
(2012) 01 AHC CK 0206
In the Allahabad High Court
Case No : Application No. 10156 of 2008

Smt. Raj Laxmi Srivastava and Others	APPELLANT
Vs	
State of U.P. and Another	RESPONDENT

Date of Decision : 16-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 239, 245, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 498A, 504, 506

Citation : (2012) 01 AHC CK 0206

Hon'ble Judges : Rajesh Dayal Khare, J

Bench : Single Bench

Judgement

Hon"ble Rajesh Dayal Khare, J.—Heard learned counsel for the applicants, Sri Vivek Srivastava, learned counsel for opposite party No. 2 and learned A.G.A. for the State-respondent. On the request of learned counsel for the applicants another Bench of this Court, vide order dated 24.04.2008 had referred the matter to mediation centre. The Incharge mediation centre vide its report dated 10.07.2008 had reported that parties are not willing for mediation and mediation has failed between the parties, copy of which report is on record.

2. Learned counsel for the applicants contends that entire alleged incident, is said to have been taken place at Delhi and complaint case has been filed at Banda.

3. It is further contended by the learned counsel for the applicants that the Court at Banda do not have jurisdiction.

4. It is next contended by the learned counsel for the applicants that when the applicants went to the Mediation Centre for conciliation between the parties, opposite party No. 2 had demanded Rs. 20,00,000/- (rupees twenty lacs) for settlement as has been contended in para-25 of the rejoinder affidavit.

5. It is also contended by the learned counsel for the applicants that on account

of the aforesaid reasons, mediation has failed between the parties.

6. It is lastly contended by the learned counsel for the applicants that charge sheet has been filed on the influence of brother of opposite party No. 2, who is working in the Court of Chief Judicial Magistrate, Banda.

7. Shri Vivek Srivastava, learned counsel appearing on behalf of opposite party No. 2 states that on account of additional demand of dowry and cruelty meted out, opposite party No. 2 has rightly initiated the present proceedings against the applicants and there is no infirmity in the order impugned, which may call for any interference by this Court in exercise of powers u/s 482 Cr.P.C.

8. The present 482 Cr.P.C. petition has been filed for quashing the proceedings of Criminal Case No. 1565 of 2008 arising out of Case Crime No. C-10 of 2007, under Sections 498A, 323, 504, 506 IPC and 3/4 Dowry Prohibition Act, PS Kotwali Nagar, district Banda pending before the Chief Judicial Magistrate, Jhansi and also for quashing the charge sheet dated 18.06.2007 filed in the aforesaid case.

9. It is contended by learned counsel for the applicants that no offence against the applicants is disclosed and the present prosecution has been instituted with a malafide intention for the purposes of harassment. He pointed out certain documents and statements in support of his contention.

From the perusal of the material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicants. All the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court u/s 482 Cr.P.C. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of R.P. Kapur Vs. The State of Punjab, , State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283. The disputed defence of the accused cannot be considered at this stage. Moreover, the applicants have got a right of discharge u/s 239 or 227/228, or 245 Cr.P.C. as the case may be through a proper application for the said purpose and they are free to take all the submissions in the said discharge application before the Trial Court.

10. The prayer for quashing the proceedings and charge sheet dated 18.06.2007 is refused.

11. Interim order, if any, stands vacated.

However, in the circumstances of the case, it is provided that if the applicants move an application for surrender before the court concerned within three weeks from today, the Magistrate concerned shall fix a date about two weeks thereafter for the appearance of the applicants and in the meantime release the applicants on interim bail on such terms and conditions as the court concerned considers fit and proper till the date fixed for the disposal of the regular bail.

12. The court concerned shall also direct the Public Prosecutor to seek instructions from the investigating officer by the date fixed and also give an opportunity of hearing to the informant and thereafter decide the regular bail application of the applicants in accordance with the observations of the Full Bench of this Court in Amarawati and Another (Smt.) Vs. State of U.P., , affirmed by the Supreme Court in Lal Kamendra Pratap Singh Vs. State of U.P. and Others, and reiterated by the Division Bench of this Court in Sheoraj Singh alias Chuttan Vs. State of UP and others, 2009 (65) ACC 781.

13. If further instructions are needed or if adjournment of the case on the date fixed for hearing becomes unavoidable, the Court may fix another date, and may also extend the earlier order granting interim bail, if it deems fit.

14. In case the applicants fail to appear before the court concerned on the dates fixed or he fails to cooperate with the investigating officer during investigation, it will be open to the Public Prosecutor to move an application for cancelling the order of interim/final bail and the Court concerned may pass an appropriate order on merits.

15. The registry of this Court is directed to communicate the order passed by this Court today to the concerned Court below forthwith. With the aforesaid directions, this application is finally disposed of.