

(2016) 05 AHC CK 0320

In the Allahabad High Court

Case No : Criminal Misc. Application No. 4143 of 2015.

**Akash Gupta and another - Applicants @HASH State of U.P. and another -
Opposite Parties**

Date of Decision : 27-05-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Dowry Prohibition Act, 1961 — Section 3, Section 4
Penal Code, 1860 (IPC) — Section 498A

Citation : (2016) 97 ACrC 71 : (2016) 11 ADJ 22

Hon'ble Judges : Karuna Nand Bajpayee, J.

Bench : Single Bench

Advocate : Sharique Ahmed, Advocate, for the Applicant; Govt. Advocate,
Rakesh Kumar Bharti, for the Opposite Party

Final Decision : Partly Allowed

Judgement

Karuna Nand Bajpayee, J. - This application u/s 482 Cr.P.C. has been filed seeking the quashing of charge sheet No. 229 of 2014 dated 13.11.2014 (State v. Akash Gupta and another) pending in the Court of C.J.M. Shahjahanpur, arising out of Case Crime No. 57 of 2014 u/s 498A IPC and 3/4 D.P. Act, P.S. Kotwali District Shahjahanpur.

2. It seems that in order to explore the possibility of an amicable settlement between the parties, the matter was referred to undergo mediation proceedings by this court vide order dated 12.2.2015. The report of Mediation Centre dated 12.7.2015 reveals that the aforesaid attempt could not succeed and did not bear any fruit for certain reasons. The Court, therefore, deems it fit to decide the matter on merits.

3. Heard learned counsel for the applicants, learned counsel for the opposite party No. 2 and learned AGA.

4. Submission of the counsel for the applicants is that when the mother of applicant no. 1 visited his house where he lived after his marriage, his wife insisted for leaving her mother in law on the pretext of disturbance into her

privacy and started misbehaving with her mother in-law and eventually left the house of applicant no. 1, which was situated in Bangalore and started residing in a girl P.G. She did not come back despite repeated requests of the applicant no. 1 to the wife to understand the situation that applicant no. 1 being the sole son of applicant no. 2 cannot avoid his filial obligations towards his mother who is a widow and an old aged lady while his father had died way back when applicant no. 1 was aged about only five years. The counsel for the applicant has drawn the attention of the court to the paragraphs no. 20 to 23 of the affidavit of Criminal Misc. Application. It has further been submitted by the counsel for the applicant that applicant no. 2 the mother, generally resides and lives separately in district Narsingpur (State of Madhya Pradesh) where the applicant no. 1 had been born and was brought up and after completing his initial schooling from Kendriya Vidyalaya Narsingpur, he got selection in M.P.P.E.T. i.e. the Madhya Pradesh Engineering Test with higher rank and got admission in Government Engineering College at Gwalior in Bachelor of Engineering in Computer Science and completed the same in the year 2004 with extreme hardship and struggle by giving tuition to the students to manage his fees and other expenses. After completing the education applicant no. 1 got job in Bangalore City and with the passage of time, he came into contact with the daughter of opp.party no. 2 and developed intimacy with her which ultimately culminated into marriage on 29.1.2013 with the consent of both the families. Counsel for the applicants further submits that the applicant no. 2 is mother in law of daughter of O.P. No. 2 and has no concern with the day to day family affairs of applicant no. 1 or his conjugal relations with his wife and she resides and lives in district Narsingpur, Madhya Pradesh. In support of this fact counsel for the applicants has drawn the attention of the court to the paragraph no. 38 of the affidavit of Criminal Misc. Application and to the various documents like domicile certificate of applicant no. 2, her ration card, Saving Bank Account of Zila Sahkari Kendriya Bank, Narsingpur and Voter I.D. Card of applicant no. 2 which have been appended as Annexure No. 12 to said affidavit. Submission is that as the wife of applicant no. 1 who is daughter of opp.party no. 2 belong to a rich family and was not willing to discharge even the normal courteous and filial duties towards her mother in law, the discord arose between the husband and wife which had nothing to do with anything like dowry. The opp.party no. 2 being father also did not advise his daughter on the right lines or to adhere to the matrimonial responsibilities. Submission is that as has become so common these days, the opp.party no. 2 lodged the first information report by giving colour to the above narrated matrimonial dispute on the false lines of demand of dowry and cruelty as well as on the false pretext of illicit relation of applicant no. 1 with some other girl and also implicated applicant no. 2 making absurd allegations against her whereas she the applicant no. 2, had no concern whatsoever with any of the matrimonial dispute between husband and wife as she for most of the time lived in district Narsingpur, which is a far off place. Counsel has also placed reliance on the Apex Court decision given in Geeta Mehrotra and another v. State of U P. and another (2012) 10 SCC 741. On the basis of what has been observed by the Apex Court

