

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 1743 of 2023

Petitioner :- Geetam Singh And Another

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Vineet Kumar Singh, Sr. Advocate

Counsel for Respondent :- G.A., Rajat Kumar Shukla

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Rishabh Srivastava, Advocate, holding brief of Sri Vineet Kumar Singh, learned counsel for the petitioner, Sri Rajat Kumar Shukla, learned counsel for respondent and learned A.G.A. for the State.

2. This petition has been filed challenging the order dated 21.07.2022 passed by the Additional Chief Judicial Magistrate, Aligarh and further challenging the order dated 31.10.2022 passed by the Sessions Judge, Aligarh, in Criminal Revision No. 320 of 2022 (Geetam Singh and Another Vs. State of U.P. and Another).

3. The submissions of the petitioners are as below:

(i) Respondent no. 2- Kavita filed a complaint case no. 446 of 2017 (Kavita alias Tanisha Vs. Raghvendra and Others) against her husband and his family members under Section 498-A, 323, 307, 504, 406, 506 I.P.C. and Section 3/4 D.P. Act.

(ii) The court proceeded to record evidence under sections 200 and 202 Cr.P.C. and passed a summoning order on 13.11.2017, summoning only Geetam Singh and Premvati Devi (the present petitioners) under section 498A I.P.C. and section 3/4/6 of Dowry Prohibition Act.

(iii) The accused persons therefore prayed for quashing of entire proceeding of the complaint case by filing an application under section 482 Cr.P.C. Application No. 23806 of 2019. This application was finally decided by an order dated 26.08.2019, giving the applicants Geetam Singh and Premvati Devi an opportunity to move a discharge application.

(iv) The accused persons moved a discharge application dated 03.10.2019, before the court concerned which was finally decided by passing the impugned order dated 21.07.2022. The trial court rejected the discharge application and directed the accused persons to surrender and apply for bail. The aforesaid order of the A.C.J.M. was challenged in Criminal Revision No. 320 of 2022 (Geetam Singh and Another Vs. State of U.P. and Kavita @ Tanisha). The learned court of revision dismissed the revision by affirming the order dated 21.07.2022. Both the aforesaid orders are under challenge now. Further prayer of petitioners is to allow their discharge application.

4. This respondent no.2 has brought into notice of this Court several other relevant facts which are as below:

Before the application under section 482 Cr.P.C. No. 23806 of 2019 was moved by the accused persons, they moved another application under section 482 Cr.P.C. Application No. 3110 of 2018 challenging the summoning order dated 13.11.2017 (copy of the order has been produced for perusal of this Court by the respondent no. 2 and is taken on record). The aforesaid application was finally decided on 08.02.2018. The High Court held as below:

"The submissions made by the applicants' counsel call for adjudication on pure questions of fact which may be adequately adjudicated upon only by the trial court and while doing so even the submissions made on points of law can also be more appropriately gone into by the trial court in this case. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. A threadbare discussion of various facts and circumstances, as they emerge from the allegations made against the accused, is being purposely avoided by the Court for the reason, lest the same might cause any prejudice to either side during trial. But it shall suffice to observe that the perusal of the complaint, and also the material available on record make out a prima facie case against the accused at this stage and there appear to be sufficient ground for proceeding against the accused. I do not find any justification to quash the complaint or the summoning order or the proceedings against the applicants arising out of them as the case does not fall in any of the categories recognized by the Apex Court which may justify their quashing.

The prayer for quashing the same is refused as I do not see any abuse of the Court's process either.

*However, it is observed that if the bail has not been obtained as yet, the accused may appear before the court below and apply for bail within two months from today. The court below shall make an endeavour to decide the bail application keeping in view the observations made by the Court in the Full Bench decision of **Amrawati and another Vs. State of U.P. 2004 (57) ALR 290** and also in view of the decision given by the Hon'ble Supreme Court in the case of **Lal Kamendra Pratap Singh Vs. State of U.P. 2009 (3) ADJ 322 (SC)**."*

5. It may be noted that the High Court, while refusing to quash the proceedings of the complaint case and the summoning order, directed the applicants to appear before the court below and apply for bail within a period of two months and till then, also gave them protection from any coercive measures.

6. When queried about this order, the counsel for the petitioners has feigned ignorance. However, this much is clear that the applicants did not comply with the aforesaid order and neither did they surrender or nor applied for bail. They obtained a different order by moving another application under section 482 Cr.P.C., with a similar prayer i.e. to quash entire proceeding of the complaint case. Prima facie it appears that the applicants not only withheld the order passed on the application under section 482 Cr.P.C. No. 3110 of 2018 dated 8.2.2018, from the Bench of the High Court which passed an order on Application No. 23806 of 2019 filed under section 482 Cr.P.C., but have attempted to withhold this order from this Court as well.

7. Before I proceed further, it may be noted that the discharge application was admittedly moved on 3.10.2019 and the same was decided on 21.07.2022. The learned trial court observed that despite lapse of sufficient time and the orders of the High Court, the accused persons did not surrender/appear before the court concerned and did not apply for bail. Admittedly, this application for discharge was moved under the provisions of section 245 (2) of Cr.P.C. IN my view, the applicant sought to assail the order of summoning by moving a discharge application in the light of the order of the High Court. As per the provisions of section 245 (2), the Magistrate court is empowered to discharge the accused at any previous stage of the case, if for reasons to be recorded by the such Magistrate, he considers the charges to be groundless. This much is clear that all the averments taken in the discharge application relate to disputed questions of fact. The questions of fact cannot be decided till the witnesses are put to cross-examination. As far as summoning order is concerned, the petitioners failed to get any relief in this regard in both the applications under section 482 Cr.P.C.

8. The High Court did not find any infirmity in summoning order. Admittedly, no new material came on record between the stage of summoning and the stage when discharge application was moved, considered and decided. All the averments taken in the discharge application related to question of facts. The Court, obviously, could not adjudicate on any question of fact raised unless complainant led the evidence and defense had an opportunity to cross examine them. The observations made by the High Court while passing an order on Application No. 3110 of 2018, hold good for the instant petition. In my view, there was nothing new on the record to arrive at a conclusion that the charges against accused persons were groundless and that they deserved to be discharged.

9. The petition lacks merit and is hereby **dismissed**.

10. Let a copy of the order be notified to the court concerned.

Order Date :- 31.10.2023

Sumit Kumar