

(2013) 03 UK CK 0020

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 201 of 2009

Mohd. Irfan and Others

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 04-03-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 156(3), 178, 190(1)(b), 472
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 498A, 504, 506

Citation : (2013) 3 DMC 375 : (2013) 1 UC 732

Hon'ble Judges : Umesh Chandra Dhyani, J

Bench : Single Bench

Advocate : Pratiroop Pande, for the Appellant; Vinod Sharma, D.A.G. for the State of Uttarakhand/Respondent No. 1 and Mr. Zafar Siddiqui, Advocate, for the Respondent

Judgement

Umesh Chandra Dhyani, J.—By way of this application moved u/s 482 Cr.P.C., the applicants/petitioners Mohd. Irfan, Mohd. Suleman, Smt. Razia, Zaheer Alam, Ms. Shakila and Ms. Shazia Bano seek to quash the criminal complaint case No. 07 of 2009 and summoning order dated 25.02.2009 in Smt. Seema vs. Mohd. Irfan and others, under Sections 498A, 323, 504, 506 IPC and 3/4 Dowry Prohibition Act, PS Ranikhet, District Almora, pending before the Judicial Magistrate Ranikhet, District Almora. A further prayer has been made to quash the proceedings against the applicants/petitioners in the said case. Upon the application moved u/s 156(3) Cr.P.C., a first information report against the applicants Mohd. Irfan, Mohd. Suleman, Smt. Razia, Zaheer Alam, Ms. Shakila and Ms. Shazia Bano was lodged in relation to the offences punishable under Sections 498A, 323, 504, 506 IPC and Section 3/4 Dowry Prohibition Act in PS Ranikhet, District Almora. Investigation began on the basis of the said first information report. After completion of the investigation, a charge-sheet against the accused-applicants was submitted before the court concerned, whereupon learned Judicial Magistrate, Ranikhet took cognizance on 13.01.2009. Applicants

have challenged the same by way of the instant application moved u/s 482 Cr.P.C.

2. Learned counsel for the petitioners submitted that the respondent No. 2 (wife of applicant No. 1) left her matrimonial home on 05.01.2005 and started living with her parents at Ranikhet. She never came back to her matrimonial home. The marriage of the applicant No. 1 and respondent No. 2 was solemnized on 26.04.2004. The application u/s 156(3) Cr.P.C. was moved by the respondent No. 2 after a lapse of three years and 9 months. [Sections 472 and 473 Cr.P.C. take care of the same] Victim has failed to explain the inordinate delay in filing the application. Learned counsel for the applicants further pointed out that applicant No. 3 is the sister of applicant No. 1 and is married to applicant No. 4 and stays at her matrimonial home and not with her parents. An application u/s 125 Cr.P.C. was filed by respondent No. 2 on 02.09.2008. Applicant No. 1 granted divorce to respondent No. 2 according to Muslim Law, which was not accepted by the said respondent. Application moved u/s 156(3) Cr.P.C. is counter blast to the divorce given by the applicant No. 1.

3. Learned counsel for the applicants further submitted that major part of the incident alleged against the applicants took place in Delhi, no incident took place in Ranikhet, and therefore, the Court at Ranikhet has no jurisdiction to try the case. The argument advanced by the learned counsel for the applicants that the Court at Ranikhet has no jurisdiction to try the case is totally unfounded in view of Section 178 of Cr.P.C., which is reproduced hereinbelow for ready reference:

178. Place of inquiry or trial.

(a) When it is uncertain in which of several local areas an offence was committed, or

(b) Where an offence is committed partly in one local area and partly in another, or

(c) Where an offence is a continuing one, and continues to be committed in more local area than one, or

(d) Where it consists of several acts done in different local areas. It may be inquired to or tried by a court having jurisdiction over any of such local areas.

4. The above provision makes it clear that where an offence is committed partly in one local area and partly in another and the offence is continuing one, the same may be inquired into or tried by any court having jurisdiction over any area. Thus, it is held that the Court at Ranikhet has jurisdiction to try the case.

5. The next point to be decided in the instant case is whether the summoning order in pursuance of the charge sheet submitted by the Investigating Officer is liable to be quashed? As has been stated above the charge sheet for the offences punishable under Sections 498A, 323, 504, 506 IPC and Section 3/4 Dowry Prohibition Act has been submitted and thereafter learned Judicial Magistrate at Ranikhet took cognizance of offences u/s 190(1)(b) Cr.P.C. This Court has

carefully considered the material on record. There appears to be no illegality in the impugned order, in as much as, there are grounds for presuming at this stage that the accused-applicants have committed the offences complained of against them. No illegality in the impugned order was highlighted by learned counsel for the applicants either. No other issue was pressed. It was simply said that no offence was made out against the applicants, whereas the fact of the matter is that prima facie, the offences complained of against them were made out. It is a different matter whether the prosecution will be able to prove these offences against the accused-applicants or not? Only time can tell.

6. It is settled law of the land that inherent jurisdiction u/s 482 Cr.P.C. has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid in the Section itself. Extraordinary power u/s 482 Cr.P.C. should not be resorted to like remedy of Appeal or the Revision.

7. Having heard learned counsel for the parties, learned counsel for the respondents and after perusing the material available on record, this Court is of the view that it is hardly a case in which there is scope of application of Section 482 Cr.P.C. This court, therefore, is not inclined to quash the impugned charge-sheet and is also not inclined to interfere with the impugned summoning order. The Petition u/s 482 Cr.P.C. is accordingly dismissed as the same is devoid of merit. It is however, expected that the criminal case pending before the court below shall be decided by the court at an early date.