

(2009) 03 AHC CK 0206

In the Allahabad High Court

Case No : Criminal M. Application No. 2225 of 2009

Nidhi Singh alias Nikhita Bhardwaj

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 23-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 304B, 306, 498A

Citation : (2009) 2 ACR 1423

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : V.P. Srivastava, Lav Srivastava and Man Mohan Singh, for the Appellant; A.G.A., for the Respondent

Judgement

Ravindra Singh, J.—This application has been filed by applicant-Smt. Nidhi Singh alias Nikhita Bhardwaj with a prayer to quash the charge-sheet of Case Crime No. 12 of 2008 u/s 306, I.P.C., P. S. New Agra, district Agra and the summoning order dated 28.12.2008, passed by learned Chief Judicial Magistrate, Agra in Criminal Case No. 993 of 2008.

2. The facts, in brief, of this case are that the F.I.R. of this case has been lodged by O. P. No. 2 Satya Prakash Upadhyay in Case Crime No. 12 of 2008 under Sections 498A, 304B, I.P.C. and 3/4 of Dowry Prohibition Act, P. S. New Agra, district Agra on 5.1.2008 at 1.15 p.m. in respect of the incident which had occurred on 5.1.2008. The F.I.R. has been lodged against the applicant and three other accused persons alleging therein that the marriage of the deceased Alpana was solemnized before four years of the alleged incident with co-accused-Anurag Singh, the brother of the applicant, thereafter, the demand of dowry was raised, to fulfil the demand of dowry, the deceased was subjected to cruelty. On 5.1.2008 at about 10 a.m., O.P. No. 2 received a telephonic information that her daughter was inside the room but no sound was coming out, thereafter, the first informant came to the place of occurrence and saw the deceased in hanging

condition. According to the post-mortem examination report, the deceased had sustained a ligature mark, the cause of death was asphyxia as a result of hanging. After investigation, the Investigating Officer submitted charge-sheet u/s 306, I.P.C. after coming to the opinion that the deceased was abetted by applicant to commit the suicide on which the learned Magistrate concerned has taken the cognizance on 24.9.2008, thereafter, learned Magistrate has issued the summons to the applicant and other co-accused persons on 28.12.2008.

3. Heard, Sri V. P. Srivastava, senior advocate assisted by Sri Lav Srivastava and Sri Man Mohan Singh, learned Counsel for the applicant, learned A.G.A. for the State of U. P.

4. It is contended by learned Counsel for the applicant that the applicant is nanand of the deceased, her marriage was solemnized prior to the marriage of the deceased, she was living at her husband's house, she was having no concern with the demand of dowry and subjecting the deceased to cruelty, such allegations made against the applicant are false and frivolous which have been made for the purpose of harassment of the applicant. The deceased was maintaining the diary, in diary itself, no allegation has been made against the applicant, she has written so many letters also in which no allegation was made against the applicant. It was further contended by learned Counsel for the applicant that during investigation, the Investigating Officer has not collected such evidence by which it can be said that the deceased was abetted by the applicant, even on the material collected by the Investigating Officer, no offence u/s 306, I.P.C. is made out but without considering the material collected by the Investigating Officer, the learned Special Chief Judicial Magistrate has taken the cognizance vide order dated 24.9.2008 and summoned the applicant and other co-accused vide order dated 28.12.2008. The learned Magistrate concerned has passed illegal orders dated 24.9.2008 and 28.12.2008. The applicant is innocent. There is no cogent material against the applicant showing her involvement in the commission of the alleged offence whereas deceased had committed suicide due to some other reasons, in such circumstances, the charge-sheet and summoning order dated 28.12.2008 may be quashed.

5. In reply to the above contentions, it is submitted by learned A.G.A. that the death of the deceased is unnatural, the allegation of demand of dowry and subjecting the deceased to cruelty is against the applicant also, there is sufficient material collected by the Investigating Officer for the purpose of the prosecution of the applicant, the Investigating Officer has not committed any error in submitting the charge-sheet u/s 306, I.P.C. because the deceased was abetted by the applicant and other co-accused to commit the suicide. It is unnatural death, the provisions of Sections 304B and 498A of I.P.C. are attracted, the learned Magistrate has not committed any error in taking the cognizance and summoning the applicant to face the trial. The appreciation of the material collected by the Investigating Officer during investigation for the purpose of framing of the charge shall be done by the trial court. It is not a stage of

appreciation, this application is devoid of the merit, the same may be dismissed.

6. Considering the submissions made by learned Counsel for the applicant, learned A.G.A. and from the perusal of the record, it appears that sufficient material has been collected by the Investigating Officer during the investigation for the purpose of the prosecution of the applicant. The specific allegation in respect of the demand of dowry and to fulfil the same, the deceased was subjected to cruelty, has been made, the material collected by the Investigating Officer is disclosing the commission of offence. There is no illegality in submission of the charge-sheet. Learned Magistrate concerned has not committed any error in taking the cognizance and summoning the applicant to face the trial. So far as constitution of particular offence is concerned, it shall be considered by the trial court of the time of framing of the charge, therefore, the prayer for quashing the charge-sheet as well as impugned order dated 18.12.2008 is refused.

7. However, considering the facts and circumstances of the case, it is directed that the applicant shall appear before the Court concerned within 30 days from today, till then the N.B.W. issued against the applicant, shall be kept in abeyance. In case she applies for bail, the same shall be heard and disposed of expeditiously, if possible, on the same day.

With this direction, this application is finally disposed.