

**SUPREME COURT OF INDIA**

Surjit Kaur

Vs.

D.S. Kapoor

(D.P. Mohapatra and Shivaraj V. Patil JJ.)

28.09.2001

**ORDER**

**Shivaraj V. Patil, J.**

1. Heard the petitioner, party-in-person and the learned counsel for the respondents.

2. The husband of the petitioner (since deceased) filed a complaint under Sections 506/452/323/34 read with Section 120-B IPC against the respondents 1-4. It is not necessary to set out the details of the complaint as the learned Additional Sessions Judge in his order has set out the facts of the case in detail.

3. After the preliminary statements were recorded, the respondents were summoned and after recording pre-charge evidence, the learned Magistrate discharged the respondents finding no justification to proceed with the case. The petitioner, aggrieved by the order of the learned Magistrate, filed criminal revision No. 80/99 in the court of Addl. Sessions Judge, New Delhi. The learned Additional Sessions Judge, after hearing the petitioner, party-in-person and the learned counsel for the respondents and having considered the material brought on record, both documentary and oral, dismissed the revision petition as against the respondents 1-3 and allowed it only as against respondent no. 4, Javed Ahmed. Aggrieved by the said order of the learned Addl. Sessions Judge, the petitioner filed Criminal Misc. (Main) No. 2703/2000 under Section 482 Cr.P.C. read with Article 227 of the Constitution of India before the High Court.

4. The High Court did not find any illegality or infirmity in the order passed by the learned Additional Sessions Judge and in that view, the petition was dismissed. Hence, the petitioner has filed this Special Leave Petition before this Court.

5. The petitioner, party-in person, submitted that there is enough evidence to proceed against respondents 1-3 also; when the same evidence was accepted as against respondent no. 4, Javed Ahmed, the learned Additional Sessions Judge was not right in dismissing the revision petition as against respondents 1-3. It was further submitted that the learned Additional Sessions Judge having observed that the evidence given by the husband of the petitioner and the petitioner is positive against all the respondents, the case should have been proceeded

against all of them. The High Court also committed an error in confirming the order passed by the learned Additional Sessions Judge. On the other hand, the learned counsel for the respondents made submissions supporting the impugned order.

6. We have perused the impugned order and the records placed before us. The learned Additional Sessions Judge has considered both oral and documentary evidence. It is no doubt true that referring to the statements of the complainant and his wife, the learned Additional Sessions Judge has said that their evidence is positive meaning thereby they gave evidence supporting the complainant. But, on scrutiny and after examination of evidence, both oral and documentary, did not find any justification to proceed with the criminal case against the respondents 1-3. In the impugned order, he has pointed out that Exbt. PW2/5 clearly shows the mind of the complainant that the complainant bore some ill-will against the respondent D.S. Kapoor. It is further pointed out that in PW2/4, in the complaint written by the complainant, he had nowhere mentioned the names of respondents 1- 3 and that no medical examination has been got done and no photographs of the alleged breaking of the door have been placed on record. Under the circumstances, the learned Additional Sessions Judge dismissed the revision petition as against respondents 1-3. As far as respondent no. 4 is concerned, his name was found in Exbt. PW2/4; the memo report given by the complainant and the same was supported by the testimony of the witnesses. The learned Additional Sessions Judge has observed that even if the medical evidence was not there, the oral evidence required consideration as far as Javed Ahmed, the respondent no. 4, was concerned. The High Court, not finding any infirmity or illegality in the order of the learned Additional Sessions Judge, confirmed the same.

7. In these circumstances, in our view, this case does not call for interference at our hands under Article 136 of the Constitution of India. Hence, the petition is dismissed.

8. However, we make it clear that in case any evidence comes on record justifying to proceed against the respondents 1-3, it is for the trial court to proceed in accordance with law.