

A.F.R.

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 1718 of 2023

Petitioner :- Nitin And 3 Others

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Sunil Kumar Saroj, Vishal Ohri

Counsel for Respondent :- G.A., Ashok Kumar Mishra, Krishna Kant Tiwari

Hon'ble Ram Manohar Narayan Mishra, J.

The instant petition under Article 227 of the Constitution of India has been filed by the petitioners against the order dated 5.9.2018 passed by learned Additional Sessions Judge/ F.T.C., court no. 1, Bijnor in Criminal Revision no. 499 of 2022 whereby summoning order passed by learned A.C.J.M. dated 15.9.2018 in Complaint Case no. 839 of 2018 (Pooja Rani @ Himanshi vs. Ashwani Kumar and others) has been affirmed. The petitioners by means of present petition have assailed both orders of the courts below.

Heard learned counsel for the petitioners, learned AGA and learned counsel for respondent no. 2.

Learned counsel for the petitioners submitted that there is matrimonial disputes between the petitioners and respondent no. 2. The petitioners are parents-in-law, brother and sister-in-law of the respondent no. 2. Complaint filed before the court of Magistrate against the petitioners, her husband, with averment that her marriage with opposite party Ashwani Kumar was solemnized on 5.3.2016 according to Hindu rites and rituals in which her father had given sufficient dowry and gifts but the opposite parties were not satisfied with the same and demanded additional dowry. They used to harass her and subjected her to physical and matrimonial cruelty for non fulfillment of demand of dowry. Her husband was having illicit relation with some other lady. She was turned out from her matrimonial home on 26.6.2016 and the opposite parties withheld her stridhan and are using her articles in their own use without any authority. They are also damaging her articles. The petitioner no. 1 Nitin used to tease her. Learned court below summoned the petitioners and husband of the complainant to face trial under section 406 IPC and Section 6 of D.P. Act vide order

dated 15.9.2018. The summoning order was assailed by filing revision before the court of sessions by present petitioners, however, learned court below dismissed the revision and affirmed the summoning order passed by the learned Magistrate vide order dated 4.2.2023 without considering the grounds taken in the revision. Long before filing of present complaint, the petitioner no. 1 lodged an F.I.R. bearing Crime no. 52 of 2017, under Sections 452, 323, 506 IPC against father and family members of the complainant on 17.3.2017. The petitioner no. 1 is informant and injured in the said F.I.R. and received as many as seven injuries including one incised wound on his person. The instant complaint was filed only to harass the petitioners who are in-laws of the complainant. Another F.I.R. was also got registered by the complainant on 19.3.2017 bearing Crime no. 142 of 2017, under Sections 147, 354-B, 427, 498-A IPC and 3/4 of D.P. Act against her husband and present petitioners with similar allegation which was challenged by the petitioners before this Court by way of application u/s 482 No. 33834 of 2018 wherein matter was referred to mediation centre of this Court and an interim order was passed on 22.11.2018 to the effect that till the next date of listing, no coercive action shall be taken against the applicants in said criminal case arising out of Case Crime no. 142 of 2017. Mediation got unsuccessful. The said petition u/s 482 Cr.P.C. is still pending before this Court. Complaint case filed by respondent no. 2 under section 12 of Protection of Women from Domestic Violence Act has been dismissed by the Delhi court vide order dated 8.3.2022 for want of prosecution and a copy of order is filed on record. The present complaint has been filed by respondent no. 2 with a view to misuse process of law and harass the petitioners. Moreover, the petitioners cannot be beneficiary of any alleged demand of dowry.

Per contra, learned counsel for respondent no. 2 submitted that no cogent ground has been disclosed by the petitioners before this Court which would warrant interference in concurrent findings of the court below. There is no infirmity, illegality or irregularity in the impugned order passed by the courts below. The instant petition is devoid of merit and is liable to be dismissed. He further submitted that mediation directed by this Court in petition u/s 482 Cr.P.C. filed by the petitioners with regard to previous FIR, has failed.

This Court is not oblivious of the fact that there are concurrent findings of the court below with regard to matter in issue in present petition. The court of first instance summoned the