in the aforesaid case the applicants" counsel has tried to submit that the in-laws are always falsely implicated while the dispute is invariably confined between husband and wife and it is only because of the grievance against husband that the other in-laws as a matter of rule are victimised in all such cases. It is further submitted that although the investigating officer has exonerated other accused persons who are relatives of applicant no. 1 and 2 and were implicated into the first information report but has not conducted the investigation properly in respect of applicant no.1 and 2 and has wrongly submitted charge sheet dated 13.11.2014 against the applicant no. 1 and 2. Learned court below has also not applied its mind while taking cognizance of the offences u/s 498A IPC and 3/4 D.P. Act and issuing summons against the applicants.

5. Learned counsel for the opp.party no. 2 and learned AGA have opposed the submissions made on behalf of the applicants and have submitted that the disputed question of facts are not liable to be adjudicated upon by this court under its inherent jurisdiction and such adjudication should be left for the trial court after adducing evidence by both the sides.

6. The record has been perused in the light of submissions made at the bar.

7. So far as the applicability of the pronouncement given by the Apex Court in the case of Geeta Mehrotra(Supra) with regard to the present case is concerned though this court is of the view that the aforesaid pronouncement of the Apex Court given in Geeta Mehrotra (Supra) cannot be subjected to any such over generalised interpretation, as has been sought to be given by applicants counsel that in all matrimonial cases where the in-laws have been made accused, they should be presumed to have been falsely implicated in the case, nor can the aforesaid decision be ascribed the interpretation to mean that in all cases regardless of the facts and circumstances pertaining to that particular case all in-laws will have to be presumed to be innocent and it is only the husband who should be taken to be guilty in such offences of demanding of dowry or committing cruelty because of its non fulfilment; but what is required for the court is to be extremely circumspect and watchful in such matters and all such cases relating to such offences should be vigilantly screened. Obviously this has to be so because of the incidence of blanket false implications of entire family that is sometimes being done by the aggrieved wife or the family members of her parental side out of sheer malice and frustration. All cases must turn and be decided on the facts pertaining to that very case and there can definitely not be any cut and dried straight jacket formula of universal application to be applied in all matrimonial matters as has been suggested by the applicants counsel during the course of his submissions.

8. In fact, the law with regard to the appropriateness of matters in which the High Court may intercept and put an end to the on going criminal proceedings has been expatiated upon in a number of authoritative decisions and the subject remains no more res-integra. The Apex Court decisions given in the case of R.P. Kapur v. State of Punjab AIR 1960 SC 866 and in the case of State of Haryana v.

Bhajan Lal 1992 SCC (Cr.) 426 have also recognised certain categories by way of illustration which may justify the quashing of a complaint or charge sheet. Some of them are akin to the illustrative examples given in the above referred case of Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi 1976 3 SCC 736. It was observed by the Hon^{ble} Apex Court in Bhajan Lal's case as follows:-

