

(2006) 09 AHC CK 0100

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 13939 of 2005

Maresh Chandra Sharma and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 15-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 437, 482

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 120B, 323, 417, 498A, 506

Citation : (2007) 1 ACR 925

Hon'ble Judges : R.K. Rastogi, J

Bench : Single Bench

Advocate : P. Dikshit and G.P. Dikshit, for the Appellant; A.G.A., for the Respondent

Judgement

R.K. Rastogi, J.—This is an application u/s 482, Cr. P.C. for quashing the proceedings of Criminal Case No. 375 of 2002, State v. Maresh Chandra Sharma and others u/s 498A/323/506, I.P.C. and Section 3/4 of Dowry Prohibition Act.

2. The facts relevant for disposal of this application are that the opposite party No. 2 is wife of applicant No. 1. Applicant No. 2 is her father-in-law and applicant No. 3 is her sister-in-law. The opposite party No. 2 had earlier filed a complaint against the above named accused- applicants on 19.3.1998 under Sections 498A/120B/417/506 and 406, I.P.C. and 3/4 Dowry Prohibition Act, and in that case the accused were summoned and the case was tried by Sri Rajesh Kumar, Additional Civil Judge (J.D.)/Judicial Magistrate Court No. 3, Aligarh and he decided it vide his judgment and order dated 8.7.2003. It appears from perusal of the judgment that the complainant had stated before the Court that no demand of dowry was made by the accused persons and no atrocity was committed upon her and all her stridhan was with her. In view of her statement the accused were acquitted.

3. It appears that during the pendency of that case the complainant lodged a

F.I.R. also against the accused persons at Police Station Shashni Gate, Aligarh under Sections 498A/323/506, I.P.C. and 3/4 Dowry Prohibition Act. In this F.I.R. after repeating the above allegations contained in the aforesaid complaint, it was alleged that a compromise had taken place between her and her husband and in pursuance of that compromise she went to her husband's house on 4.5.2000 and performed her marital obligations. After lapse of some time her husband, father-in-law and sister-in-law again repeated their earlier demand of buffalo. When she told them that her father was not in a position to meet this demand, the accused threatened to kill her, and then her husband, in consultation with his father and sister, snatched her child from her and left her in pregnant condition at her father's house three months ago. On 27.1.2001 she gave birth to a child but none came from her in-law's house to look after her or her baby nor did they send her two years' old child to her, and so she suspected that her husband wanted to perform his second marriage and he had done compromise simply with a view to evade the legal consequences of proceedings filed against the accused persons. She therefore lodged this F.I.R. The police after investigation submitted a charge-sheet in the case, and the present application has been filed to quash that charge-sheet.

4. I have heard learned Counsel for the applicant as well as the learned A.G.A. for the State at length and am deciding the case finally at the admission stage.

5. It is to be seen that the opposite party No. 2 had already filed a complaint in March, 1998, in respect of the allegation of demand of dowry and atrocities, etc. but it appears that during the pendency of that case a compromise had taken place between the opposite party No. 2 and her husband and so she gave a statement in the Court denying the complaint allegations and so the accused were acquitted. She had also lodged the present F.I.R. on 10.2.2001 in which as pointed out above, the allegations made in the earlier complaint, were repeated, and the subsequent incidents, which took place after 4.5.2000, were added. Since the case in regard to the incidents which took place prior to the compromise between the parties on 4.5.2000 had already been tried by the Magistrate and an acquittal order had been passed in respect of those incidents in favour of the accused persons, I am of the view that there is no question of second trial in respect of those incidents which were subject-matter of the complaint filed by the opposite party No. 2 against the present accused persons. The Investigating Officer has submitted a charge-sheet against the accused persons on the basis of total allegations in the F.I.R., but, as I have already pointed out above, the trial cannot take place in respect of those incidents which were subject-matter of the previous complaint filed by the complainant. This trial can proceed in respect of those incidents only which took place after 4.5.2000, as stated in the F.I.R. This application moved u/s 482, Cr. P.C. therefore, deserves to be allowed to this extent only that no second trial shall take place against the accused-applicants in respect of those incidents which were covered in the complaint filed by the opposite party No. 2 against the accused-applicants and which were tried, Smt. Seema Devi v. Mahesh Chandra and Ors. in Criminal

Case No. 164 of 2002 by Additional Civil Judge (Junior Division)/Judicial Magistrate, Court No. 3, Aligarh.

6. The application u/s 482, Cr. P.C. is, therefore, partly allowed and it is hereby ordered that the Court concerned shall not proceed with the trial of the case on the basis of impugned charge-sheet in respect of those incidents for which the complainant opposite party No. 2 had already filed a complaint against the accused-applicants and in which the accused applicants had already been acquitted vide judgment and order dated 8.7.2003 in Criminal Case No. 164 of 2002, Smt. Seema Devi v. Mahesh Chandra and others passed by Additional Civil Judge (Junior Division)/Judicial Magistrate, Court No. 3, Aligarh. Trial of the case shall take place on the basis of charge-sheet dated 27.4.2001 in respect of those incidents only which had been complained of in the F.I.R. after the compromise dated 4.5.2000. No case for quashing the charge-sheet in respect of the incidents which took place after 4.5.2000 is made out and so the application u/s 482, Cr. P.C. stands rejected in respect of the incident which took place after 4.5.2000. The accused-applicants are allowed one month's time to appear before the Magistrate concerned and during this period the execution of non-bailable warrants against the accused-applicants shall remain stayed so as to enable them to appear before the Court. The accused applicants, after putting in appearance before the Court, may apply for bail and their application shall be decided by the Court expeditiously, if possible on the same day, taking into consideration the directions of this Court in the case of New India Assurance Co. Ltd. Vs. Gangarasaiah and Another, Learned Magistrate shall also take into consideration the provisions of Section 437, Cr. P.C. while considering the bail application of applicant No. 3 Km. Sunita who is a lady.