
(2017) 07 AHC CK 0024
In the Allahabad High Court
Case No : 1264 of 2011

Smt. Jyotsana Nagar Koti, & Ors.

APPELLANT

Vs

State Of U.P., & Anr.

RESPONDENT

Date of Decision : 14-07-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 420](#), [Section 376](#), [Section 506](#), [Section 406](#), [Section 354](#) - Cheating and dishonestly inducing delivery of property - Punishment for rape - Punishment for criminal intimidation - Punishment for Criminal breach of trust - Assault or criminal force to woman with intent to outrage her modesty

Citation : (2017) 07 AHC CK 0024

Hon'ble Judges : Arvind Kumar Mishra

Bench : Single Bench

Advocate : Amit Daga, Vikrant Rana

Judgement

1. Heard Sri Amit Daga, learned counsel for the revisionists, Sri Vikrant Rana, learned counsel for opposite party no.2, Sri Saghir Ahmad, learned AGA for the State and perused the material available on record.
2. The instant revision has been directed against the order dated 10.12.2010 passed by Special Chief Judicial Magistrate, Meerut, in Criminal Case No.302 of 2009 State Vs. Jyotsana and others, arising out of Case Crime No.439 of 2008 under Sections 420, 406, 506 IPC, Police Station Lal Kurti, District Meerut.
3. Precisely, facts of this case are that on the written application, the informant-opposite party no.2 lodged the first information report against the revisionists at Case Crime No.439 of 2008 under Sections 420, 406, 506 IPC, Police Station Lal Kurti, District Meerut. The matter was duly investigated into by the Investigating Officer concerned who filed charge sheet dated 21.12.2008 under Sections 420, 406, 506 IPC.
4. The case was taken up for hearing on the point of charge by Special Chief

Judicial Magistrate, Meerut when a protest was raised by the accused-revisionists that the material brought on record does not justify the framing of charges against the revisionists on several specific counts. Consequently, the revisionists were heard on point of discharge by the court below. After appraisal of factual position and evidence on record, the court below rejected the discharge application and directed for framing of charge vide its order impugned dated 10.12.2010. Consequently, this revision.

5. It has been vehemently contended on behalf of the revisionists that assuming it to be; that the allegations contained in the first information report and averments made in the statements of the witnesses do carry some substance even then no offence, whatsoever, can be said to have been committed by the revisionists under Sections 420 and 406 IPC. There is no an iota of evidence or material on record, justifying submission of the charge sheet under Section 506. This is totally ornamental.

6. Learned counsel for the revisionists went on to add that in this case, at the most a promise was made by revisionist no.1 to marry the informant's son Nitin Dev but that promise was not fulfilled. Now both the parties have entered into their respective marital lives with another person of their own choice and are enjoying their lives and no useful purpose will be served by sending the matter afresh to the trial court for proceeding with the case. Moreover, the allegations contained in the first information report and statement of the various prosecution witnesses do not carry any substance worthwhile and the same cannot be relied upon for summoning the revisionists and for framing charges under Sections 420, 406, 506 IPC.

7. Perusal of the entire episode and statement of the prosecution witnesses are dramatic in nature and do not carry any legal force, therefore, cognizance of the same cannot be taken and charge sheet filed against the revisionists lacks requisite material and support for framing charges. Moreover, supposing that the trial is conducted against the revisionists even then no useful purpose will be served since the matter is too old and as it pertains to the year 2010 and the parties have settled married life at their respective places. One of the parties resides in USA and it is not expected that proceedings will be gone into and completed by the trial court in one sitting because no one will easily turn up from USA to give testimony before the trial court at the earliest and it may consume lot of time. That way also, purpose of the trial would fail. No offence can be said to have been committed by the revisionists under Section 406 IPC. The essential ingredient of offence is entrustment in legal term which entrustment was never made and never established on record still there is an order for framing charge under Section 406 IPC.

8. Learned counsel for the revisionists has further stressed on the statement of the informant's son Nitin Dev wherein also he felt prey to his own love phobia, he really wanted to marry Jyotsana Nagar Koti but she did not marry him. Only this much is grievance of the informant's son. Jyotsana Nagar Koti out of

vengeance, might have lodged the case under Sections 354, 376 IPC if she had any dishonest intention to defraud the informant's son qua valuable property to the extent alleged in the statement of the informant's son but she never gave any such statement that the informant's son ever indulged in such activities. This shows bonafides on the part of Jyotsana Nagar Koti.

9. Learned counsel for the revisionists has lastly contended that in this case, at the most the parties may enter into fresh negotiation to resolve the dispute and if any of the parties has suffered any loss then the same can be compensated satisfactorily outside the Court. The dispute is purely of civil nature rather than criminal.

10. Learned counsel for opposite party no.2 - the informant has submitted that legal fiction, interpretation / construction regarding charge and discharge is to be taken into consideration and the core consideration of the matter qua discharge relates to fact whether the material brought on record is assumed to be correct even then no conviction can be had on it then discharge will follow, conversely if the material on record, prima facie, suggests the case established against the person concerned, while assuming it to be correct then conviction can be had on it then charges will be framed and the trial will be gone into against the persons concerned.

11. That way, obviously perusal of the contents of first information report and the connected material as form part of the charge sheet profusely indicates that charges under Sections 420, 406, 506 IPC are very much justified. There is allegation of entrustment both in the averments made in the statements of the prosecution witnesses as well as allegations made in the first information report that not only the informant's son but also the other witnesses who have verified and testified to the ambit that Rs.2,00,000/- were given before them to Jyotsana Nagar Koti by the informant's son.

12. I have considered the rival submissions of the parties and also perused the record.

13. Obviously, the matter which is required to be considered relates to fact that the averments made in the statement of the prosecution witnesses and the allegations made in the first information report are to be gone into by the trial court on merits. It cannot be analyzed and scrutinized in extenso at this stage as it is work of the trial court while conducting trial. It cannot be said that from perusal of the first information report and charge sheet, prima facie no case is made out. Therefore, the impugned order dated 10.12.2010 passed by Special Chief Judicial Magistrate, Meerut, in Criminal Case No.302 of 2009 State Vs. Jyotsana and others, arising out of Case Crime No.439 of 2008 under Sections 420, 406, 506 IPC, Police Station Lal Kurti, District Meerut needs no interference and is sustained.

14. Accordingly, the instant revision is dismissed.

15. Interim order dated 28.02.2011 granted by this Court stands discharged.

16. After this order was dictated, a request was made by the learned counsel for the revisionists that since both the parties belonged to highly educated and civilized family, vagaries of trial would serve no purpose, therefore, some negotiation/promise may still be allowed to be considered by the trial court, if the parties so wish.

17. The request so made can be pressed before the trial court and it is for the trial court concerned to proceed further with the case in accordance with law.

18. Let a copy of this order be sent to the trial court for necessary information and follow up action forthwith.