

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAI PUR BENCH, JAI PUR

SMT. LALITA VS. STATE OF RAJ. AND ORS.

SB Criminal Revision Pet. No. 1145 of 2008 under Section 397 read with Section 401 Cr. P. C. against the order dated December 8, 2003 of Addl. Sessions (Fast Track) No. 1 Baran in Sessions Case No. 164 of 2003.

Date of Order : October 31, 2008

PRESENT

HON'BLE MR. JUSTICE MAHESH CHANDRA SHARMA

Mr. Rohan Jain for the petitioner.
Ms. N. K. Singhal for the non-petitioners 2 to 11.
Mr. B. N. Sandhu PP for the State

BY THE COURT :

The petitioner Lalita filed misc. petition No. 49 of 2004 assailing the order dated December 8, 2003 passed by Additional Sessions Judge (Fast Track) No. 1 Baran by which charges were framed against non-petitioners 2 to 11 only under sections 148, 304/149, 120 B and 201 IPC and a prayer was made for framing

charge against the non-petitioners 2 to 11 for offences under sections 148, 149, 302, 365, 201 and 120 B IPC. This Court vide order dated September 16, 2008 treated the misc. petition as revision petition.

2. Brief facts of the case are that on August 19, 2003 one Ghanshyam lodged a report at Police Station Kishanganj Distt. Baran under sections 365, 323, 147 IPC which was later on converted into under sections 302, 365, and 147 IPC because one Radhey Shyam who was husband of the petitioner was murdered. The police filed challan against the non-petitioners 2 to 11 under sections 148, 365, 302, 149, 201 and 120 B IPC. The matter was committed for trial to Sessions Judge, Baran, who transferred it

to the Additional Sessions Judge (Fast Track) No. 1, Baran. On December 8, 2003, the Addl. Sessions Judge arbitrarily discharged the non-petitioners 2 to 11 for the offences under sections 302 and 365 IPC and framed charge against the non-petitioners 2 to 11 for the offences under sections 148, 304/ 149, 201 and 120 B IPC.

3. As stated above the wife of deceased Radhey Shyam, who was murdered filed the misc. petition which was converted into revision petition by the order of this court as stated above.

4. The learned counsel for the petitioner vehemently argued that learned Additional Sessions Judge has committed illegality in considering the meticulous evidence and appreciating documents at

the stage of framing charge. The order of the Addl . Sessions Judge refusing to frame charge under sections 302 and 365 IPC is palpably wrong and the order framing charge only under sections 148, 304/149, 12-B and 201 IPC is liable to be quashed and set aside. The Learned counsel placed reliance on Radhey Shyam vs. Kunj Behari and others (1989 Supp (2) SCC 572, Mohd. Akbar Dar and others vs. State of Jammu and Kashmir and others 1981 (Supp) SCC 80 and Hem Chand vs. State of Jharkhand (2008)5 SCC 113).

5. The Learned counsel for the non-petitioners 2 to 11 and Mr. B. N. Sandhu, Public Prosecutor submitted that the Learned Addl . Sessions Judge has not committed any illegality in framing charge against the non-petitioners 2 to

11 only under sections 148, 304/149, 120 B and 201 IPC.

6. I have heard counsel appearing for both the parties and carefully gone through the entire material available on record and also gone through the relevant case law.

7. In Radhey Shyam vs. Kunj Behari and others (supra), their Lordships of the Supreme Court held that at the stage of framing of charge the Court is not justified in going into meticulous consideration of evidence and appreciating documents and statements filed by police. In Hem Chand vs. State of Jharkhand (supra) the Apex Court held that at the stage of framing of charge, the court will not weigh the evidence.

The stage for appreciating the evidence for the purpose of arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused or not would arise only after all the evidence is brought on record at the trial.

8. In Mohammed Akbar Dar and others vs. State of Jammu and Kashmir and others (supra) the Apex Court while considering provisions of Section 211 Cr. P. C. propounded that at the stage of framing of charges, meticulous consideration of evidence and materials by court not required.

9. I have gone through the order passed by the Learned Additional Sessions. It appears from the order that

the Additional Sessions Judge has taken into consideration even the documents and statements of witnesses recorded by the police under section 161 Cr. P. C. Thus the order passed by the Learned Additional Sessions Judge framing charge only under sections 148, 304/149, 120 B and 201 IPC against the non-petitioners 2 to 11 and not framing charge under sections 302 and 365 IPC, is liable to be set aside. The matter is remanded back to the Learned Additional Sessions Judge (Fast Track) No. 1 Baran to rehear arguments in view of the case law cited above and decide the matter as afresh within period 15 days from the date of receipt of this order.

10. After hearing both the parties if it finds that the charges are to be framed then he will frame the charges and

proceed for trial expeditiously.

11. The revision petition is disposed as indicated above and the matter is remanded back.

Stay

12. In view of the order passed in the main petition, the stay application also stands disposed of.

(Mahesh Chandra Sharma) J.

OPPareek/