

(2005) 04 AHC CK 0173

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 5277 of 2004

Smt. Sangita Devi, Satich Chandra Sonkar, Budhi Ram,
Nirmala and Radhika

APPELLANT

Vs

State of U.P. and Om Prakash Sonkar

RESPONDENT

Date of Decision : 26-04-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 239, 482
Penal Code, 1860 (IPC) — Section 323, 498, 498A, 504, 506

Citation : (2005) 04 AHC CK 0173

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : Pradeep Kumar and Uma Nath Pandey, for the Appellant; S.N. Singh, R.P. Srivastava and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Ravindra Singh, J.—Heard Sri Pradeep Kumar and Sri Uma Nath Pandey learned counsel for the petitioners, learned A.G.A. and Sri Satyendra Narayan Singh and Sri R.P. Srivastava learned counsel for the respondents No. 2.

2. This petition has been filed against the order dated 22.9.2003 passed by learned C.J.M. Basti in Criminal Case No. 4862 of 2002 whereby the application u/s 239 Cr. P. C. filed by the petitioners was rejected and the order dated 5.6.2004 passed by the learned Additional Sessions Judge, Court No. 1, Basti in Criminal Revision No. 761 of 2003 whereby the revision filed by the petitioners was dismissed.

3. The facts in brief of the case are that an F.I.R. was lodged by the respondent No. 2 in Case Crime No. 12 of 2000, u/s 498, 323, 504 and 506 I.P.C at Police Station Purani Basti, District Basti on 14.1.2000. After completing investigation charge sheet dated 27.2.2000 was submitted by the I.O. against the petitioners and one Rakesh Kumar for the offences punishable u/s 498A, 323, 504 and 506 I.P.C. on the basis of the charge sheet submitted by the I.O. the learned

Magistrate took the cognizance and summoned the petitioners to face the trial for the above mentioned offences on 15.9.2000 by the learned C.J.M., Basti. Thereafter, the petitioners moved an application dated 21.1.2000 u/s 239 Cr. P.C in the court of the learned C.J.M., Basti with a prayer that the petitioners were falsely implicated and no offence is made out against them, so they may be discharged for the offences in which they have been summoned to face the trial. That application was rejected by the learned C.J.M. on 22.9.2003. Against that order the petitioners filed Criminal Revision No. 761 of 2003. The same was dismissed by the learned Additional Sessions Judge, Court No. 1, Basti on 5.6.2004.

4. It is contended by the learned counsel for the petitioners that the petitioner No. 2 Satish Chandra Sonkar was married with Smt Chandrawati Devi, the sister of the respondent No. 2 in the year 1980. Thereafter, she came to the house of her husband in the year 1991 in her Gauna ceremony. From the wedlock of the petitioner No. 2 and Smt Chandrawati Devi one daughter was born on 2.11.1992. Subsequently, Smt Chandrawati Devi left the house of her husband and went to the house of her parents in the month of September of 1993 leaving her daughter Km. Kanchan Lata at the house of her husband. At that time she was only 11 months old. Smt Chandrawati Devi did not return to her husband's house after September 1993 and thereafter she did not come in the contact of the petitioner No. 2 but she gave birth to a male child in the year 1995 at her parents house. Therefore, the petitioner No. 2 filed a Suit No. 247 of 1999 against the Chandrawati in the court of Civil Judge (S.D.), Basti on 25.10.1999 seeking the relief for divorce decree from Smt Chandrawati. When Smt Chandrawati came to know about the filing of the suit for divorce, she filed an application 125 Cr.P.C. in the court of Judicial Magistrate, 1st, Basti against the petitioner No. 2 and the respondent No. 2 the brother of Smt Chandrawati lodged FIR of the present case on the basis of the false and frivolous allegations on 14.1.2000. The petitioners challenged that F.I.R.. by way of filling a Criminal Misc. Writ Petition No. 570 of 2000 before this court, in which the arrest of the petitioners was stayed till further orders of the court or till the submission of the charge sheet whichever is earlier vide order dated 1.2.2000. The Investigating Officer recorded the statement of Kanhaya Lal, Ashok Kumar and Rajendra on 19.1.2000. They did not support the allegations made against the petitioners. Thereafter, the I.O. recorded the statement of some other persons and came to conclusion that no evidence was available against the petitioners to show that they have committed the alleged offence. The conclusion of the case recorded by the I.O. was also mentioned in the case diary that a false report was lodged against the petitioners, but the respondent No. 2 made a complaint against the I.O. to the D.I.G., Basti, who directed the Superintendent of Police, Basti to change the I.O. of this case. Then the Superintendent of Police, Basti changed the I.O. and the investigation of the case was entrusted to S.I. Sohan Singh vide order dated 10.2.2002, who took the investigation in his hand on 21.2.2000, but without recording statement of any witness he submitted the charge sheet on

27.2.2000.

