

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Criminal Misc. Application (C482) No.890 of 2019

Bhupendra Singh and Others ... Applicants

Vs.

State of Uttarakhand and Another ... Respondents

Advocate: Mr. Ramji Shrivastava, learned counsel for the applicants.
Mr. V.K. Gemini, learned Deputy Advocate General for the State.
Mr. Lalit Miglani, learned counsel for respondent no.2.

Hon'ble Sharad Kumar Sharma, J.

The brief facts of this C482 Application are that, the complainant/ respondent no.2, who is the wife of late Mr. Avtar Singh, was the heir of the present applicant. She being married to the son of applicant no.3, had registered an FIR, being FIR No.633 of 2017 for the alleged involvement of the present applicants for commission of the offences under Sections 498A, 323, 504, 506 and 342 of the IPC.

2. The matter was investigated and the Investigating Officer has submitted a Chargesheet No.132 of 2018 dated 28.03.2018, as against the present applicants for the offences under Sections 498A, 323, 504, 506 and 342 of the IPC, on which, the summoning order has been issued, resulting into the registration of Criminal Case No.10482 of

2018, “State Vs. Baljeet Kaur and Others”, the summoning order has been issued on 10.08.2018, which is the subject matter of challenge in the instant C482 Application.

3. The matter has been contested by the parties to the C482 Application on different grounds. In order to precisely summarize the grounds, as taken by the learned counsel for the applicants to put a challenge to the FIR, it deals with:-

1) That FIR is nothing but an encyclopedia with regards to the claim which has been raised by the complainant in relation to the property claiming herself to be having a coparcenary rights since being the widow of late son of applicant no.3.

2) It has been argued by the learned counsel for the applicants that the entire FIR, in fact, is a reflection of a civil litigation, which has been given the colour of a criminal case by registration of the FIR and, particularly, in a nutshell, if the FIR is taken into consideration, it relates to the vengeance of the grievances, with regards to the respective claim and rights over the immoveable property, which the parties claim and, particularly, the complainant, is alleged to have her claim of having succeeded the share of the

same, on the basis of being the widow of late son of applicant no.3.

3) Learned counsel for the applicants has submitted, that none of the ingredients, as contemplated under Sections 498A, 323, 504, 506 and 342 of the IPC, are made out against the present applicants. Thus, the proceeding of the Criminal Case No.10482 of 2018, "State Vs. Baljeet Kaur and Others" does not sustain.

4) In extension of his argument, he submits that in C482 Application in paragraph no.14, he has specifically raised a plea that, in fact, it is the demand of share in the property, which has been raised by the complainant, which has been denied by applicant no.3, which is the sole motive for registration of the complaint. He further submits that the aforesaid facts stand fortified by the response given by the respondent in paragraph no.12 of the counter affidavit, where it has been submitted that though the contents of paragraph no.14 are false, but the complainant has submitted that she would be having a coparcenary rights over the property belonging to her late husband.

4. While on the other hand, learned counsel for the respondent has argued the matter from the view point that, if the FIR is taken into consideration in its totality, the offence under Section 498A of the IPC, would be made out, for the reason being, that according to his interpretation given to Section 498A of the IPC, he submits that in order to constitute a commission of the offence under Section 498A of the IPC, the prime ingredients required therein, is with regard to establishment of the facts of cruelty.

5. He submits that, if the provisions contained under Section 498A of IPC is considered in its literal sense, it is always the conduct, which has to be taken into consideration by the Court to come to a conclusion, as to whether the offence under Section 498A of the IPC is made out or not? Because its basic feature has to be that it should drive a women to commit suicide or cause grave injury or danger to her limb, life or health.

6. This deliberation made with regards to Sub-section (a) of Section 498A of the IPC about driving a women to commit suicide or injuries as referred to therein, none of the elements, which has been expressed by the complainant either in the FIR or in response to it in the counter affidavit. But, still learned counsel for the respondent proceeds to carve out an exception that the wilful conduct of grave injury or danger would be

including also by way a mental or physical injury of a woman. Mental agony or driving a woman to commit suicide would always be an abstract term, which has to be spelt out specifically in the FIR, which has been registered by the complainant, which is lacking in the instant case.

