

(2011) 01 UK CK 0014

In the Uttarakhand High Court

Case No : Restoration Application No. 1006 of 2010 and Delay Condonation App. No. 1349 of 2010 in Criminal Miscellaneous Application (C-482) No. 748 of 2007

Pappu Khan and Bhuri

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 03-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 301, 302, 304B

Citation : (2011) 1 NCC 461 : (2011) 1 UC 196

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—This is Delay Condonation Application No. 1349 of 2010, moved on behalf of the applicants/petitioners, for condonation of delay in moving the Restoration Application MCRC No. 1006 of 2010, for restoration of Criminal Misc. Application (C-482) No. 748 of 2007, which was dismissed for non-prosecution by this Court, on 21.09.2010.

2. Heard.

3. There is delay of 32 days delay in moving the restoration application, which is sufficiently explained in the affidavit filed by Pappu Khan (petitioner No. 1). The Delay Condonation Application No. 1349 of 2010, is allowed. Delay is condoned.

4. Also, heard on Restoration Application MCRC No. 1006 of 2010, and perused the affidavit accompanying the application.

5. There is sufficient ground mentioned in the affidavit showing absence of the petitioner's counsel on the date fixed (21.09.2010). In view of the principle of law laid down in Madhumilan Syntex Limited and Ors. v. Union of India and Anr.

A.I.R.2007 S.C.W. 1971, the restoration application is allowed, on the condition that the parties shall be heard on merits today in the petition filed u/s 482 of Code of Criminal Procedure. The petition u/s 482 of Code of Criminal Procedure. stands restored to its original number on the condition, as above.

6. Heard, on the petition filed u/s 482 of Code of Criminal Procedure.

7. Brief facts of the case are that Bushra (deceased) died unnatural death in January 2007, in respect of which Mohd. Hayat (respondent No. 5) informed the police on phone that Bushra has been murdered. On the basis of said telephonic report, Crime No. 25 of 2007, was registered against unknown persons, in respect of offence punishable u/s 302 of I.P.C. Later, respondent No. 4 Nazakat Khan moved a written report on 26.01.2007, stating that the husband of the deceased has given wrong information that unknown persons have killed Bushra. In said report, complainant Nazakat Khan alleged that Wazeer (husband of the deceased) appears to have killed his wife. After investigation, a charge sheet was filed against accused Wazeer, for his trial in respect of offence punishable u/s 302/201 of I.P.C. On further investigation, another charge sheet was filed against present petitioners Pappu Khan and Bhuri (brother-in-law and sister-in-law of the deceased), for their trial in respect of offence punishable u/s 304B of I.P.C., and one punishable u/s 3/4 of the Dowry Prohibition Act, 1961. It is this charge sheet, which has been challenged in the petition filed u/s 482 of Code of Criminal Procedure. by the two accused, namely Pappu Khan and Bhuri (brother-in-law and sister-in-law of the deceased).

8. Learned Counsel for the petitioners drew attention of this Court to the copy of judgment and order dated 27.07.2010, passed by Addl. Sessions Judge, Roorkee, in Sessions Trial No. 158 of 2007, whereby Wazeer Khan (husband) has been acquitted of charge of offence punishable u/s 302/201 of I.P.C. On its basis it is argued that it will be abuse of process of law to direct the petitioners to face the trial, after acquittal of the husband.

9. It is pertinent to mention here that this Criminal Misc. Application (C-482) No. 748 of 2007 was filed in the year 2007, and the trial proceeded further as against the husband, who was not the petitioner in this case, and against whom separate charge sheet was filed. The judgment and order passed by the trial court acquitting the husband shows that said trial concluded in the year 2010. It is possible that the petitioners might be innocent, or might not have committed the offence for which a charge sheet was filed against them. But, merely on the basis of acquittal of husband against whom separate charge sheet was filed, in respect of offence punishable u/s 302 of I.P.C., it cannot be said that the proceedings against the present petitioners on separate charge sheet which relates to offences punishable u/s 304B of I.P.C., and one punishable u/s 3/4 of the Dowry Prohibition Act, 1961, is liable to be quashed. This Court in its jurisdiction u/s 482 of Code of Criminal Procedure cannot examine the factual aspect of the matter. It is relevant to mention here that ingredients of the offence punishable u/s 304B of I.P.C. are different to the offence punishable u/s

302 of I.P.C.

10. In the above circumstances, without expressing any opinion as to the final merits of the case, this Court is not inclined to interfere with the prosecution initiated against the present petitioners.

11. Therefore, the petition u/s 482 of Code of Criminal Procedure is dismissed with the observation that if the petitioners, namely Pappu Khan and Bhuri surrender before the court concerned, their bail application shall be heard and disposed of without unreasonable delay. (Stay Application No. 1350 of 2010 also stands dismissed).