
(2006) 07 AHC CK 0170

In the Allahabad High Court

Case No : Criminal Misc. Application No. 3331 of 2000

Jai Prakash Agarwal and Others

APPELLANT

Vs

State of U.P., The Xth Additional Chief Judicial Magistrate and
Smt. Manju Agarwal

RESPONDENT

Date of Decision : 28-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 109, 494

Citation : (2006) 7 ADJ 147 : (2006) 4 AWC 4199

Hon'ble Judges : Amar Saran, J

Bench : Single Bench

Advocate : O.P. Agarwal and Rohit Agarwal, for the Appellant; Swapnil Kumar and A.G.A., for the Respondent

Final Decision : Disposed Of

Judgement

Amar Saran, J.—List has been revised. Learned Counsel for the applicants is present Learned Counsel for the complainant is absent.

2. This application has been filed for quashing the criminal proceedings against the applicants in case No. 1369 of 1998, pending in the Court of Xth Additional Chief Judicial Magistrate, Agra.

3. It is contended by the learned Counsel for the applicants that the complaint has been lodged belatedly as admittedly the incident in question took place in 1988 and the complainant left for her parents house in the year 1989 and after nine years in the year 1998, the complaint had been lodged.

4. As the offence u/s 494 IPC is a continuing offence, it provides no ground for quashing of the proceedings against the applicants

5. Secondly, learned Counsel for the applicants has placed reliance on the decision of the Apex Court in Kanwal Ram and Others Vs. The Himachal Pradesh Admn., for the proposition that there must be proof of second marriage and the

allegations of second marriage in the present case are vague.

6. The aforesaid judgement pertains to an appeal from conviction and in the present case also the argument can be raised during the trial and it will be premature to quash the criminal proceedings on this ground at this stage.

7. It is further contended by the learned Counsel for the applicants that the entire family members including the husband (in all eleven persons) have been implicated in this case under Sections 494/109 IPC.

8. What role a particular accused had played, can only be appreciated by the trial court and not by this Court in proceedings u/s 482 Cr.P.C.

9. In this view of the matter, I find no ground to quash the criminal proceedings against the applicants.

10. However, looking to the circumstances of the case that the proceedings have remained stayed for a long time, it is provided that if the applicants No 7 to 11, who have not secured bail, appear and apply for bail within one month, their bail application shall be considered and decided expeditiously in accordance with Full Bench decision of this Court in Smt. Amarawati and Anr. v. State of U.P. 2004 CBC 705.

11. Learned Counsel for the applicants states that applicants No. 1 to 6 have already secured bail. It is provided that if all the applicants appear before the trial court within one month, they may be permitted to appear through counsel and raise their objections to the initiation of trial proceedings against them at the stage of framing of charges. This relief is being granted up to the stage of framing of charges provided the applicants after securing bail give an undertaking to the satisfaction of the trial court that (a) their counsel will remain present on their behalf and represent them on each date, (b) they will not raise any objection as to their being the actual person who is facing trial, (c) they do not object to the evidence being recorded in their absence, (d) they undertake to be present before the Court whenever called upon to do so at any stage.

12. These undertakings are being taken in the light of the directions of the Supreme Court in the case of M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim and Apparels Ltd. and Others,

13. This relief of appearing through counsel on the terms and conditions mentioned above will only be available to the applicants provided they appear within one month from the date of this order and obtains bail in the court below.

14. With these observations this application is disposed of.