

(2011) 02 AHC CK 0276
In the Allahabad High Court
Case No : U/S 482/378/407 No. 554 of 2011

Srimati Neelam Tripathi and Another	Vs	APPELLANT
The State of U.P. and Another		RESPONDENT

Date of Decision : 07-02-2011

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Evidence Act, 1872 — Section 40, 41, 42, 43, 44
Penal Code, 1860 (IPC) — Section 323, 376, 377, 498A, 504
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2011) 3 DMC 199

Hon'ble Judges : Narayan Shukla, J

Bench : Single Bench

Judgement

Narayan Shukla, J.—Heard Mr. Rishad Murtaza, learned Counsel for the Petitioners and Mr. Rajendra Kumar Dwivedi, learned Additional Government Advocate for the State.

2. The Petitioners being sister-in-law and mother-in-law of the Respondent No. 2, have challenged the proceedings of Criminal Case No. 1821-A of 2010, under Sections 498-A, 323, 504, 506 IPC and Section 3(1)(X) of SC and ST Act, Police Station Krishna Nagar, district Lucknow, inter alia on the ground that though the complainant at the time of lodging the First Information Report deposed the case as the case of abduction, rape and demand of dowry, but ultimately through her statement during the course of evidence she admitted marriage with Mr. Rajeev Kumar Tripathi, though it was an inter-caste marriage, and ultimately denies the charges levelled against the husband.

3. Upon perusal of the First Information Report, I find that substantially she raised allegations only against her husband. The husband has been tried for the offences in Sessions Trial No. 732 of 2010 and has been acquitted from the charges by means of order dated 9th of November, 2010, passed by the Special Judge, SC/ST Act, Lucknow. The observations of the learned Sessions Judge are

very much relevant for the decision of the present case. The relevant portion of which is reproduced hereunder:

12. In my view, having regard to what has been argued from both the sides, it is apparent that the complainant, who had lodged the FIR against her husband, accused, Rajeev Kumar Tripathi, is now reluctant to bring the case to its logical end, but half-hearted stated against her husband to the effect that he did not oppose his family members in the demand of dowry is merely an eye wash. There is nothing to suggest that there was any demand of dowry in the marriage between the complainant and the accused, since the witnesses have clearly stated that the accused and the complainant were having affair as they were studying together and, in the marriages, which are performed due to love-affair, generally, there is no scope of demand of dowry. In this view of the matter, in my opinion, offence u/s 498-A IPC read with Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, are not proved against the accused. the Public Prosecutor has already conceded that other offences for which the accused has been charged, i.e. the offences under Sections 323, 504, 506, 376 and 377 IPC read with Section 3(1)(x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, and Section 3(1)(xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, and 3/4 of the Dowry Prohibition Act, have not been established. Hence, the accused, Rajeev Kumar Tripathi, deserves to be acquitted of the charge, levelled against him.

4. On this ground the learned Counsel for the Petitioners submits that the present proceeding arising out of said case shall be futile exercise that too against the relatives for the allegations for commission of offences as are there.

5. On the other hand Mr. Rajendra Kumar Dwivedi, learned Additional Government Advocate invited the attention of this Court towards the judgment rendered by the Division Bench of this Court in the case of Km. Rinki v. State of U.P. and Ors. reported in 2008 (3) JIC 267 (All), in which the Division Bench of this Court has held that the judgment of acquittal rendered in one case is not relevant in the case of co-accused separately tried inasmuch as Sections 40 to 44 of the evidence Act and every case has to be decided on the evidence adduced therein and therefore all the cases have to be decided on the evidence, which may be adduced during the course of trial.

6. In light of the aforesaid observations this Court declined to interfere in the proceedings.

7. Thus if I go through the record under the observations made as above to consider the case on merit apart from the judgment rendered in the case in the form of acquittal of the husband, I find that the evidence which has been dealt with in the case, does not warrant to make Anr. view as has been made by the complainant as the complainant herself has taken a lenient view in favour of her husband during the course of examination, therefore, prima facie, I am of the

view that it does not lead to proceed against the Petitioners, who are relatives and I hereby stay the proceedings of Case No. 1821-A of 2010 pending before the Additional Chief Judicial Magistrate-IV, Lucknow, relating to Case Crime No. 42 of 2010, under Sections 498-A, 323, 504, 506 IPC and Section 3(1)(X) of SC & ST Act, Police Station Krishna Nagar, district Lucknow till further orders of this Court.

8. Issue notice to opposite party No. 2.

9. List after service report.