
(2011) 01 AHC CK 0160
In the Allahabad High Court
Case No : Case No. 2416 of 2006

Smt. Jai Raji

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 482

Citation : (2011) 01 AHC CK 0160

Hon'ble Judges : Yogendra Kumar Sangal, J

Bench : Single Bench

Advocate : R.K. Saini, for the Appellant; G.A., for the Respondent

Final Decision : Dismissed

Judgement

Yogendra Kumar Sangal, J.—This petition u/s 482 Code of Criminal Procedure moved by Smt. Jai Raji with the prayer to quash the proceedings of the case pending before the Additional Civil Judge (J.D.)/Magistrate, Court No. 5, Gonda and also summoning order dated 11.07.2005 in Criminal Case No. 51/2005.

2. This case is listed in the list of cases likely to have been infructuous.

3. Heard learned Counsel for the Petitioner as well as learned Additional Government Advocate and perused the record.

4. From the perusal of the record, it reveals that on 16.10.2006 by this Court has passed the stay order that further proceedings of the aforesaid case pending before the trial court shall remain stayed till the next date of listing.

5. An application u/s 156(3) Code of Criminal Procedure was moved by Respondent No. 2 with the allegations that when he had gone to the house of the Petitioner Smt. Jai Raji for Bidai of his daughter-in-law and also asked from the Petitioner to return his money and jewellery, Petitioner in the company of other accused-persons have maltreated him and beaten him with kicks and fists and badly abused him and they have misappropriated his money and jewellery. On

this application, complaint case was registered in the court of learned Magistrate. After recording statement u/s 200 and 202 CrPC, learned Magistrate found that prima-facie case is made out against the accused-persons and he ordered for summoning the accused-persons for their trial for the offence u/s 147, 504, 506, 323 IPC. Aggrieved by this order, this petition has been filed.

6. Learned Additional Government Advocate argued that a revision against the impugned order was maintainable in the court concerned but why the same has not been filed and remedy provided under the Act was not availed, it is not sufficiently explained. Learned Additional Government Advocate further argued that if alternate remedy against the impugned order is available in the Code, application u/s 482 Code of Criminal Procedure generally should not be entertained. In support of the argument, learned Additional Government Advocate cited the law laid down by the Hon'ble Apex Court in the case of *Madhu Limaye v. State* reported in AIR 1978 47, where it is held that power u/s 482 Code of Criminal Procedure is not to be restored if there is specific provision in the Code for the redress of the grievance of the aggrieved party.

7. Record shows that a revision No. 144/06 was filed in the matter by Smt. Jai Raji before the learned Sessions Judge, Gonda. Copy of the order of the learned Sessions Judge shows that this revision was not filed against the impugned order, but the same was filed against the order dated 11.07.2005. By this order, learned Magistrate has made some correction in the impugned order. No sufficient explanation has been given on behalf of the Petitioner why the remedy available in the Code was not availed. Further, the impugned order was passed on 27.06.2002 and this petition was filed on 05.10.2006 i.e. after more than four years. There is inordinate delay in filing this petition and no sufficient explanation has been given on behalf of the Petitioner about this delay. It is correct that for filing petition u/s 482 Code of Criminal Procedure no limitation is provided nevertheless petition is to be filed within a reasonable time i.e. 90 days also prescribed for revision or appeal generally. Petition filed after so much delay suffers from vice of delay and latches.

8. By the impugned order seven accused-persons were summoned by the learned Magistrate for their trial. Out of them Smt. Jai Raji has filed this petition challenging the order. Learned Counsel for the Petitioner argued that complainant in his statement u/s 200 Code of Criminal Procedure has not named her amongst the assailants and also learned Magistrate has not named her in the body of the judgment amongst the assailants and only in the operative portion, she was joined and summoned saying that wife of Salikram. Record shows that earlier due to some clerical mistake, name of Salikram was mentioned in the operative portion of the order which was later on corrected on the application on behalf of the complainant Respondent No. 2. The record shows that in the application u/s 156(3) Code of Criminal Procedure which was treated as complaint case later on Petitioners was shown at S. No. 2 in the list of accused as wife of Salikram and accordingly in summoning order her name was shown. It is correct that in his

statement u/s 200 Code of Criminal Procedure nowhere it is mentioned that wife of Salikram was amongst the assailants but in the statement of witness Prahlad whose statement was recorded u/s 202 Code of Criminal Procedure her name as wife of Salikram is shown amongst the assailants. If by inadvertence name of Petitioner was left in the statement u/s 200 Code of Criminal Procedure only due to this reason it cannot be taken that she was not amongst the assailants, specially when her name was there in complaint and stated by witness u/s 202 CrPC. However, learned trial court will free to take into consideration this lapse at the time of framing charge or final disposal of the matter and learned Counsel for the Petitioner is free to raise this argument before the trial court at proper time and proper stage.

9. From the above facts and circumstance of the case there appears no ground for interference in the impugned order and proceedings pending before the trial court under the proceedings of Section 482 Code of Criminal Procedure and the same is liable to be dismissed.

10. Accordingly, the application u/s 482 Code of Criminal Procedure is hereby dismissed. Stay order granted by the Court shall stand vacated. As the matter is quite old, learned trial court is directed to expedite the disposal of the case. Office is directed to inform the trial court.