7. So far as the physical assault, which is referred to under Section 498A of the IPC is concerned, though at different parts of the FIR, it has been asserted that she was physically manhandled by the applicants, but it does not specify as to what is the nature of injury suffered by her! and if suffered then what remedial medical avenues has been resorted to by her to substantiate a cause of physical injury to her.

8. Sub-section (b) of Section 498A of the IPC has also to be read together for carving out an offence under Section 498A of the IPC, where it uses the word 'harassment' of a woman for coercing her or any person related to her to meet 'any unlawful demand for any property or valuable security'.

9. The basic element required under Sub-section (b) of Section 498A of the IPC, is that there has to be a coercion to meet out any unlawful demand of property. It is not a case in the FIR, which has been carved out by the complainant, at any juncture, that the applicants had coerced her to fulfil any illegal or any unlawful demand of any

property or a valuable security, but rather to the contrary, as argued by the learned counsel for the applicants, the FIR was nothing but a substitutive mode adopted by the complainant for redressal of her simple grievances with regards to the share in property, which she has claimed over the property, alleging it to have devolved upon her on the basis of the coparcenary rights, which would have been otherwise vested with her late husband, which she would contend that she was otherwise entitled to receive.

10. To summarize, so far Section 498A of the IPC is concerned, the element of Sub-section (a) of Section 498A of the IPC, it basically intends to instigate a female to a level, to force her to commit suicide or cause grievous injury. There is no such act, which has been mentioned in the FIR, that she has ever resorted to because of the alleged coercion exerted upon her by the applicants.

11. Secondly, for the purpose of Sub-clause (b), 'coercion' here means that it would be a force exerted upon the complainant to meet any unlawful demand of property. There is no such averment in the FIR registered by the complainant / respondent no.2, that the applicants were ever, at all, involved in forcing her to meet any unlawful demand or demand of any property.

12. Learned counsel for the respondent argues that, in view of certain observations, which

has been made in the FIR, it satisfies the test of cruelty, if it is read along with the offence under Section 342 of the IPC.

13. For the time being, even if it is presumed that some of the offences, as it was referred to, if at all, it would constitute to be an offence Section 323 or 342 of the IPC, in fact, there is no supporting evidence on record to show that, as a consequence of the assault falling within the ambit of Section 323 of the IPC, the complainant had ever got herself medically examined with regards to the injuries suffered. Rather an abstract version which has been attempted to be argued, that owing to the offence under section 342 of the IPC, which she has complained of, that she was forcefully confined that would amount to be a cruelty under the ambit of Section 498A of the IPC.

14. In fact, if the FIR is taken up in its summarized form together with the chargesheet, none of the offences could be said to be materially crystallised even by the Investigating Officer in the chargesheet, which has been submitted by him on 28.03.2018. Because, if the chargesheet is taken into consideration, the Investigating Officer has considered the report as submitted by the S.I. and thereafter, the case diary and the statements recorded of the witnesses with regards to the commission of offences, what is important herein is, that even the Investigating Officer, when he has

recorded the statements of seven witnesses during the course of investigation, he does not remark, at any point of time, that any offence under section 323 or 342 of the IPC was made out as against the applicants in order to attract the so called 'principal of cruelty', as argued by the learned counsel for the respondents from the contents of the FIR, that confining a female in a room itself will be a cruelty but only when first he precedes with to establish that there was a forceful confinement, which itself was not established by the Investigating Officer, at the stage, when the chargesheet was submitted.

15. The learned counsel for the applicants has argued, that if the entire FIR is taken into consideration, the basic concern of the complainant was to seek her apportionment of share and right over the property, which belonged to applicant no.3 and which would have automatically devolved upon the late husband of complainant /respondent no.2. If that be the situation, the appropriate recourse available to the complainant would have been to resort to civil remedies for settling off her share over the property, which according to the male lineage, would have devolved upon the late husband of the complainant.

16. Learned counsel for the applicants has submitted that the aforesaid principle as to whether a civil dispute could be given a shape of criminal case, it has been deprecated in a judgment of the

Hon'ble Apex Court as reported in **(2007) 12 SCC 1, Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others**, and, particularly, he has referred to paragraph no.49, 56 and 60 of the said judgment, which are extracted hereunder:-

“49. *In State of U.P. v. Poosu [(1976) 3 SCC 1 : 1976 SCC (Cri) 368] at SCC p. 5, para 13 the Court observed:*

“13. ... Whether in the circumstances of the case, the attendance of the accused-respondent can be best secured by issuing a bailable warrant or non-bailable warrant, is a matter which rests entirely in the discretion of the Court. Although, the discretion is exercised judicially, it is not possible to computerise and reduce into immutable formulae the diverse considerations on the basis of which this discretion is exercised. Broadly speaking, the court would take into account the various factors such as, the nature and seriousness of the offence, the character of the evidence, circumstances peculiar to the accused, possibility of his absconding, larger interest of the public and State.”

