
(2012) 01 AHC CK 0727

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 845 of 2011

Smt. Suman And Others

APPELLANT

Vs

State of U.P. And Others

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 498A, 504

Citation : (2012) 01 AHC CK 0727

Hon'ble Judges : Vinay Kumar Mathur, J;Devendra Pratap Singh, J

Bench : Division Bench

Advocate : R.S. Shukla, Apul Misra and Pradeep Kumar, for the Appellant; A.P. Paul and Pooja Mishra, Govt. Advocate, for the Respondent

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioner and learned Additional Government Advocate. This writ petition has been filed for quashing of an FIR in case crime No. 2179 of 2010 under Sections 498A, 323, 504 I.P.C. and 3/4 D.P. Act, P.S. Indra Puram, District, Ghaziabad.

2. While entertaining the writ petition, this court, at the threshold, relegated both the parties for conciliation before the mediation centre of this court. The mediation centre has submitted its report dated 18.8.2011 that though the mediation took place on five dates, no agreement could be reached.

3. It is urged that the marriage between the husband, petitioner no. 6 and the wife, respondent no. 3 took place on 22.1.2006 according to Hindu rites and a son was born on 30.10.2006. It is further urged that the respondent was forcing her husband to get his share divided in the parental property but the petitioner refused and the lady tried various tricks leading to strained relations between the petitioner and his old parents. She used her position as a lawyer in poisoning the atmosphere of the entire family and also was neglecting the son and finally she went away to her parent's home in April, 2009 forcing the petitioner to file a suit

for divorce on 1.5.2010. It is further urged that as a counterblast this first information report has been lodged by implicating the entire family of the petitioner after receiving a notice of divorce.

4. The writ court is not competent to go into questions of facts and on the allegations, it cannot be said that no prima facie case is disclosed.

5. Hence, no ground exists for quashing the FIR or staying the arrest of the petitioners.

6. However, in the circumstances of the case, it is provided that if the petitioners move an application for surrender before the court concerned within four weeks from today, the Magistrate concerned shall fix a date about ten days thereafter for the appearance of the petitioners and in the meantime release the petitioners 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.

7. The court concerned shall also direct the Public Prosecutor to seek instructions from the investigating officer by the date fixed and as far as possible also give an opportunity of hearing to the informant and thereafter decide the regular bail application of the petitioners 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 UP, (2009) 4, SCC 437 and reiterated by the Division Bench of this Court in Sheoraj Singh alias Chuttan Vs. State of UP and others, 2009 (65) ACC 781.

8. 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 provided that the adjournment of hearing of the regular bail on one or more dates should not exceed a total period of six weeks.

9. It will also be in the discretion of the Sessions/Special Judge concerned to consider granting interim bail pending consideration of the regular bail on similar terms as mentioned herein above when and if the petitioners apply for bail before him.

10. For a period of four weeks from today or till the petitioners appear/surrender before the court below and apply for bail (whichever is earlier), the petitioners shall not be arrested in the aforementioned case crime.

11. It is made clear that if the petitioners fail to appear before the court concerned for the purpose of applying for bail within the time allowed, no further extension will be given.

12. In case the petitioners fail to appear before the court concerned on the dates fixed or they fail 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. With the aforesaid observations, this petition is disposed off.