

(2011) 11 UK CK 0064

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application (C-482) No. 349 of 2011

Vipin Kumar and Others

APPELLANT

Vs

State of Uttarkhand and Smt. Rani

RESPONDENT

Date of Decision : 17-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 482

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 323, 406, 498A, 504, 506

Citation : (2011) 11 UK CK 0064

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Prafulla C. Pant, J.—Heard.

2. By means of this petition, moved u/s 482 of Code of Criminal Procedure, 1973, the petitioners have sought quashing of the proceedings of Criminal Case No. 59 of 2011, relating to offences punishable u/s 498A, 323, 504 and 506 I.P.C, and one punishable u/s 3/4 of Dowry Prohibition Act, 1961, Police Station Ranipokhri, District Dehradun, pending in the court of Additional Judicial Magistrate, Rishikesh.

3. Brief facts of the case are that, respondent no.2 Smt. Rani got married to petitioner no.1 Vipin Kumar on 08.12.2001. Out of the wedlock one daughter was said to have been born, who is living with her mother. The First Information Report was lodged by respondent no.2 Smt Rani against the petitioners on 11.11.2010, at police station Ranipokhri, alleging that after her marriage, her husband Vipin Kumar, mother in law Smt.Nirmala Devi, and brother in law Bhupendra Singh demanded Rs. 50,000/- as dowry, and on being unable to meet said demand she was subjected to cruelty by her husband and in laws. It is also alleged by her that she was ousted from her husband"s house after she was beaten by her husband, mother in law, brother in law and sister in law

(DEVrani). On 25.05.2009 relating to said incident she has further stated in the First Information Report that she got herself medically examined. She has also stated that on 08.10.2010, when she was attending the court in a case filed by her, she was again attacked. The Investigating Officer after investigation, filed charge sheet against the petitioners Vipin Kumar, (husband) Smt.Nirmala Devi (mother in law), Bhupendra Singh (brother in law/DEVAR) and Smt Kavita (sister in law/DEVrani), Ramesh Kumar Kaushal (maternal uncle in law) and Smt Neelam (maternal aunt in law) and sister Anju (married sister in law) relating to offences punishable u/s 498A, 323, 504 and 506 I.P.C., and one punishable u/s 3/4 of Dowry Prohibition Act, 1961, on which the cognizance is taken by the Judicial Magistrate, Rishikesh, and accused were summoned. Aggrieved by said summoning order dated 27.01.2011, this petition is filed by the petitioners for quashing of the same.

4. Learned counsel for the petitioners submitted that the respondent no.2 is filing one after another criminal cases against her husband and his relatives which is nothing but abuse of process of law. It is pointed out that the husband is facing the cases filed u/s 125 of Cr.P.C, and the trial in respect of offence punishable u/s 406 of I.P.C., and one filed under Protection of Women from Domestic Violence Act, 2005. Petitioner no.2 Nirmala Devi (mother in law) is also facing trial in the above mentioned last two cases.

5. On the other hand, respondent no.2 Smt Rani, who is present in person in the court, and her counsel Shri Nagesh Aggarwal argued that the respondent no.2 is being subjected to cruelty at the hands of her husband and in laws.

6. Having considered submissions of learned counsel for the parties, and after going through the papers on record, this court finds that there is sufficient material on record suggesting that the respondent no.2 has falsely implicated petitioner no.5 Ramesh Kumar Kaushal (maternal uncle in law), petitioner no.6 Smt. Neelam (maternal aunt in law), and petitioner no.7 Smt Anju (married sister in law). The petitioner no.5 and petitioner no.6 live in Jahore Singh Nagar, and petitioner no.7 lives in Amballa Cantt. Other petitioners namely Vipin Kumar (husband), Smt. Nirmala Devi (mother in law), petitioner no.3 Bhupendra Singh (brother in law) and petitioner no.4 Kavita (sister in law/ DEVrani), they lived together in Lajpat Nagar. No specific incident of cruelty is mentioned as against another petitioners no. 5, 6 and 7. To the extent of trial of these three, it appears to be abuse of process of law on the part of the respondent no.2 Smt Rani.

7. However, as far as the other petitioners namely Vipin Kumar, Nirmala Devi, Bhupendra Singh and Kavita are concerned though learned counsel for the petitioners have pleaded their innocence, but this court in its jurisdiction u/s 482 of Cr.P.C., can not decide the disputed question of fact. Such pleas can be examined by the trial court after recording the evidence.

8. For the reasons as discussed above, the petition u/s 482 of Cr.P.C., is partly allowed. The proceedings of Criminal Case No. 59 of 2011, relating to offences

punishable u/s 498A, 323, 504 and 506 I.P.C, and one punishable u/s 3/4 of Dowry Prohibition Act, 1961, Police Station Ranipokhri, District Dehradun, pending in the court of Additional Judicial Magistrate, Rishikesh, are hereby quashed, so far as the same relate to the petitioner no.5 Ramesh Kumar Kaushal, petitioner no.6 Smt. Neelam and petitioner no.7 Anju. However, the trial in respect of other petitioners namely Vipin Kumar, Nirmala Devi, Bhupendra Singh and Kavita is not interfered with. It is further observed if these four petitioners are not on bail, and surrender before court concerned, their bail application shall be heard without unreasonable delay.