

(2011) 07 UK CK 0006

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C-482) No. 1134 of 2010

Master Singh Yadav, Smt. Munni Devi, Ms. Sushma Yadav
and Ms. Ruchi Yadav

APPELLANT

Vs

State of Uttarakhand and Smt. Manu Yadav

RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 498A, 504, 506

Citation : (2011) 07 UK CK 0006

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Judgement

Prafulla C. Pant, J.—This is restoration application MCRC No. 556 of 2011, for recall of order dated 15.07.2011, passed by this Court whereby the restoration application MCRC No. 412 of 2011, and delay condonation application 617 of 2011, were dismissed for non prosecution.

2. Learned Counsel for the Petitioners/applicants pleaded that on 15.07.2011, he was waiting in the court, but for sometime when he left the court room, meanwhile the case was called, and no one could be present on behalf of the Petitioners. An affidavit to this fact has been filed in support of the application.

3. In the interest of justice MCRC No. 556 of 2011, is allowed, and order dated 15.07.2011, is hereby recalled on the condition that matter shall be heard today.

4. Also heard on restoration application MCRC No. 412 of 2011, and delay condonation application No. 617 of 2011, and perused the affidavit filed with the said applications. Delay condonation application in filing MCRC No. 412 of 2011, is allowed. Delay is condoned.

5. In view of principle of law laid down in Madhumilan Syntax v. Union of India, AIR 2007 SCW 1971, the restoration application No. 412 of 2011, is also allowed.

The petition u/s 482 Code of Criminal Procedure is restored.

6. Heard learned Counsel for the parties on the petition u/s 482 Code of Criminal Procedure.

7. Brief facts of the case are that Respondent No. 2 Manu Yadav got married to Rajesh Yadav in the year 2000. Two children were born out of the wed-lock. It appears that Manu Yadav is a teacher, and Rajesh Yadav was also a teacher (terminated from service). The matrimonial relations between the two appear to have soured after he (Rajesh Yadav) started living with another woman named Monika Tiwari, whereafter the litigations started between the husband and the wife. In the FIR relating to the impugned charge sheet not only the husband is named as an accused but the Petitioner No. 1 Master Singh Yadav (father in law), Petitioner No. 2 Munni Devi (mother in law), Petitioner No. 3 Sushma Yadav (married sister in law) and Petitioner No. 4 Ruchi Yadav (unmarried sister in law) are also named as accused. It is alleged in the FIR of the Respondent No. 2 that her husband, and in-laws made demand of dowry, and she was subjected to cruelty. After investigation charge sheet was filed against all the five accused named in the FIR.

8. Learned Counsel for the Petitioners drew attention of this Court to the principle of law laid down in Preeti Gupta and Anr. v. State of Jharkhand and Anr. (2010) SCC 667, and argued that the Petitioners have been falsely implicated in the case. On the other hand, learned Counsel for the State, and learned Counsel for the complainant argued that the complainant Manu Yadav was subjected to cruelty by her husband and in-laws. Perusal of the FIR, and the statements of the witnesses recorded by the Investigating Officer show that there are specific allegations of cruelty against Rajesh Yadav (husband). Allegations are also made against father-in-law and mother-in-law relating to demand of dowry. However, no specific role is assigned to the sisters-in-law namely Sushma Yadav and Ruchi Yadav.

9. Learned Counsel for the Petitioners submitted that Sushma Yadav is married sister-in-law who lives far away in Etah. It is also contended that Ruchi Yadav is still a student. It is argued that there is nothing either in the FIR or the statement of the witnesses u/s 161 Code of Criminal Procedure as to what cruelty was committed by the two sisters.

10. Having considered submissions of learned Counsel for the parties, and after going through the papers on record, there appears to be abuse of process of law against Petitioner No. 3 Sushma Yadav and Petitioner No. 4 Ruchi Yadav. Therefore, this petition u/s 482 Code of Criminal Procedure, is partly allowed. The impugned criminal proceedings of criminal case No. 765 of 2010, State v. Master Singh Yadav and others, relating to offences punishable u/s 498A, 323, 504, 506 IPC., and one punishable u/s 3/4 Dowry Prohibition Act, 1961, P.S. Kathgodam, pending in the court of Additional Civil Judge (Jr. Div.)/Judicial Magistrate, Haldwani, District Nainital, are quashed so far as the same relate as

against the Petitioner No. 3 Sushma Yadav and Petitioner No. 4 Ruchi Yadav. However, the trial is not interfered with in respect of rest three accused. The petition stands accordingly disposed of.