

(2009) 07 AHC CK 0371

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 2584 of 2009

Sanjiv Rai Chaudhari and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Penal Code, 1860 (IPC) — Section 323, 498A, 506

Citation : (2009) 32 CriminalCC 106

Hon'ble Judges : S.C. Chaurasia, J

Bench : Single Bench

Advocate : Dharmendra Kumar, for the Appellant; Rajendra Kumar Dwivedi, AGA, for the State, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Chaurasia, J.—The learned Counsel for the petitioners, learned AGA and perused the record.

2. This petition u/s 482 Cr.P.C. has been filed with the prayer that the entire proceedings of complaint case No.7539 of 2008, including the summoning order dated 15.04.2009, under sections 323, 506 and 498-A, IPC and 3/4 of the Dowry Prohibition Act, P.S. Kotwali, District-Kheri, pending in the Court of Chief Judicial Magistrate, Kheri, may be quashed.

3. The learned Counsel for the petitioners has submitted that from the allegations made against the petitioners, no offence has been made out against them; that the Court at Lakhimpur Kheri, has no jurisdiction to take cognizance and to pass the summoning order and the summoning order is without jurisdiction; that the rulings mentioned in the impugned order dated 15.04.2009, are not applicable to the instant case; that the learned Magistrate without applying its judicial mind, has summoned the petitioners illegally and hence, the summoning order and the complaint case, deserve to be quashed.

4. The learned AGA has drawn my attention, towards para 8 of the application moved u/s 156(3) C.P.C. which has been treated as a complaint case and has submitted that the part of the cause of action has arisen at District-Lakhimpur Kheri, and hence, the Court at District-Lakhimpur Kheri, has jurisdiction to summon the accused. He has further submitted that an offence u/s 498A, is a continuing offence. He has also drawn my attention towards section 179, Cr.P.C. His contention is that the learned Magistrate, after applying its judicial mind has summoned the accused rightly and no interference is called for by this Court in the summoning order.

5. From the perusal of the record, it transpires that an application moved u/s 156(3), was treated as a complaint case. The statement of the complainant was recorded u/s 200, Cr.P.C. The complainant has examined her father, Sri Amulya Dhan Banerjee, PW1, u/s 202, Cr.P.C. in support of her case. The complaint was filed against the four accused, but, after considering the record, the learned Magistrate, has summoned the three accused only vide order dated 15.04.2009. It indicates that the learned Magistrate has summoned the accused after applying its judicial mind."

The para 8 of the complaint, indicates that the part of the cause of action has also arisen at District-Lakhimpur Kheri and hence it cannot be said that the summoning order is without jurisdiction. This Court cannot enquire at this stage as to whether the allegations made against the petitioners are true or false. The competent Court at an appropriate stage, would determine as to whether the prima facie, case has been made out against the petitioners. This Court cannot be converted into a Trial Court. The powers u/s 482, Cr.P.C. cannot be exercised to stifle the law prosecution.

7. In view of the aforesaid discussions, I am of the view that this petition has no force and it is dismissed accordingly.