"The following categories can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognisable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) where the un-controverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) where the allegations in the FIR do not constitute a cognisable offence but constitute only a non-cognisable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. Illumined by the aforesaid case law, this court has adverted to the entire facts

of the case. In view of the material available on record, it may be noted that the criminal case in question has been lodged against applicant no. 1 who is husband of the daughter of Opp.Party no. 2 and also against the applicant no. 2 who is mother-in-law of daughter of opp.party no. 2. It further reveals from the record that the allegations regarding demand of dowry and cruelty have been made for the entire period after two months or two and a half months from the date of marriage. It further reveals from the record that the daughter of opp.party no. 2 went with applicant no. 1 to Bangalore after one week of marriage and was residing there till the dispute arose in between husband and wife and thereafter she left the Bangalore city after such dispute and started living in Delhi and district Shahjahanpur (Uttar pradesh), which is her Mayaka. So far as applicant no. 1 is concerned, the material available in case diary is in the form of the statements of Smt. Richa Tomar and her family members wherein allegations regarding demand of dowry and cruelty against the wife Smt. Richa Tomar as well as illicit relationship of applicant no. 1 with one lady have been narrated. So far as applicant no.2 is concerned, there seems to be no very specific allegation of demand of dowry and cruelty against her in the statements made before the Investigating Officer and the allegations are more of omnibus nature. There are documents issued by public authorities disclosing the fact that she lives separately in district Narsingpur, State of Madhya Pradesh and hence. it appears that she had visited her son who is residing in Bangalore City. The documents so relied by the applicant no.2 have been issued by the public authorities and the learned counsel for the opp.party no. 2 and learned AGA could not dispute the veracity of these documents, which impels this court to treat these documents as the documents of unimpeachable category and hence, the factum of separate living of applicant no.2 who is an old aged widow lady remains un-controverted. It is quite clear that the prosecution of applicant no. 2 appears to be uncalled for in the wake of vague nature of allegations against her for demanding dowry or committing cruelty and also in wake of the un-controverted factum of her separate living from that of applicant no. 1. It looks manifest that the implication of the mother is nothing but an outcome of malice and feelings of vengeance and she (O.P.No. 2) has fallen prey to the vengeful indiscretion of the aggrieved wife who for the given reasons had already entered the no love lost relationship with her husband. However, as there is no material which may be legally considered in contradiction to the allegations made against applicant no. 1, the charge which he is facing is required to be adjudicated at the stage of trial after appreciation of evidence, which may be led by the parties before the concerned court below. He being husband had the principal responsibility, legal and moral both, to ensure the welfare of his wife and provide her with a normal matrimonial life free of harassment. Having failed on that score badly coupled with the specific allegations made against him, his case appears quite distinguishable from his mother.

10. The aforesaid categories recognised by the Apex Court in the case law referred to herein above are required to be considered in the light of the record

of the case and in considered opinion of this court the matter relating to applicant no. 2 who is the widow lady and the mother of applicant no. 1 clearly falls in illustrative category no. 7 and also to a great extent in category No. 5

11. In perspective of the aforesaid discussion and observations, so far as the peculiar facts and circumstances of this case are concerned, this court is of the view that the proceedings pending in the Court of C.J.M. Shahjahanpur, arising out of Case Crime No. 57 of 2014 u/s 498A IPC and 3/4 D.P. Act, P.S. Kotwali District Shahjahanpur, so far as they relate to applicant no. 2 Smt. Indu Gupta wife of late Sri Mahendra Nath, deserve to be quashed.

12. This court is also of the considered view that the proceedings pending in the Court of C.J.M. Shahjahanpur, arising out of Case Crime No. 57 of 2014 u/s 498A IPC and 3/4 D.P. Act, P.S. Kotwali District Shahjahanpur, so far as they relate to the applicant no. 1 Akash Gupta son of late Mahendra Nath do not require any interference by this court as his case does not fall in any of the illustrative categories recognised by the Hon. Apex Court which contemplate the quashing of criminal proceedings going on against a given accused.

13. However, it is observed that if the bail has not been obtained as yet, the accused/applicant no. 1 may appear before the court below and apply for bail within one month from today. The court below shall make an endeavour to decide the bail application, keeping in view the observations made by the Court in the Full Bench decision of Amrawati and another v. State of U.P. 2004 (57) ALR 290 and also in view of the decision given by the Hon"ble Supreme Court in the case of Lal Kamendra Pratap Singh v. State of U.P. 2009 (3) ADJ 322 (SC).

14. In the aforesaid period or till the date of appearance of the accused in the court below, whichever is earlier, no coercive measures shall be taken or given effect to.

15. With these observations, this application is partly allowed accordingly.