
(2012) 01 AHC CK 0243
In the Allahabad High Court
Case No : Application 482 No. 12363 of 2007

Rajeev Kumar and Others	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 12-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 239, 245, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 498A

Citation : (2012) 01 AHC CK 0243

Hon'ble Judges : Rajesh Dayal Khare, J

Bench : Single Bench

Judgement

Hon"ble Rajesh Dayal Khare, J.—Heard Learned Counsel for the applicants, Sri S.K. Tripathi, Learned Counsel for opposite party No. 2 and learned A.G.A. for the State. On the request of Learned Counsel for the applicants another Bench of this Court, vide order dated 01.06.2007 had referred the matter to mediation centre. The Incharge mediation centre vide its report dated 06.08.2007 had reported that husband and wife had agreed to live together and settlement agreement dated 06.08.2007 was signed by applicant No. 1, (husband)Rajeev Kumar and opposite party No. 2, Sitala Devi (wife), copy of which report is on record.

2. It is contended by the Learned Counsel for opposite party No. that immediately after signing of the settlement agreement, opposite party No. 2 was again left behind by the applicants and she was not permitted to go with her husband and also not permitted to live in her matrimonial house.

3. The present 482 Cr.P.C. petition has been filed for quashing the proceedings of Complaint Case No. 289 of 2006, under Sections 323, 498-A IPC and 3/4 Dowry Prohibition Act pending before the Judicial Magistrate-V, Farrukhabad.

4. It is contended by Learned Counsel for the applicants that no offence against the applicants is disclosed and the present prosecution has been instituted with a

malafide intention for the purposes of harassment. He pointed out certain documents and statements in support of his contention.

5. From the perusal of the material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicants. All the submission made at the bar relates to the disputed question of fact, which cannot be adjudicated upon by this Court u/s 482 Cr.P.C. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of R.P. Kapur Vs. The State of Punjab, , State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283. The disputed defence of the accused cannot be considered at this stage. Moreover, the applicants have got a right of discharge u/s 239 or 227/228, or 245 Cr.P.C. as the case may be through a proper application for the said purpose and they are free to take all the submissions in the said discharge application before the Trial Court.

6. The prayer for quashing the proceedings is refused.

7. Interim order, if any, stands vacated.

8. However, it is provided that if the applicants appear and surrender before the court below within 30 days from today and apply for bail, their prayer for bail shall be considered and decided in view of the settled law laid by this Court in the case of Amrawati and another Vs. State of U.P. reported in 2004 (57) ALR 290 as well as judgement passed by Hon"ble Apex Court reported in 2009 (3) ADJ 322 (SC) Lal Kamendra Pratap Singh Vs. State of U.P. For a period of 30 days from today or till the disposal of the application for grant of bail whichever is earlier, no coercive action shall be taken against the applicants. However, in case, the applicants do not appear before the Court below within the aforesaid period, coercive action shall be taken against them.

9. The registry of this Court is directed to communicate the order passed by this Court today to the concerned Court below forthwith. With the aforesaid directions, this application is finally disposed of.