56. *The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straitjacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.*

60. *Reverting to the facts of this case, we are of the considered view that the impugned judgment of the High Court in declining to exercise its inherent power has led to grave miscarriage of justice. Consequently, we set aside the impugned judgment and in order to prevent abuse of the process of the Court and to otherwise secure the ends of justice we direct that all the proceedings emanating from the FIR shall stand quashed. The appeal is disposed of accordingly. In the facts and circumstances of this case, we direct the parties to bear their own costs.”*

17. In fact, basically the principle of the Hon'ble Apex Court, was that the criminal platform may not be used or permitted to be abused to be used for vengeance of a private vendetta in relation to an immoveable property, over which the complainant might be claiming his or her share, based upon the rights, which was claiming to be devolving upon her and that has been deprecated by the judgment of the Hon'ble Apex Court as rendered in the case of **State of Haryana Vs. Bhajan Lal** as reported in **1992 SCC (Cri) 426**, which has been considered by the Hon'ble Apex Court in the matter of **Inder Mohan Goswami(supra)**, as it has been observed in paragraph no.38 of the said judgment. The relevant part of which has been extracted hereunder:-

“38. The question before us is—whether the case of the appellants comes under any of the categories enumerated in Bhajan Lal [1992 Supp (1) SCC 335: 1992 SCC (Cri) 426] ? Is it a case where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in entirety, do not make out a case against the accused under Sections 420, 467 and 120-B IPC? For determination of the question it becomes relevant to note the nature of the offences alleged against the appellants, the ingredients of the offences and the averments made in the FIR/complaint.”

18. While on the contrary, in order to substantiate his argument, learned counsel for the respondent has submitted that the jurisdiction under Section 482 of the Cr.P.C. cannot be utilized by an applicant to conduct a mini-trial, in the light

of the judgment of the Hon'ble Apex Court in the matters of the **State of Odisha Vs. Pratima Mohanty** as reported in **AIR 2022 SC 41** and the Court should not venture into dealing with the intricate facts and evidence to arrive at a conclusion as to whether, at all, the offence, which is the subject matter of a criminal trial is actually made out or not.

19. It will be too preposterous to attract the said principle, particularly, when on the simplicitor reading of the FIR in the instant case, it is basically centered around the claim over an immoveable property and the apportionment of share. For that purpose, a simplicitor narration of allegations levelled in the FIR and the chargesheet would be sufficient enough to draw a conclusion, for which, no mini-trial is required to be conducted where a detailed appreciation of evidence is required. More particularly, for the other co-related offences, neither there is specific dealing in the FIR nor was the same established by the Investigating Officer in the chargesheet submitted by him.

20. Not even that, it has not been substantiated by the respondent in the counter affidavit, as filed by them in response to the C482 Application in order to substantiate that the offences, as complained of in the FIR, are made out, rather to the contrary, the respondent has admitted the fact, that it was a controversy

pertaining to the claim of coparcener right over the undivided property, which would have vested with the late husband of the complainant, which is the basic motive of registration of the FIR, as it is apparent from its simplicitor reading.

21. Hence, it could be conclusively derived that the registration of the criminal proceedings was nothing, but an attempt made by the respondent to give a criminal colour to a civil case by registration of the FIR, when no other elements of the offences, which has been complained of and as it has been dealt with above, is made out either in the FIR or in the chargesheet as submitted by the Investigating Officer.

22. As a result thereto, the C482 Application is allowed. The proceedings of Criminal Case No.10482 of 2018, "State Vs. Baljeet Kaur and Others" pending considering before the Court of the Chief Judicial Magistrate, Haridwar would hereby stand quashed.

23. However, it is made clear that any observations made herein, would not prejudice the rights of the respondent, in case, if she resorts to any independent civil proceedings for the settlement of her rights.

(Sharad Kumar Sharma, J.)

04.09.2023