
(2012) 05 UK CK 0005

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C-482) No. 1153 of 2010

Samsher alias Lala and others

APPELLANT

Vs

State of Uttarakhand and another

RESPONDENT

Date of Decision : 24-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 498A, 504, 506

Citation : (2012) 05 UK CK 0005

Hon'ble Judges : Umesh Chandra Dhyani, J

Bench : Single Bench

Advocate : Manish Arora, for the Appellant; M.A. Khan, Brief Holder for the respondent State and Mr. Rajendra Singh, for the Respondent

Judgement

Hon''ble U.C. Dhyani, J.—Heard. By means of this petition, moved u/s 482 of Cr.P.C., the petitioners have sought quashing of the proceedings of Criminal Case No. 2640 of 2010; State vs. Samsher and others, relating to offences punishable u/s 498A, 323, 504, 506 of I.P.C. and u/s 3/4 of the Dowry Prohibition Act, registered with police station Kotwali Manglaur, District Haridwar pending in the court of First Addl. Civil Judge (J.D.) / Judicial Magistrate, Roorkee.

2. Brief facts of the case are that an FIR was lodged by respondent No. 2 / complainant with police station Kotwali Manglaur in respect of offences punishable under Sections 498A, 323, 504, 506 of I.P.C. and Section 3/4 of Dowry Prohibition Act against the petitioners. It was stated in said FIR that Parveen, daughter of the complainant, got married to Irshad about 31/2 years ago. Soon after the marriage the petitioners including husband of his daughter, started harassing Parveen demanding colour television and a motorcycle. The complainant / respondent No. 2 could not fulfill said demand and therefore her daughter was subjected to cruelty and beaten up by them. After investigation, charge sheet has been filed against the petitioners viz. Samsher alias Lala, Imran, Altaf and Mustkeem, including husband of Parveen, in respect of offences

punishable u/s 498A, 323, 504, 506 of I.P.C., and u/s 3/4 of the Dowry Prohibition Act. The charge sheet against Irshad was also filed as an absconder. The trial of Irshad was separated from that of the present petitioners.

3. Learned counsel for the petitioners submitted that the petitioner no. 1 is father-in-law, who is an old person and petitioner nos. 2 to 4 are brothers-in-law JETH of daughter of the complainant. It is also submitted that the occurrence took place on 17.12.2009, but the application u/s 156(3) of Cr.P.C. was moved on 04.03.2010 after about 31/2 months of the alleged occurrence which makes the entire story doubtful. It is also pleaded that on the application being moved u/s 156(3) of Cr.P.C., the Magistrate referred the matter to Women Help Line, on which a report was submitted to the Magistrate clearly stating that respondent no. 2 wants share in the property of the petitioners. Said fact has emerged from the report submitted by Women Help Line which is annexed with the petition. Learned counsel for the petitioners submitted that in order to pressurize the petitioner for parting share in favour of his daughter, this false FIR was lodged by the complainant against the petitioners. It is further submitted that Parveen and her husband Irshad used to live separately from petitioner nos. 2 to 4.

4. Mr. M.A. Khan, Brief Holder opposed the petition as also Mr. Rajendra Singh, learned counsel for the complainant / respondent no. 2.

5. From perusal of the material on record and looking into the facts of the case, it cannot be said at this stage that no offence is made out against the petitioners. The submissions made by learned counsel for the petitioners relate to the disputed questions of fact, which cannot be adjudicated upon by this court u/s 482 of Cr.P.C. At this stage only a prima facie case is to be seen in the light of the law laid down by the Supreme Court in cases of R.P. Kapur Vs. The State of Punjab, ; State of Haryana vs. Bhajan Lal, 1992 SCC (CrI) 426; State of Bihar vs. P.P. Sharma, 1992 SCC (CrI) 192 and Zandu Pharmaceuticals Works Ltd. vs. Mohd. Saraful Hage and another, 2005 SCC (CrI) 283 (para 10).

6. Having considered submissions of learned counsel for the parties, this court is of the opinion that the factual matters cannot be appreciated by this court in its jurisdiction u/s 482 of Cr.P.C. So far as the impugned order is concerned, there appears to be no illegality in it. The petition u/s 482 of Cr.P.C. is accordingly dismissed.

7. Learned counsel for the petitioners made an alternative prayer for directing the Magistrate concerned to dispose of the bail application of the petitioners as expeditiously as possible.

8. The alternate prayer seems to be innocuous, hence the same is allowed in view of principle of law laid down in Amarawati vs. State of U.P., 2005 Criminal Law Journal 1172.

9. Learned counsel for the petitioners drew attention of this court towards the report of Women Help Line and it is submitted that in fact it is the property

dispute which has led to filing of this FIR. It is also contended that the first information report is false / frivolous and has been filed with the ulterior motive in which the entire family of the petitioners has been roped in.

10. Considering the above submissions, it is directed that in case the present petitioners surrender before the Magistrate concerned and move application for bail, the same shall be disposed of without unreasonable delay after affording an opportunity of hearing to learned counsel for the parties. With these observations, petition u/s 482 of Cr.P.C. is finally disposed of.