
(2009) 01 AHC CK 0189

In the Allahabad High Court

Case No : Criminal M. Application No. 28951 of 2008

Smt. Anita and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 06-01-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202
Penal Code, 1860 (IPC) — Section 120B, 302, 364

Citation : (2009) 1 ACR 648

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : Kameshwar Singh, for the Appellant; Shiv Gopal Mishra and B.N. Singh and A.G.A., for the Respondent

Judgement

Ravindra Singh, J.—Heard Sri Kameshwar Singh, learned Counsel for the applicants, learned A.G.A. for the State of U.P. and Sri Shiv Gopal Mishra, learned Counsel for O. P. No. 2.

2. This application has been filed by the applicants Smt. Anita, Luxmi Kant, Hari Charan and Asgar Ali with a prayer to quash the order dated 20.9.2008, passed by learned C.J.M., Jalaun in Complaint Case No. 1811 of 2008, whereby the learned Magistrate concerned has taken the cognizance and summoned the applicants to face the trial for the offence punishable under Sections 302 and 120B, I.P.C.

3. The facts in brief of this case is that a complaint has been lodged by O. P. No. 2 Smt. Sunita in the court of learned C.J.M., Jalaun at Orai against the applicants alleging therein that the marriage of O.P. No. 2 was performed with Hakim Singh on 14.6.2003. The husband of O. P. No. 2 purchased a plot having the area of 2700 square feet in town of Konch where one house was constructed and the land for second house was left open thereafter the constructed house was sold by him to the family of one Tika Ram, he also purchased one acre of land in his Village Mansukhpura. The husband of O. P. No. 2 was a simple man, he was

attracted in a net of love affairs by his cousin's wife who was not having a good character, she used to live in the house at Konch and developed illicit relation because applicants-Lakshmi Kant and Hari Charan the cousin's of husband of O.P. No. 2 wanted to usurp the house and land of the husband of O.P. No. 2. Thereafter the husband of O. P. No. 2 was misguided, the pregnancy of O. P. No. 2 was terminated at the instance of her husband and a pre-planned scheme the father of O. P. No. 2 was called and she was sent in his company on 3.1.2008 after three or four days thereafter she got the information at her parents house that her husband has been killed thereafter she came to Konch and found that Smt. Anita and Lakshmi Kant have taken over the possession of her house. She came to know that a false F.I.R. has been lodged against some persons, on enquiry the O.P. No. 2 found that on 3.1.2008 at about 2 p.m. her husband has been killed by the applicants. The statement of O. P. No. 2 has been recorded u/s 200, Cr. P.C. and the statement of witnesses Sambhu Dayal, Manohar Mangal, Uma Shanker have been recorded u/s 202, Cr. P.C. After considering the same the learned C.J.M., Jalaun has taken the cognizance and summoned the applicants to face the trial for the offences punishable under Sections 302 and 120B, I.P.C. Being aggrieved from the order dated 20.9.2008, passed by learned C.J.M., Jalaun the present application has been filed by the applicants.

4. It is alleged by learned Counsel for the applicants that in respect of the same incident the F.I.R. was lodged by applicant Lakshmi Kant at P. S. Konch in Case Crime No. 3 of 2008 under Sections 364 and 302, I.P.C. on 3.1.2008 at 4.20 p.m. against Chottu, Binu, Ram Lala and Neelam Nai. After investigation the charge-sheet has been submitted, the case has been committed to the Court of Session which is pending in the Court of learned IInd Additional Session Judge, Jalaun vide S. T. No. 92 of 2008 which is at the stage of the conclusion but it is surprising that in respect of the same incident the complaint has been filed by O. P. No. 2 with different version in which the set of the accused persons has been changed and the first informant of the F.I.R. has been made the accused. The present complaint is based on false and frivolous allegations, it has been lodged due to ulterior motive because the O. P. No. 2 was not having the good relation with her husband Hakim Singh the deceased of this case. The divorce has taken place between them in the year 2005. The O. P. No. 2 was residing at a distance of about 50 km. from the alleged place of occurrence, she was not eye-witness of the alleged occurrence even on the day of alleged incident he did not come at the place of occurrence but subsequently due to ulterior motive at the instance of some other persons the complaint has been lodged by O. P. No. 2 because the persons facing the trial are notorious persons and to give a different version they have successfully persuaded the O. P. No. 2 to lodge the F.I.R. The learned C.J.M. concerned has also not considered the facts and circumstances of the case and in a routine manner the cognizance has been taken. The impugned order dated 20.9.2008 is illegal, the same may be set aside.

5. In reply of the above contention it is submitted by learned A.G.A. and counsel for O. P. No. 2 that on the basis of the allegation made against the applicants in

complaint and the statement recorded under Sections 200 and 202, Cr. P.C. prima facie offence under Sections 302 and 120B, I.P.C. is made out. There is no illegality in the summoning order, the present application is devoid of merit, the same may be dismissed.

6. Considering the submission made by learned Counsel for the applicants, learned A.G.A., learned Counsel for O. P. No. 2 and from the perusal of record it appears that the learned C.J.M., Jalaun has taken the cognizance and summoned the applicants to face the trial after considering the complaint and statement recorded under Sections 200 and 202, Cr. P.C. and some other documents including inquest report, challan and site plan etc. which discloses the commission of offence. So far as the second version of the same incident is concerned, it may be considered at the stage of the trial because in respect of one incident one or more version may come forward, only on the ground of second version taken into the complaint whereas in earlier version the proceeding of the trial are at the conclusion stage, the impugned order dated 20.9.2008, may not be quashed. There is no illegality in the impugned order therefore, the prayer for quashing the impugned order is refused.

7. However, considering the facts and circumstances of the case it is directed that applicants shall appear before the Court concerned within 30 days from today, till then bailable warrant/N.B.W., if any, issued against the applicants shall be kept in abeyance. In case they apply for bail, the same shall be heard and disposed of expeditiously by the courts below thereafter in case the applicants move discharge application before the Court concerned at an appropriate stage, the same may be heard and disposed of in accordance with the provisions of law.

With the above directions, this application is finally disposed of.