
(2012) 04 UK CK 0004

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 101 of 2008

Geetam Singh and others

APPELLANT

Vs

State of Uttarakhand and another

RESPONDENT

Date of Decision : 20-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 156(2), 2
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 498A

Citation : (2012) 04 UK CK 0004

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Advocate : M.K. Goyal, s, for the Appellant; G.S. Sandhu, Government Advocate for the State of Uttarakhand and Mr. PawanMishra, Advocate, for the Respondent

Judgement

Servesh Kumar Gupta, J.—Having heard learned counsel for the petitioners as well as learned counsel for the respondent no. 2 nay learned Government Advocate, it transpires that Lajwanti was wedded with Geetam Singh on 15.02.2002 as per Hindu Rituals. After a couple of years, the relations between husband & wife and families of duo became estranged and ultimately, she had to leave her matrimonial house and was constrained to live in her native place along with her parents. So she moved an application u/s 156 (3) Cr.P.C. before the Magistrate making several allegations of demand of dowry and other atrocities committed upon her person at the hands of husband and his other relatives. The investigation culminated into submission of final report on 18.06.2006. It appears that learned Magistrate, after receiving the final report from the police, registered the afore-stated application moved by Lajwanti, as complaint case and recorded her statement u/s 200 Cr.P.C. After recording her statement u/s 200 Cr.P.C., learned Magistrate passed the following impugned order dated 28.11.2007:

Statement of Smt. Lajwanti recorded. There is prima facie evidence u/s 498-A, 323 IPC and 3/4 of the Dowry Prohibition Act against Sri Geetam, Smt. Shivani,

Nanak Chand and Paniram. Summon the accused for inquiry. Fixing 18.01.2007.

2. It is a settled position of law that prospective accused persons cannot be summoned for "inquiry". There is a difference between "Summoning for inquiry" and "Summoning for trial". The word "inquiry" has been defined in Section 2 (g) of the Cr.P.C., which reads thus:

2 (g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court.

The Magistrate before taking cognizance, if he desires so, cannot summon the prospective accused persons to participate in the inquiry. Thus, impugned order is quite illegal and liable to be quashed. Accordingly, the petition is allowed. Impugned order of cognizance dated 28.11.2007 passed by the Special Judicial Magistrate 1st, Dehradun in criminal complaint case no. 2696 of 2007 (Smt. LajwantiVs. Geetam Singh and others) is hereby quashed. However, it is made clear that if Magistrate thinks that further inquiry is necessary in the matter, then he may ask Lajwanti to produce her witnesses u/s 202 Cr.P.C. but in any case, he cannot summon the prospective accused persons to participate in the inquiry before him. Let a copy of the order be sent to the court concern.