

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE JUSTICE SRI RAKESH THAPLIYAL

December 15, 2023

Criminal Writ Petition No. 1665 of 2023

Vishal Kulshrestha Petitioner

Versus

State & Ors. Respondents.

With

Criminal Writ Petition No. 833 of 2023

Smt. Payal Kulshrestha Petitioners

Versus

State & Ors. Respondents.

Counsel for the Petitioners:
Counsel for the State:
Counsel for the complainant:

Mr. Rajat Mittal.
Mr. Saurabh Pandey, Brief Holder
Mr. Amish Tiwari

Upon hearing the learned Counsel, the Court made the following Order:

1. On mention the record of WPCRL No. 833 of 2023 was summoned today, since another WPCRL No. 1665 of 2023 is listed before this Court wherein the same FIR which was the subject matter of WPCRL No. 833 of 2023 is under challenge therefore, both the petitions are clubbed together, and are being decided by a common order.

2. Brief facts, of the case are that son of the complainant Mr. Ishank married with Ms. Payal Kulshrestha on 21.11.2021, as per Hindu Rites and customs but after some time some differences were arose between them, consequently, a FIR was lodged by the father-in-law of Ms. Payal Kulshrestha at P.S. Kotwali Jwalapur District Haridwar bearing FIR No. 0428 of 2023 on 08.06.2023, wherein the wife of Ishank Ms. Payal Kulshrestha, Smt. Neelam Kulshrestha (mother of Ms. Payal), Sri Sudhir Kumar Kulshrestha (father of Ms. Payal) and Sri Vishal Kulshrestha (brother of Ms. Payal) were implicated with some unknown persons for the offences punishable under Section 452, 503, 506 IPC. After registration of the FIR, the investigation was

going on, however, the said FIR was challenged in Criminal Writ Petition No. 833 of 2023 by Ms. Payal Kulshrestha with her father and mother wherein the Coordinate Bench of this Court stayed the investigation by order dated 16.06.2023. The order passed by the coordinate Bench passed in WPCRL No. 833 of 2023 is being extracted herein below”-

“ Learned counsel for the petitioners would submit that the investigation in the matter has to be stopped because all the witnesses are police officers and under pressure, they may file chargesheet within a day or two, which may create another agony and problem to the petitioners.

Learned counsel would submit that in the case of Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others, 2021 SCC OnLine SC 315, the Hon’ble Supreme Court observed that if no cognizable offence is made out, the Court will not permit the investigation to go on.

It is the case in the FIR that the petitioner no.1 had visited the house of the respondent no.3 along with other petitioners, who happen to be the parents of the petitioner no.1. Petitioner no.1 is admittedly the daughter-in-law of the respondent no.3. The husband of the petitioner no.1 had filed a divorce suit. The FIR records that the petitioners and others have visited the house of the respondent no.3 in connection with the divorce suit. They wanted that the petitioner no.1 should stay in her in-laws house, to which the respondent no.3 was not agreeable, and, thereafter, they threatened that they would be implicated in a false case.

Having considered, this Court is of the view that this is a matter in which as an interim measure, till the objections are invited and heard, the investigation should be stopped.

No further investigation shall proceed in the matter till the next date of listing.”

3. WPCRL No. 1665 of 2023 has been preferred by Vishal Kulshrestha brother of Ms. Payal Kulshrestha wherein the FIR was challenged on the ground that now the parties have settled their dispute amicably outside the Court and they are ready to get the offences compounded and the complainant is also agreed to withdraw the complaint instituted against the petitioner.

4. It has been informed to this Court by the learned counsel for the parties that earlier a divorce petition was filed by the husband Ishank under section 13(1)(i-a) of Hindu

Marriage Act, which was, after amicable settlement agreed to be withdrawn subject to the condition that Ishank and Ms. Payal Kulshrestha both will prefer a divorce petition by way of mutual consent under section 13(B) of Hindu Marriage Act. Pursuant to this settlement the divorce petition was filed by way of mutual consent under Section 13(B) of Hindu Marriage Act on 30.10.2023 wherein the first motion has already been completed and for now second motion 04.04.2024 is fixed. It has been also informed by the learned counsel for the parties that apart from the aforesaid proceedings, the application was also filed by Ms. Payal Kulshrestha for seeking maintenance under Section 125 Cr.P.C., and the same was also withdrawn on 12.10.2023.

5. Petitioners of both the petitions, namely, Ms. Payal Kulshreshtha, Smt. Neelam Kulshreshtha, Sri Sudhir Kumar Kulshreshtha who are petitioners in WPCRL No. 833 of 2023 are present in the Court with respondent no. 3. In this writ petition compounding application being IA No. 5 of 2023 has been moved which are supported with the affidavit of all the three petitioners as well as respondent no. 3 wherein reference has been made with regard to the amicable settlement of the applicants and respondent no. 3. The applicants and respondent no. 3 are identified by their respective counsels through their Aadhar Cards. This Court has interacted with each of them and they fairly submits that now their dispute has been resolved and they now entered with amicable settlement and both Ishank and Ms. Payal Kulshrestha now agreed for divorce by way of mutual consent for which they have already filed petition under Section 13(B) of the Hindu Marriage Act. So far as WPCRL no. 1655 of 2023 is concerned, in this case applicant Vishal Kulshreshtha (brother of Ms. Payal) has also challenged the FIR along with compounding application being IA No. 1 of 2023, which is also supported with the affidavit of the applicant as well as respondent no. 3/complainant. Vishal Kulshreshtha is

present through V.C. and this Court has also interacted with him and he is also identified by his counsel. Simultaneously respondent no. 3-complainant is also identified by his counsel. This Court also interacted with respondent no. 3-complainant and he also fairly submits that since the parties have already entered with an amicable settlement and his son Ishank and his wife Ms. Payal Kulshrestha already agreed to get divorce by way of mutual consent, therefore he does not want to pursue this case.

6. Per contra, Mr. Saurabh Pandey, learned Brief Holder submits that all the offences are compoundable except Section 452 IPC but he fairly submits that since the allegations appears to be matrimonial in nature and both the parties came up with amicable settlement that Ms. Payal will get divorce from her husband Ishank by way of mutual consent, therefore, in view of the judgment passed by the Hon'ble Apex Court in the case of ***Gian Singh Vs. State of Punjab (2012) 10 SCC 303*** this offence can be compounded.

7. After hearing the arguments of the learned counsel for the parties, and after taking into consideration the records of both the writ petitions and after taking into consideration that no investigation has been carried out since, the coordinate Bench has already stayed the investigation by order dated 16.06.2023 passed in WPCRL No. 833 of 2023, this Court is of the view that compounding applications moved in both the writ petitions deserves to be allowed.

8. In view of the above, compounding application (IA No. 1 of 2023) preferred in WPCRL No. 1655 of 2023 and compounding application (IA No. 5 of 2023) preferred in WPCRL No. 833 of 2023 are allowed. The FIR dated 08.06.2023 bearing FIR No. 0428 of 2023, in both the petitions, for the offences punishable under sections 452,

503, 506 IPC, registered at P.S. Kotwali Jwalapur District Haridwar are quashed.

9. Accordingly, both the writ petitions are disposed of finally.

10. Pending application(s), if any, also stands disposed of.

RAKESH THAPLIYAL, J.

Parul