
(2019) 04 UK CK 0143

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 321 Of 2011

Bhanu Singh Nayal

APPELLANT

Vs

State Of Uttarakhand & Another

RESPONDENT

Date of Decision : 26-04-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 323, 498A, 506

Citation : (2019) 04 UK CK 0143

Hon'ble Judges : R. C. Khulbe, J

Bench : Single Bench

Advocate : Lokendra Dobhal, J.S. Virk, Lalit Sharma

Final Decision : Allowed

Judgement

R. C. Khulbe, J

1. This petition, under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred to as 'the Act') has been filed by the petitioner against the respondent no.2, with the prayer to quash the entire proceedings of Criminal Case No.560 of 2010 (State v. Bhanu Singh Nayal), under Sections 498A, 323 and 506 IPC pending before the Court of Judicial Magistrate, Rudrapur, District Udham Singh Nagar.

2. Facts of the case are that respondent no.2 filed an FIR on 22.7.2007 against the present applicant and three others under Sections 498A/323/506 IPC, with the allegations that the applicant along with three other accused on 23.3.2004 had assaulted and tried to ablaze her by pouring kerosene oil. The allegation of demand of dowry was also made in the FIR. It was also alleged that she was thrown out of her matrimonial house in the month of September 2004 when her daughter was only six months' old. On 28.3.2007, she received a communiqué from Vipin Shah (maternal uncle of applicant) demanding a house and an Indica car in dowry.

3. On the basis of the said report, the case was registered at P.S. Rudrapur. After investigation, a charge-sheet under Sections 498A, 323 and 506 IPC was submitted only against the present applicant, on which, the Magistrate concerned took the cognizance and summoned the applicant to face trial. Feeling aggrieved, the present petition has been filed seeking to quash the entire proceedings pending before the Court below.
4. Heard learned Counsel for the parties and perused the material available in the file of the Court.
5. As per the FIR, the applicant had thrown out the respondent no.2 from her matrimonial house i.e. at Kanpur in the month of September, 2004 and on 28.3.2007, she received information from Vipin Shah about the demand of dowry.
6. As far as communication dated 28.3.2007 is concerned, no such allegation was made by the respondent no.2 against the present applicant Bhanu Singh Nayal. The allegation has been made only against Vipin Shah.
7. As far as the incident of September 2004 is concerned, it alleged in the FIR that the respondent no.2 was thrown out from her matrimonial home i.e. at Kanpur and since then she is residing at Rudrapur. It is evident that no such allegation is made particularly against the present applicant, rather general assertions have been made by the respondent no.2.
8. Moreover, in the FIR, no date, time or day is mentioned when she was thrown away by the applicant from her matrimonial house.
9. That apart, in the FIR, the respondent no.2 clearly stated that in the month of September, 2004, the applicant had gone to Dubai. It means that the present applicant Bhanu Singh Nayal, who is the husband of respondent no.2, was not present in India at the time of incident.
10. Furthermore, when a petition for restitution of conjugal rights was filed by the present applicant against the respondent no.2 on 29.3.2006, thereafter the present FIR was lodged by her as a counterblast.
11. As per the record, a divorce petition was filed by the present applicant in the year 2008 at Family Court, Kanpur which has been decided in favour of the applicant and the divorce was granted on 5.6.2010 by the Additional Principal Judge, Family Court, Kanpur.
12. Considering the aforesaid facts and circumstances of the case, I am of the view that no charge of demand of dowry or criminal assault or criminal intimidation is made out against the present applicant and the present petition is liable to be allowed.
13. Accordingly, the present petition is allowed. The entire proceedings of Criminal Case No.560 of 2010 (State v. Bhanu Singh Nayal) pending in the Court of J.M. Rudrapur (Udham Singh Nagar) are hereby quashed.

14. Pending application, if any, stands disposed of.