
(2015) 10 AHC CK 0055

In the Allahabad High Court

Case No : Criminal Misc. Application No. 29720 of 2015

Baghel Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 320, 482

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 323, 406, 498A, 498-A, 504

Citation : (2015) 10 ADJ 411 : (2016) 1 DMC 486

Hon'ble Judges : Ramesh Sinha, J.

Bench : Single Bench

Advocate : Keshari Nath Tripathi, for the Appellant

Judgement

Ramesh Sinha, J.—Sri K.D. Tiwari, Advocate has filed his power on behalf of the opposite party No. 2, which is taken on record. Heard Sri Keshari Nath Tripathi, learned counsel for the applicants, Sri K.D. Tiwari, learned counsel for the opposite party No. 2 and Manish Dev, learned A.G.A. for the State and perused the record.

2. This application under Section 482 Cr.P.C. has been filed for quashing the charge-sheet No. 7/15 dated 1.2.2015 as well as entire proceeding of case No. 4228/9/2015, State v. Baghel Singh and others, case crime No. 162/2014, under Section 498-A , 323 , 504 , 506 IPC and 3 /4 D.P. Act P.S. Mahila Thana, district Moradabad.

3. Learned counsel for the applicants submits that the marriage between the applicant No. 1 and opposite party No. 2 was solemnized in the year 2010.

4. After having very carefully examined, the submissions made by the learned counsel for the applicants and perused the material brought on record, I find that so far as applicant No. 1 (husband) is concerned, there is no justification for quashing the prosecution of the aforementioned case.

5. The prayer to that extent on behalf of applicant No. 1, namely, Baghel Singh is hereby refused.

6. So far as applicant Nos. 2 to 4 namely Tejindra Singh, Smt. Jasveer Kaur, Tega Singh Val respectively are concerned, it has been contended by learned counsel for the applicants that they are the family members of applicant No. 1 and the allegation levelled against them are wholly vague and no specific allegation has been levelled against them. Learned counsel for the applicants has placed reliance on the judgment of the Apex Court in the case of Geeta Mehrotra and Another Vs. State of U.P. and Another, and has drawn the attention of the Court towards paragraphs 17, 19, 20, 21 and 24 of the following judgments. The said paragraphs are quoted here below:

17. Their Lordships of the Supreme Court in this matter had been pleased to hold that the bald allegations made against the sister in law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband's relatives as possible. It was held that neither the FIR nor the charge-sheet furnished the legal basis for the magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge-sheet, none of the alleged offences under Section 498A , 406 and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's husband who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister in law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed.

19. Coming to the facts of this case, when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

20. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of G.V. Rao Vs. L.H.V. Prasad and Others, , wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

"there has been an outburst of matrimonial dispute in recent times. Marriage is a

sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counseled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a Court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their cases in different Courts."

The view taken by the judges in this matter was that the Courts would not encourage such disputes.

21. In yet another case in the matter of B.S. Joshi and Others Vs. State of Haryana and Another, , it was observed that there is no doubt that the object of introducing Chapter XXA containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband. Section 498A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry. But if the proceedings are initiated by the wife under Section 498A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent woman from settling earlier. Thus for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power.

24. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the Court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well-settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the Court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the Courts are expected to adopt a

cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.

7. The learned A.G.A. as well as learned counsel for the opposite party No. 2 tried to justify the summoning order passed against the applicant Nos. 2 to 4 also but they could not dispute that only bald allegation have been leveled against the family members of husband by opposite party No. 2.

8. Considered the submissions of learned counsel for the parties.

9. From the perusal of the complaint as well as the statements of the complainant and its witnesses recorded under Section 161 Cr.P.C., it is apparent that except bald allegation leveled against the applicant Nos. 2 to 4 who are the family members of the husband of opposite party No. 2, there is no active participation of the aforesaid applicants in the harassing of the wife-opposite party No. 2 for want of dowry.

10. The contention of the learned counsel for the applicants find support from the judgment of the Apex Court in the case of Geeta Mehrotra (Supra) that the applicant Nos. 2 to 4 are being harassed by opposite party No. 2 with mala fide intention simply because they are the family members of her husband. Hence so far as applicant Nos. 2 to 4 are concerned, the summoning order is bad in the eyes of law. The proceeding of the aforesaid case is quashed against them. The present 482 Cr.P.C. application stands partly allowed.