petitioners alongwith co-accused Ashwani Kumar, husband of the victim, for facing trial of charge under Section 406 IPC and Section 6 of D.P. Act on complaint filed by the respondent no. 2, Pooja Rani @ Himanshi. The said complaint was filed on 19.2.2018. Learned court below after recording statement of the complainant and her witnesses Narendra Singh and Karan Singh, who are uncle and father of the complainant, under section 200 and 202 Cr.P.C., summoned the petitioners alongwith co-accused Ashwani Kumar for charge under Section 406 IPC and section 6 of D.P. Act. Prior to filing of present complaint, an F.I.R. was lodged at the instance of complainant at P.S. Noorpur, District Bijnor on 19.3.2017 bearing Crime no. 142 of 2017, under Sections 147, 354-B, 427, 498-A IPC and 3/4 of D.P. Act against her husband Ashwani Kumar and present petitioners in which all allegations of present complaint were substantially included. In said FIR also it is stated that on being harassed and coerced by accused persons, informant was compelled to shift to her parental place on 20.6.2016. Her ornaments were snatched by her in-laws. The informant/ complainant has also levelled allegation of teasing (molestation) against the petitioner no. 1 Nitin, who is her brother-in-law (dever) in said F.I.R. However, some interim order was passed by this Court on 12.11.2018 on application of Ashwani Kumar and six others under Section 482 Cr.P.C. No. 33834 of 2018. The applicant therein included present petitioners. Matter was referred to mediation centre and till the next date of listing it was directed that no coercive action shall be taken against the applicants in criminal case arising out of Crime no. 142 of 2017, under Sections 147, 354-B, 427, 498-A IPC and 3/4 of D.P. Act. Prior to lodging of this F.I.R. on 19.3.2017, the petitioner no. 1 had lodged an F.I.R. on 15.3.2017 at 1:30 pm against father and family members of the informant/ complainant under Sections 452, 323, 506 IPC, thus, present complaint as well as previous F.I.R. lodged at the instance of respondent no. 2 is proceeded by F.I.R. lodged by petitioner no. 1 against the father and family members of complainant as from the perusal of F.I.R. version of the complainant in Case Crime no. 142 of 2017 and present complaint on which petitioner has been summoned to face trial, it appears that version in both documents are substantially same, although section 6 of D.P. Act and Section 406 IPC are not added in the F.I.R. but there are allegations with that regard to that in F.I.R. itself, therefore, court below has summoned the accused persons/ petitioners inter-alia for charge under section 6 of D.P. Act, which provides as under:-

"6. Dowry to be for the benefit of the wife or her heirs.—

(1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman (1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman"

(a) if the dowry was received before marriage, within [three months] after the date of marriage; or

(b) if the dowry was received at the time of or after the marriage, within [three months] after the date of its receipt; or

(c) if the dowry was received when the woman was a minor, within 1[three months] after she has attained the age of eighteen years, and pending such transfer, shall hold it in trust for the benefit of the woman. [(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefor, [or as required by sub-section (3),] he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years or with fine [which shall not be less than five thousand rupees, but which may extend to ten thousand rupees] or with both.] [(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefor, [or as required by sub-section (3),] he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years or with fine [which shall not be less than five thousand rupees, but which may extend to ten thousand rupees] or with both.]"

(3) Where the woman entitled to any property under sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being: [Provided that where such woman dies within seven years of her marriage, otherwise than due to natural causes, such property shall, [Provided that where such woman dies within seven years of her marriage, otherwise than due to natural causes, such property shall,"

(a) if she has no children, be transferred to her parents; or

(b) if she has children, be transferred to such children and pending such transfer, be held in trust for such children.]

[(3A) Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section (1) [or sub-section (3)] has not, before his conviction under that sub-section, transferred such property to the woman entitled thereto or, as the case may be, [her heirs, parents or children] the Court shall, in addition to awarding punishment under that sub-section, direct, by order in writing, that such person shall transfer the property to such woman or, as the case may be, [her heirs, parents or children] within such period as may be specified in the order, and if such person fails to comply with the direction within the period so specified, an amount equal to the value of the property may be recovered from him as if it were a fine imposed by such Court and paid to such woman or, as the case may be, [her heirs, parents or children]."

(4) Nothing contained in this section shall affect the provisions of section 3 or

section 4."

From perusal of above provision it appears that there is no specific averment in the complaint with regard to section 6 of D.P. Act, however, it is stated therein that accused persons failed to return her stridhan given by her parents on demand made by her which comes within the purview of section 406 IPC itself. If section 406 IPC or any other penal section of any criminal statute are lacking in FIR, the informant has every right to move an application for addition of charge, during course of trial in case it proceeds, but fresh complaint on similar version already taken in F.I.R. lodged at the instance of complainant will amount to misuse of process of law. Even learned court below has not considered this point in true prospective and dismissed the revision filed by the petitioners against the summoning order. The points raised in present petition were raised before the revisional court but same was not duly considered by the revisional court and revision was dismissed in summary manner after citing certain case laws. Article 227 of the Constitution of India confers on High Courts power of superintendence over all courts, tribunals throughout jurisdiction of concerned High Court.

In the light of foregoing discussions and for the reason that complainant version in present complaint as well as in her previous F.I.R. are substantially same, filing of complaint on similar allegations taken in F.I.R. already lodged is not tenable and summoning order issued by the court of first instance pursuant to said complaint and judgement of revisional court affirming said summoning order in criminal revision preferred by present petitioners are not sustainable and orders of both court below are liable to be set aside.

The impugned orders passed by the courts below are set aside. However, it is clarified that observations made herein above will not affect the proceedings initiated pursuant to F.I.R. lodged bearing Case Crime no. 142 of 2017, P.S. Noorpur, District Bijnor against the petitioners and co-accused at the instance of the present complaint/ respondent no. 2.

The instant petition stands **allowed** with above observations.

Order Date :- 16.11.2023

Dhirendra/