss.307 and 406 IPC and that by addition of these sections, the case was triable by the Court of Sessions. 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 he could make variation if there was sufficient material before him. The High Court felt that

H

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 ought to have considered and decided at the time of framing charges, the points so that unnecessary proceedings were not taken up and ultimately the case was to go before the Sessions Judge. Direction was given to consider and decide the matter afresh. Hence the present appeal.

Disposing of the appeal, the Court

HELD: 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. [Paras 6, 7] [338-H; 339-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 177 of 2007.

From the Judgment/Final Order dated 8.2.2006 of the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in CrI. Misc. Case No. 350/2006.

Gaurav Bhatia and Abhishek Chaudhary for the Appellants.

P. Narasimhan for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. 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.

3. Factual background in a nutshell is as follows:

A 4. On the basis of the information given by respondent no.2 case of
alleged commission of offence punishable under Sections 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.
B 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
C 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
D 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
E 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
F given to consider and decide the matter afresh.

5. 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
G have found fault with the Magistrate's observations to similar effect.

6. 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
H 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. **A**

7. 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. **B**

8. The appeal is accordingly disposed of.

D.G.

Appeal disposed of.