
(2015) 02 AHC CK 0087

In the Allahabad High Court

Case No : Criminal Misc. Application No. 21084 of 2013

Shamshad and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 03-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 161, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 384, 406, 498-A, 504

Citation : (2015) 2 ACR 1194 : (2015) 4 ALJ 313 : (2015) 89 ALLCC 509

Hon'ble Judges : Ramesh Sinha, J

Bench : Single Bench

Advocate : Sharique Ahmed, for the Appellant; Manish Dev Singh and R.K. Paramhansh Singh, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ramesh Sinha, J.

1. Rejoinder affidavit filed by learned Counsel for the applicant is taken on record. Heard Sri Sharique Ahmed, learned Counsel for the applicants, Sri R.K. Paramhansh Singh, learned Counsel for opposite party No. 2 and Sri R.K. Maurya, learned AGA for the State.

2. The present application under section 482 Cr.P.C. has been filed for quashing the criminal proceeding as well as impugned order dated 31.5.2013 in Case No. 30592 of 2009 (State v. Shamshad and another), arising out of Case Crime No. 277 of 2009, under sections 323 and 384 IPC, P.S. Chandbak, District Jaunpur.

3. The fact which emerges from the record that the sister of the applicants namely Reshma was married with the son of opposite party No. 2 namely Rashid Jamal as per Muslim rites and traditions on 22.6.2014 and soon after the marriage the opposite party No. 2 and his family members started harassing the sister of the applicants demanding Maruti car and rupees one lac in dowry and

when the father of the applicants could not meet the said demand, Rashid Jamal, the husband of sister of the applicants and his family members assaulted and ousted her from the matrimonial home. A first information report was lodged by the father of the applicants namely Nisar Ahmad against opposite party No. 2 and his family members which was registered as Case Crime No. 1105 of 2008, under sections 498-A, 323, 504 IPC and section 3/4 Dowry Prohibition Act, P.S. Kotwali, District Mau on 18.7.2008. The charge-sheet was submitted against the opposite party No. 2 and other family members on 11.8.2008 by the police and the learned Magistrate took cognizance of the offence and summoned the opposite party No. 2 and his son who are facing criminal prosecution. The sister of the applicants also filed an application under section 125 Cr.P.C. before the Judicial Magistrate, Mau on 2.1.2009 against her husband Rashid Jamal claiming maintenance for him. The maintenance application under section 125 Cr.P.C. was also allowed on 10.1.2012. When the opposite party No. 2 and his son came to know about the FIR lodged against them on 18.7.2008 by the father of the applicants against them and other family members then the present FIR was lodged by opposite party No. 2 against the applicants on 24.9.2009, which was registered as Case Crime No. 277 of 2009, under sections 323 and 384 IPC, P.S. Chandbak, District Jaunpur for an incident which had taken place on 22.4.2008. The police submitted charge-sheet against the applicants. The learned Magistrate took the cognizance of the offence and summoned them hence the present application for quashing of the summoning the order dated 31.5.2013 as well as the proceedings of the aforesaid case.

4. It has been further submitted by learned Counsel for the applicants that the FIR has been lodged against the applicants who are the brothers of daughter-in-law of opposite party No. 2 only for the purpose of harassment and as pressure tactics so that the matrimonial litigation which has been lodged by sister against opposite party No. 2 and his son and other family members for offence under sections 498-A, 323, 504, 506 IPC and section 3/4 D.P. Act in which they are facing trial and further an application for maintenance under section 125 Cr.P.C. filed against the son of opposite party No. 2 by sister of the applicants in which the interim maintenance was allowed may be withdrawn by their sister. It was argued that as per the allegation made in the FIR as well as the statement of the witnesses and informant recorded under section 161 Cr.P.C. only general and bald allegations have been made against the applicants that while opposite party No. 2 returning after attending the date in a Court at Mau to Jaunpur then the applicants had assaulted him and got some signatures on the blank papers of opposite party No. 2. He further pointed out that though incident taken place on 22.11.2008 but the FIR of the incident was lodged after 5 months of the incident which itself shows that the present incident is nothing but mere concocted story which has no legs to stand. Further the injuries which is stated to have been sustained by the opposite party No. 2 are two abrasions and complain of pain on his body. All the injuries were simple and superficial in nature. It appears that medical report has been manipulated and fabricated one in order to a crave out a

case against the applicants.

5. He further submits that the applicants have challenged the validity of the charge-sheet in Criminal Misc. Application No. 24155 of 2010 before this Court and the same was rejected by this Court on 2.8.2010 directing them to move discharge application before the Court below. In pursuance of which the applicant moved a discharged application on 30.5.2010 before the C.J.M., Jaunpur which was dismissed on 26.5.2011 for want of prosecution. He again on 13.9.2011 moved a discharge application praying the Court to decide the same on merit. Learned Counsel for the applicants further submits that the discharge application was rejected by the Trial Court on the ground that the earlier application of the discharge has already been rejected on 26.5.2011 hence the Trial Court rejected the second discharge application on 31.5.2013 and fixed the case for framing of charge against them. He further submits that the son of opposite party No. 2 has also filed a complaint against the sister of the applicant under sections 504, 506 and 406 IPC before the ACJM, Jaunpur and the learned Magistrate after recording the statement of son of opposite party No. 2 rejected the complaint on 3.5.3011 against which a revision was also filed by the son of the opposite party No. 2 which too was dismissed on 3.8.2011. He further submits that as per the allegations levelled and material collected during the investigation on the basis of which charge-sheet has been submitted against the applicants no cognizable offence is disclosed and their prosecution is a malicious one.

6. Learned AGA as well as learned Counsel for the opposite party No. 2 opposed the prayer for quashing the impugned order and submitted that cognizable offence is disclosed against the applicants but could not dispute the fact that the opposite party No. 2 and his other family members are facing criminal prosecution at the hand of sister of the applicants under section 498-A IPC etc. which was lodged by the father of the applicants. Further the sister of the applicants has claimed maintenance under section 125 Cr.P.C. and interim maintenance has been allowed against the son of opposite party No. 2.

7. Considering the submissions advanced by learned Counsel for the parties and perused the record, it is admitted that opposite party No. 2 and his son are facing prosecution under sections 498-A, 323, 504, 506 and 3/4 D.P. Act which has been lodged by the father of the applicants for ousting their sister by opposite party No. 2 and his son and other family members subjecting her to cruelty and for demand of dowry. Further an interim maintenance has been allowed by the Magistrate concerned under section 125 Cr.P.C. to the sister of the applicants against the son of opposite party No. 2 which annoyed the opposite party No. 2 and his son who started harassing the applicants and his family members as their sister had instituted litigation against her husband Rashid Jamal. The opposite party No. 2 had instituted the present FIR against the applicants as pressure tactics so that matrimonial litigation which has been lodged against him and his son and claim of maintenance filed by the sister of the applicants and against her husband under section 125 Cr.P.C. may be

withdrawn by her. So far as the allegations levelled in the FIR as well as in the statement of informant and witnesses recorded under section 161 Cr.P.C. are only general and vague. The injuries of opposite party No. 2 also are to be superficial in nature and cast doubt about its genuineness. Moreover, there appears to be no explanation given by opposite party No. 2 for lodging the present FIR against the applicants after a delay of five months of the incident. Moreover, no offence is disclosed against the applicants and the present prosecution of the applicants appears to be malicious one. Hence, the summoning order as well proceeding of the aforesaid case are hereby quashed. The present application is, accordingly, allowed.