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**(2009) 11 AHC CK 0175**

**In the Allahabad High Court**

**Case No :** Criminal Miscellaneous W.P. No. 17663 of 2007

Jai Prakash Yadav and another

APPELLANT

Vs

State of U.P. and others

RESPONDENT

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**Date of Decision :** 09-11-2009

**Acts Referred:**

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 120B, 494, 498A

**Citation :** (2009) 11 AHC CK 0175

**Hon'ble Judges :** Krishna Murari, J and Syed Rafat Alam, J

**Final Decision :** Disposed Of

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## Judgement

Syed Rafat Alam and Krishna Murari, JJ.

1. In the instant petition the petitioners have prayed for quashing of the FIR dated 23.5.2007 registered as case Crime No. 403 of 2007, under sections 498A, 494 and 120B, IPC, Police Station Kerakat, District Jaunpur.

2. We have heard learned Counsel for the petitioners and the learned Additional Government Advocate appearing for the Staterespondents.

3. It is contended that petitioner No. 1 was married with the informant in June, 1997 as per Hindu rituals. However, since marriage failed both of them agreed for separation by mutual settlement on 5.8.2005. It is submitted that thereafter petitioner No. 1 applied for grant of decree of separation before the Civil Court which was decreed by an exparte decree on 30th September, 2007. It is further submitted that the impugned FIR has malafidely been lodged. However, on the other hand, learned Additional Government Advocate pointed out that the investigation is in progress and the Investigating Officer has already submitted charge sheet against six coaccused persons. He further states that the investigation against petitioner No. 1 cannot be completed since he never made himself available for the purpose of investigation.

4. Be that as it may, we are of the view that since the allegation in the impugned

FIR prima facie discloses commission of cognizable offence, there can be no reason to quash the same. However, looking to the nature of the allegations and in view of the observations of the Hon'ble Apex Court in the case of Jogindar Kumar v. State of U.P. and others 1994 (31) ACC 431 (SC) and also in the light of the observations made in the case of Smt. Amarawati and another v. State of U.P., 2004 (57) ALR 398 = 2004 (23) AIC 1 (All India F.B.) we are of the view that no useful purpose would be served by keeping this matter pending further in this Court and it would be appropriate to dispose of this petition finally at this stage with the following directions:

1. The investigation, if not already completed, may be completed within three months of the date on which a certified copy of this order is presented before the Investigating Officer or any police officer of the district to whom the Investigating Officer is directly subordinate;
2. The petitioners will not be arrested during the pendency and for the purpose of investigation, provided a certified copy of this order is presented before the police officer, as directed above within one month from today.
3. If certified copy is not presented within the time aforesaid, the stay of arrest will not operate.

If on the conclusion of the investigation a charge sheet is submitted instead of final report, it will be open to the Judicial Magistrate, if he decides to take cognizance, to summon the accused by summons or warrants in accordance with section 204, Cr. P.C. after copies have been prepared for compliance with sections 207/208, Cr. P.C.

4. If the charge sheet is decided to be submitted to the Court of Magistrate, then in Column No. 3 of the prescribed form of charge sheet it will be mentioned that the accused have not been arrested on account of stay order granted by this Court.

5. The accused will cooperate with the investigation and appear before the Investigating Officer as and when called upon for the purpose of investigation and in case of noncooperation this writ petition shall be deemed to have been dismissed and the interim order should also be deemed to have been discharged. It is further provided that if the Investigating Officer comes to the conclusion that for any other valid reason the arrest of the accused/petitioner is necessary for the purpose of investigation, it will be open to the Investigating Officer to apply in this writ petition by means of misc. application giving details of noncooperation as also details of what kind of cooperation is expected from, the accused for completing investigation or why the arrest is otherwise necessary so that stay of arrest granted hereby may be vacated.

With the aforesaid direction, this petition stands finally disposed of.