
(2011) 08 UK CK 0157

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 80 of 2005

Liyakat and Others

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 27-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202
Penal Code, 1860 (IPC) — Section 498A, 504

Citation : (2011) 08 UK CK 0157

Hon'ble Judges : Servesch Kumar Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Servesch Kumar Gupta, J.—The present Criminal Miscellaneous Application challenges the order of cognizance dated 1.7.2003, passed by the Judicial Magistrate, Khatima, District Udham Singh, which has been passed in the Criminal Complaint Case No. 573/2003, titled as Smt. Nazama v. Liyakat & 5 others. By the said cognizance order, the applicants have been summoned to face the trial for the offences punishable u/s 498A & 504 Indian Penal Code.

2. Having heard learned Counsel for the parties, it appears that the complainant Smt. Nazama was married to applicant No. 1 Liyakat somewhat 15 to 20 years prior to filing the said complaint. Out of the wedlock, six children, named in para 1 of the complaint, were born. During this period, differences cropped up between the complainant Smt. Nazama and her husband Liyakat (applicant No. 1). On 17.7.2002, Smt. Nazama moved an application to the Senior Superintendent of Police, Bareilly alleging ill-treatment by her husband and other members of his family for bringing rupees forty thousand in dowry. Once, she tried to satisfy the demand of her husband and his family members by fetching rupees twenty thousand from her brother, but they remain discontented.

3. Smt. Nazama made a complaint No. 573/2003 to the court of Judicial Magistrate, Khatima on 3.6.2003 with the allegations that on 20.4.2003, she was

beaten by the accused persons for not fulfilling their demand of rupees twenty thousand, and at the same time, she was also ousted from her in-laws' house. Since then she is living in her parent's house at Khatima, District Udham Singh Nagar. She has alleged that on 28.5.2003, at about 7 pm, all the accused persons came to her parent's house at Khatima. As soon as the accused applicants reached at her parent's house, they began hurling abuses asking her as to why she did not return back with the wherewithal. When the applicants were resisted by her brother, then they pushed him aside, and her husband Liyakat (applicant No. 1) started beating her. Hearing the noise emanating from the place of occurrence, the neighbours assembled there. Noticing the presence of neighbours, the accused persons left the place holding out a threat to Smt. Nazama. They also asked her to return to her in-laws' house with the money, or else be ready to face the consequences.

4. After recording the statement of the witnesses u/s 200 and 202 Code of Criminal Procedure and taking on record other necessary evidence, the Judicial Magistrate, Khatima took cognizance of the offence and passed the impugned cognizance order against the applicants and summoned them to face the trial for the offences punishable u/s 498A & 504 Indian Penal Code.

5. It would be pertinent to mention that the applicant No. 1 Liyakat is the husband, applicants No. 2, 3 & 5, namely, Shauket, Irfan & Pappu are brothers-in-law (brothers of husband), applicant No. 4 Smt. Munni is sister-in-law (wife of husband's brother Irfan) and applicant No. 6 Smt. Begum is the sister-in-law (sister of husband) of the complainant Smt. Nazama.

6. It is inconceivable that after 15-20 years of marriage, a husband along with all his brothers, sister, brother's wife will come all the way from Bareilly to the parent's house of his wife at Khatima and will manhandle her there and will ask her to return to her in-laws' house along with the demanded wherewithal of rupees twenty thousand or so. Certainly, there has been an exaggerated version given by Smt. Nazama with all possible embellishment.

7. It is also worthy of mention that when the application was moved by Smt. Nazama to SSP, Bareilly on 17.7.2002, the matter was enquired by the Women Police Station, Bareilly and the report of the police dated 22.7.2002 reveals that Smt. Nazama had some liking for her neighbour Riyasat, who also used to intervene in the quarrel between Smt. Nazama and Liyakat. It further aggravated the situation. Otherwise also, there are contradictions on various scores in the averments made in the application to SSP, Bareilly and the complaint filed before the court.

8. Learned Counsel for the complainant has contended that the report of Women Cell, Bareilly is not admissible and readable at this stage because it involves the questions of fact, which are to be determined by the trial court. This Court does not agree with the said contention of the learned Counsel inasmuch as the said report has been annexed by the applicants as one of the annexure along with the

petition. So, prima facie it deserves to be considered by this Court. Apart from this, just for the reason that the disputed facts at this stage cannot be looked at by this Court, is not sufficient to permit the trial against the applicants to continue on the basis of a complaint, the allegations whereof prima facie appear to be highly exaggerated and even if all the allegations made therein are taken to be true in their entirety, the same does not inspire confidence regarding commission of the alleged offences at least against the applicants No. 2 to 6. Therefore, the applicants No. 2 to 6 cannot be made to suffer and to through the mental agony of facing a criminal trial. Hence, the impugned order of the cognizance warrants interference to this extent by this Court.

9. Resultantly, the petition is partly allowed. The impugned order of cognizance dated 1.7.2003, passed by the Judicial Magistrate, Khatima in Criminal Complaint Case No. 573/2003, is hereby quashed only in respect of applicants No. 2 to 6. However, the trial shall proceed against the applicant No. 1 Liyakat.

10. Registry is directed to inform the court concerned accordingly.