
(2005) 09 AHC CK 0293

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 13760 of 2005

Smt. Zahrun Nisa

APPELLANT

Vs

State of U.P. and Gulam Khan

RESPONDENT

Date of Decision : 22-09-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2005) 09 AHC CK 0293

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : N.I. Jafri, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Poonam Srivastava, J.—Heard Sri N.I. Jafri, learned counsel for the applicant and learned A.G.A. for the State.

2. This application has been filed for quashing the charge sheet and the entire proceedings in case No. 9239 of 1989, State v. Zahrun Nisa, arising out of case crime No. 154 of 1989, under Sections 498A, 304B I.P.C. pending in the court of learned Chief Metropolitan Magistrate, Kanpur Nagar.

3. The marriage of the deceased Nasiran was performed with Saghir Ahmad in the month of May, 1989 and allegation in the first information report is that after the marriage, she was subjected to cruelty for bringing insufficient dowry. On 12.8.1989 the deceased died of burn injury and a first information report was registered at the instance of opposite party no. 2 Gulab Khan on 12.8.1989 at Police Station Bekanganj, District Kanpur Nagar. S.T. No. 546 of 1989 proceeded in the court of 5th Additional District and Sessions Judge, Kanpur Nagar, State v. Saghir Ahmad and Ors. The trial proceeded against the husband and mother-in-law and vide judgment dated-24/25.5.1990, both the accused i.e. husband and mother-in-law were acquitted as the prosecution was not able to prove its case beyond doubt, A copy of the judgment dated 24/25.5.1990 is annexed as

Annexure 5 to the affidavit. This application is on behalf of sister-in-law Suit. Zahrun Nisa, against whom charge sheet was filed subsequently, A certified copy of the charge sheet is annexed as Annexure-1, a perusal of the same reveals that Saghir Ahmad and mother-in-law Smt. Rahman were challaned on 9.9,1989, whereas the present applicant has been challaned by means of the present charge sheet. On the basis of charge sheet, the proceeding in case No. 9239 of 1989, State v. Jaharun Nisa is continuing.

4. The ground for quashing the charge sheet is that since the main accused i.e. husband and mother-in-law have already been acquitted after evaluating the entire evidence, principle of stare decise will apply and the proceedings should be quashed. This argument is based on a decision of this Court in the case of Manoj v. State of U.P. (49) 2004 ACC 302 . This Court has ruled that since two accused have already been acquitted and the same evidence is to be adjudicated for the second lime, it will only amount to wastage of time. Admittedly, no conviction can be procured and there is no prospect of the case ending in conviction against the present applicant, it will only be a hallow formality of completing the procedure of the trial and it is almost certain that the trial will meet the same fate and entire exercise will be rendered futile. In such circumstances, the proceedings can be quashed in exercise of inherent powers applying the principle of the said case. I am in agreement with the argument of the counsel for the applicant.

5. Another decision relied upon by the counsel is, Smt. Begam and Ors. v. State of U.P. and Anr. 2005 CBC 546. In this case, this Court had held that since the case arises out of the same first information report and the allegations are identical in respect of which an order of acquittal has already been passed, it was held that the proceedings, if allowed to continue, will amount to an abuse of the process of the court.

6. Looking to the facts and circumstances of the case and after perusing the judgment dated 24/25.5.1990 in Sessions Trial No. 546 of 1989, I am convinced that the proceedings on the basis of the impugned charge sheet should be quashed applying the principle of "stare decise".

7. In the circumstances, this application is allowed and the charge sheet in case No. 9239 of 1989, State v. Zahrun Nisa, arising out of case crime No. 154 of 1989, under Sections 498A, 304B I.P.C., Police Station Bekanganj, District Kanpur Nagar, pending in the court of Chief Metropolitan Magistrate, Kanpur Nagar is quashed.