

(2011) 09 UK CK 0171

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 776 of 2007

Shraddha Nautiyal and Others

APPELLANT

Vs

State of Uttaranchal and Another

RESPONDENT

Date of Decision : 01-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 420, 498A

Citation : (2011) 09 UK CK 0171

Hon'ble Judges : Servesch Kumar Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Servesch Kumar Gupta, J.—By way of this criminal application, the prayer has been advanced to set aside the proceedings of criminal case No. 1195 of 2007 pertaining to crime No. 40/2007 u/s 498A, 420 Indian Penal Code and 3/4 Dowry Prohibition Act, P.S. Rajpur, District Dehradun, State v. Bhagwati Prasad and Ors.. This case is pending for trial in court of Civil Judge (Junior Division)/ Judicial Magistrate, Dehradun after submission of the chargesheet as a result of investigation against the applicants.

2. Having heard the learned Counsel of both the parties, it appears that Smt. Anita Shastri, the lodger of the report was wedded on 9.2.2004 with one Nirmal Shastri in Dehradun city. Nirmal Shastri used to work as a medical representative in the city and live alone. Somehow or the other, through a common friend, Nirmal Shastri offered himself as a prospective groom of Anita Shastri. The father of Anita, a retired army personnel asked Nirmal Shastri to bring his parents for the advancement of the wedding talks but the latter, on one pretext or the other, could not bring his parents for the purpose. Rather, he tried to persuade Anita Shastri on emotional basis. She was convinced and in turn, persuaded her father to accept this proposal of wedding. Consequently, the

marriage was solemnized on 9.2.2004 and later, a daughter was borne on 1.12.2004 out of this wedlock. Soon after the marriage, the tale entailing the reality of economic, social or the job engagement status of Nirmal Shastri was revealed and it was found that he is quite a poor person, did not have any settlement in the city but had an expertise to befool the others on one pretension or the other and to cheat the money from so many persons and in that course, Anita Shastri came to know that she also has been cheated. There was a consistent and persistent demand of money from the retired army personnel (father of Anita Shastri). In all, some years passed but Nirmal Shastri could not make any proper arrangement of accommodation even in the city, so the father of Anita Shastri, helplessly, offered his daughter along with her husband to live with him in the house. It has been on the record that whereabouts of Nirmal Shastri are not known since 3.3.2007 and so many creditors, from whom he had borrowed the money, started to visit the house of father of Anita, demanding the same from them. Helplessly, Anita Shastri lodged an FIR on dated 4.5.2007 against all the applicants including her husband Nirmal Shastri. Since Nirmal Shastri's whereabouts were not known and police was not even in a position to make the attachment of his properties, inasmuch as, he did not have any, so the chargesheet under challenge in this petition is only against the seven applicants; out of these seven, two are the parents of Nirmal Shastri and rest are the sisters and brothers in law of Nirmal Shastri.

3. Learned senior counsel on behalf of the applicants has drawn the attention of this Court to the fact that Nirmal Shastri had abandoned the house way back in 1998, so he was disowned by father by making a publication in some Gujrati newspaper. The Hindi excerpt of the abandonment has been filed as annexure 6 to the petition. Attention of the Court has also been drawn towards the additional statement of Anita Shastri, allegedly recorded by the Investigating Officer, wherein she has admitted that she has never seen her father in law Bhagwati Prasad Shastri and her sister in laws, but she has asserted that these persons used to call her on telephone. She also allegedly admitted that these persons had never teased her on the question of dowry.

4. Learned Counsel appearing for Respondent No. 2 has drawn the attention of the Court towards the contents of paragraph 4 of the counter affidavit filed on her behalf in this Court on 23.10.2007. In this affidavit, she has specifically mentioned the implication of her sisters in law, husband of sisters in law, father in law and mother in law and has also disclosed that this additional statement was never given by her to the Investigating Officer, which is presently being relied upon by the learned Counsel of the Petitioners.

5. Even Bhagwati Prasad Shastri (father in law), in his statement, has admitted that his wife Rajeswari Shastri, once went to live with her son and daughter in law at Dehradun.

6. Having heard the learned Counsel of both the parties and going through the papers produced herein, this Court is of the view that it is not the intention of

Section 482 Code of Criminal Procedure to enter into the full merits of the case, only prima facie, the matter is to be judged vis-à-vis to the abuse of process of court. This Court feels that the chargesheet has been submitted by the police after thorough investigation and prima facie there is substance on the basis of material available on the record, inasmuch as, all these accused persons, at least the parents of the groom, are of District Pauri Garhwal, their parental property lies here, so sometime or the other, all are attached with this hill district. This Court feels that the trial should be proceeded against all the applicants and there is No. appropriate reason to drop down the proceedings.

7. In view of the above, this petition is bereft of merit and is liable to be dismissed. It is dismissed. Interim order dated 24.10.2007 passed by this Court is vacated.