

(2011) 06 UK CK 0070

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C482) No. 248 of 2006

Alok Kumar Sharma and Others

APPELLANT

Vs

Judicial Magistrate and Omkar Nath Dubey

RESPONDENT

Date of Decision : 08-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 200, 202, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 406, 498A

Citation : (2011) 06 UK CK 0070

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—Heard.

2. By means of this petition moved u/s 482 of Code of Criminal Procedure, 1973 (for short Code of Criminal Procedure .), the Petitioners have sought quashing of the proceedings of criminal case No. 1430 of 2005, Omkar Nath Dubey v. Alok Kumar and Ors., pending in the court of Judicial Magistrate, Kashipur, Udham Singh Nagar.

3. Brief facts, of the case, are that Respondent No. 2 Omkar Nath Dubey filed a criminal complaint before the trial court on 20.07.2005. It is pleaded in the criminal complaint that complainant's daughter Manju got married to Petitioner No. 1 Alok Kumar Sharma on 11.05.2003. She was given dowry including STRIDHAN. It appears that after sometime the relations between the parties to matrimony got soured, and complainant's daughter filed an application u/s 125 Code of Criminal Procedure ., before Judge Family Court, Udham Singh Nagar, and also got criminal proceedings initiated in respect of offences punishable u/s 498A IPC, and 3/4 Dowry Prohibition Act, 1961. In the complaint in question, the complainant has given details of the STRIDHAN in para 2 (of the complaint), and it is alleged that the STRIDHAN was not returned to the daughter of the

complainant. The trial court after recording statement of the complainant u/s 200 Code of Criminal Procedure ., and that of Krishnanad Dubey and Om Prakash Pandey u/s 202 Code of Criminal Procedure , summoned the Petitioners namely Alok Kumar Sharma, Pradeep Kumar Sharma, Vichitra Sharma, Mukesh Pandey and Dinesh Kumar Pandey, to face the trial in respect of offence punishable u/s 406 IPC. The said order was passed by the trial court on 19.10.2005. Aggrieved by said order the present petition u/s 482 Code of Criminal Procedure ., is moved on behalf of the accused u/s 482 Code of Criminal Procedure ..

4. Learned Counsel for the Petitioners submitted that it is abuse of process of law on the part of the Respondent No. 2 to implicate the Petitioners in criminal case due to matrimonial discord between his daughter, and the Petitioner No. 1. It is pointed out that Petitioner No. 1 Alok Kumar Sharma is husband, Petitioner No. 2 Pradeep Kumar Sharma is father-in-law, Petitioner No. 3 Smt. Vichitra Sharma is mother-in-law, Petitioner No. 4 Mukesh Pandey and Petitioner No. 5 Dinesh Kumar Pandey are maternal uncles-in-law of the daughter of the complainant.

5. From the papers on record it is evident that Petitioner No. 4 Mukesh Pandey and Petitioner No. 5 Dinesh Kumar Pandey are residents of Village Dhanaili while the Petitioner No. 1 Alok Kumar Sharma (husband), and his parents (Petitioner No. 2 and Petitioner No. 3) are residents of Village Kyorar. It is nowhere stated either of the witnesses examined u/s 200, 202 Code of Criminal Procedure ., that any of the part of the STIRDHAN is held up by the Petitioner No. 4 and Petitioner No. 5 in their village Dhanaili. In the circumstances, this Court is of the view that Petitioner No. 4 Mukesh Pandey and Petitioner No. 5 Dinesh Kumar Pandey who are maternal uncles of Petitioner No. 1 are falsely implicated due to the matrimonial discord between the daughter of the complainant and her husband Alok Kumar Sharma. To make the two to stand trial is nothing but abuse of process of law. However, same cannot be said with regard to the remaining three Petitioners who are husband, father-in-law, and mother-in-law of the complainant.

6. Having considered submissions of learned Counsel for the parties, and after going through the papers on record, this Court is of the view that present petition deserves to be partly allowed. The petition u/s 482 Code of Criminal Procedure ., is partly allowed. The proceedings of criminal case No. 1430 of 2005, Omkar Nath Dubey v. Alok Kumar and Ors., pending in the court of Judicial Magistrate, Kashipur, are hereby quashed so far the same relate to the Petitioner No. 4 Mukesh Pandey and Petitioner No. 5 Dinesh Kumar Pandey. However, the trial court may proceed as against Petitioner No. 1 Alok Kumar Sharma, Petitioner No. 2 Pradeep Kumar Sharma and Petitioner No. 3 Vichitra Sharma.