5. It is further contended by the learned counsel for the applicant that the charge sheet dated 27.2.2000 was not approved by the prosecuting officer so the Circle Officer again changed the I.O. and investigation was entrusted to Sri Prabhakar Misra, S.I., who recorded the statements of the witnesses and came to the conclusion that the petitioners were falsely implicated and submitted the report dated 12.8.2000, in the Court of learned C.J.M., Basti

6. It is contended by the learned counsel for the petitioners that there was no fair investigation, even on the basis of the investigation done by the I.O. no offence is made out against the petitioners. On the basis of the charge sheet submitted by the I.O. the learned C.J.M., Basti took the cognizance and summoned the petitioners to face the trial on 15.9.2000 but learned C.J.M. has not considered the report dated 12.8.2000 submitted by the last I.O. the petitioners filed a Criminal Misc. Application No. 2512 of 2001 u/s 482 Cr. P. C. before this court with a prayer to quash the criminal proceedings but the same was dismissed by this court on 18.1.2002. It is contended by the learned counsel for the petitioners that the first I.O. who had recorded the statement of Smt Chandrawati Devi came to conclusion that false FIR was lodged against the petitioners, but the second I.O. did not record statement of Smt Chandrawati Devi, who obtained only affidavits of first informant and Smt. Chandrawati Devi and made the part of the case diary and without collecting any other evidence submitted the charge sheet, so no fair investigation was done by the I.O. and on the basis of the evidence collected by the I.O. no offence is made out against the petitioners u/s 498A, 323, 504 and 506 I PC The petitioners filed an application u/s 239 Cr. P. C. The same was dismissed on 22.9.2003 by the learned C.J.M. without considering the facts and circumstances of the case and the evidence collected by the I.O., the impugned order dated 22.9.2003 is illegal. The learned Sessions Judge also did not considered the manifest error committed by the learned C.J.M. and without applying his judicial mind dismissed the revision filed by the petitioners on 5.6.2004.

7. This contention is opposed by the learned A.G.A; and the learned counsel for the respondents No. 2 by submitting that there is no illegality in the investigation of the case and proper charge sheet was submitted by the I.O. and on the basis of the evidence collected by the I.O. the offences under Sections 498A, 323, 504 and 506 I PC is made out and on the basis of the charge sheet the learned Magistrate took the cognizance and summoned the petitioners to face the trial for the aforesaid offences on 15.9.2000. The order dated 15.9.2000 was challenged in this court by way filling the Criminal Misc. Application No. 2142 of 2002. This court has already considered the evidence collected by the I.O. and dismissed the Criminal Misc. Application No. 2512 of 2001 filed by the petitioners and on the same evidence the petitioners filed an application u/s 239 Cr. P. C, for discharge which was rightly rejected by the learned C.J.M. on 22.9.2003. Against that order the petitioners filed Criminal Revision. The same was dismissed on

5.6.2004 by the learned Additional Sessions Judge, Court No. 1, Basti, There is no illegality in the impugned orders.

8. In view of the facts and circumstances of the case and the submissions made by learned counsel for the petitioners, learned A.G.A. and the learned counsel for the respondents No. 2 and from the perusal of the record it appears that the I.O. has submitted the charge sheet against the petitioners on the basis of the statement of the witnesses respondent No. 2 Om Prakash Sonkar, smt Chandrawati wife of the petitioner No. 2, Jawahar Lal and Ram Kewal Chaudhary and some other formal witnesses. From the perusal of the statement of Smt Chandrawati Devi, Om Prakash it appears that on the basis of the allegations made therein prima facie offence u/s 498A, 323, 504 and 506 is made out and there is sufficient evidence to proceed further and to frame the charge against the petitioners. At the stage of taking the cognizance and framing the charge the only evidence collected by the I.O. is considered to determine whether on the basis of the evidence collected by the I.O. prima facie any offence is made out against the accused and there is sufficient ground to proceed further, so the learned Magistrate did not commit any error by rejecting the application u/s 239 Cr. P. C. filed by the petitioners.

9. From the perusal of the impugned order dated 22.9.2003 passed by the learned C.J.M. and the order dated 5.6.2004 passed by the learned Additional Sessions Judge, Court No. 2, Basti respectively it appears that both the orders are well reasoned. There is no illegality or irregularity in the impugned orders, which require no interference by this court. In the result the prayer for quashing the orders dated 22.9.2003 and 5.6.2004 is refused.

10. Accordingly, the petition is dismissed.