

(2005) 04 AHC CK 0093

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 5687 of 1999

Smt. Phula Devi and Others

APPELLANT

Vs

State of Uttar Pradesh, Premod Kumar Tiwari, Ram Surat
Pandey and Smt. Lalita Devi

RESPONDENT

Date of Decision : 12-04-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 498A, 504, 506

Citation : (2005) 04 AHC CK 0093

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : N.D. Shukla, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Poonam Srivastava, J.—List is revised.

2. Heard learned counsel for the applicants and learned A.G.A.

3. This application u/s 482 Cr.P.C has been filed invoking inherent powers to quash the entire criminal proceedings of Criminal Case No. 250 of 1999, State v. Devi Shanker and Ors. under Sections 498A, 504, 506, 323 I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Bahariya, District Allahabad. A prayer has also been made for quashing the charge sheet and summoning order dated 20.4.1999, This Court while issuing notice is the contesting opposite party had stayed further proceedings in Criminal Case No. 250 of 1999. It appears that despite service of notice no one has put in appearance for the contesting opposite party. The applicant No. 1 is mother-in-law of Smt. Lalita Devi, applicant no. 5 is father-in-law, applicant No. 4 is husband, applicant No. 6 is Dewar, applicant no 2 is daughter and applicant No. 3 is son-in-law of the applicant Nos. 1 and 5. The daughter-in-law (victim), Smt. Lalita Devi left her matrimonial house more than two year back from the date of alleged occurrence

and got married with, opposite party No. 3. Ram Surat Pandey. Notional marriage agreement was entered into that they have married on 1.9.1998. A copy of the said agreement of marriage is annexed as Annexure-2 to the affidavit. A daughter was also born from the cohabitation of Smt. Lahta Devi and Ram Surat Pandey, opposite party No. 3. However, the brother namely Pramod Kumar Tiwari, opposite party No. 2 lodged a First information Report against the entire family members of the applicants under Sections 498A 504 I.P.C. and Section 3/4 Dowry Prohibition Act even after his sister Smt. Lalita Devi started living with her second husband. The allegation against the applicants was that demand of dowry was made from the brother which he was unable to fulfill and his sister was subjected to cruelty all along. The arrest of the applicants was stayed during the investigation by this Court in Criminal Misc. Writ Petition No. 4832 of 1998 on 12.11.1998. A copy of the said order is annexed as Annexure-3 to the Affidavit. On 30. 11.1998 the opposite party No. 2 entered into a compromise with the applicants in presence of the Panches. Annexure-4 is the said compromised dated 30.11.1998 Smt. Lalita Devi, the alleged victim also submitted her notorial affidavit before the Investigating Officer and clearly stated that her brother has lodged a false report against the applicants. She has also given her affidavit in the Court. Her statement was recorded u/s 161 Cr. P.C. by the Investigating Officer which has been annexed as Annexure-6 to the affidavit. The father of Smt. Lalita Devi namely Vikram Jeet Tiwari has also supported the version of his daughter and had denied the entire prosecution story narrated by his son Promod Kumar in the F.I.R. Despite overwhelming evidence that no offence was made out against the applicants, the The Investigating Officer submitted a charge sheet and the learned Magistrate summoned the accused persons which is under challenge in this application. Smt. Lalita Devi has filed an affidavit which is annexure 10 to the affidavit, where she has specially stated that the report is absolutely false. She has also stated that she was never subjected to any physical or mental torture by the applicants may be discharged and they should not be harassed.

4. No counter affidavit has been filed and learned A.G.A. has also not disputed the documents such as the statements recorded by the Investigating Officer and affidavit has been filed by Smt. Lalita Devi. It is thus evident that the entire prosecution story appears to be on the face of it malicious and only with a view to harass the applicants. The Apex Court has carved out three categories in the case of R.P. Kapur Vs. The State of Punjab, The Apex Court has also broadly laid down 7 guidelines wherein the F.I.R. or the charge sheet or criminal complaint can be quashed. In the case of Union of India v. Prakash P. Hinduja and Anr. (47) 2003 A.C.C. 433, the Apex Court had clearly held that in case the court comes to a conclusion that there are no chances of conviction whatsoever the proceeding can be quashed in exercise of inherent powers. In the case of B.S. Josh and Ors. v. State of Haryana and Anr. 2003 (51) A.L.R. 222 the Apex Courts has ruled in matrimonial disputes, where the parties have arrived at a settlement and compromised, even in non the ends of justice.

5. In the instant case admittedly, the victim Smt. Lalita Devi has also got married to another man and she has got a daughter from the wedlock of second husband who has also been arrayed as a party but they had not come forward to dispute the allegations. The father of Smt. Lalita Devi has not supported the prosecution case, in fact it is a case where the police should not have submitted the charge sheet, Since each and every allegation has been clearly and specifically denied by the victim herself, in the circumstances, I come to a conclusion that this is one of those rarest of the rare where the applicants should not be relegated to face the trial. It is apparent that there are no chance of conviction and continuation of proceedings will amount to an abuse of the process of the court.

6. For the reasons discussed above, the charge sheet and entire proceedings initiated on its basis in Criminal Case No. 250 of 1999, State v. Devi Shanker and Ors. are quashed and this application is allowed.