

Court No. - 92

Case :- APPLICATION U/S 482 No. - 38653 of 2011

Applicant :- Sunil And Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Amit Saxena,N.D. Shukla,Sanjay Kumar Upadhyay,Surya Pratap Singh Parmar

Counsel for Opposite Party :- Govt.Advocate,Sudhanshu Pandey

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri K.K. Tiwari, learned counsel for the applicants, Sri Sudhanshu Pandey, learned counsel for the opposite party no.2 and Sri Prem Prakash Tripathi, learned AGA for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the charge sheet dated 18.10.2011 as well as the proceedings of Case No. 2289 of 2011 (State vs. Sunil and others), under Sections 498-A, 323, 504, 506 IPC and 3/4 Dowry Prohibition Act, P.S. Mahila Thana, District Hathras, pending before the Chief Judicial Magistrate, Hathras.

3. Learned counsel for the applicants has vehemently argued that the instant FIR was lodged by the opposite party no.2 on 30.08.2011 as a counter blast after the husband of the opposite party no.2 committed suicide on 25.08.2011 and a case under Section 306 IPC was lodged against the opposite party no.2 and her family members on the basis of a suicide note allegedly written by the deceased-husband of opposite party no.2. Learned counsel for the applicants further submitted that after the marriage, the opposite party no.2 along with her husband was residing separate from other family members in a separate house and the husband of the opposite party no.2 was also in Rampur and in reply to a notice given by father of the opposite party no.2 to her husband, opposite party no.2 has replied the said notice stating that there was no demand of dowry on behalf of the husband of the opposite party no.2. It is also submitted that the instant FIR has been made implicating all the family members on the basis of general allegations against all of them. As the opposite party no.2 and her husband were residing separate from the family, there was no question of demand of dowry by the applicants herein.

4. Learned counsel for the applicants has further submitted that so far as the incidents dated 06.07.2011 and 21.08.2011 are

concerned, those are the baseless allegations as the one year daughter of the opposite party no.2 was admitted on 30.06.2011 at AIIMS, Delhi, was operated there for heart problem and was discharged on 05.07.2011. The incident dated 06.07.2011 was a concocted story by the opposite party no.2. Therefore, learned counsel for the applicants has prayed for quashing of the entire proceeding against the applicants. In support of his submissions, learned counsel for the applicants has relied upon the judgments of Apex Court in ***Geeta Mehrotra and another vs. State of U.P. and another, 2012 (10) SCC 741 and Kahkashan Kausar @ Sonam and others, 2022 0 AIR (SC) 820.***

5. On the other hand, learned counsel for the opposite party no.2 submits that the instant complaint was submitted by the opposite party no.2 on 22.08.2011 itself at P.S. Mahila Thana, District Mahamaya Nagar, on which the FIR was finally registered on 30.08.2011. In the meantime, on 25.08.2011, the husband of the opposite party no.2 has committed suicide and an FIR was lodged on 26.08.2011 by the applicant no.5 herein implicating all the family members of the opposite party no.2. Learned counsel for the opposite party no.2 submits that at the time of the commission of alleged suicide by the husband of opposite party no.2, none of the family members of the opposite party no.2 was present with the husband of the opposite party no.2. The suicide has been committed by the husband of opposite party no.2 where he was residing along with the applicants at their native place at village-Nagla Ghanshyam, P.S.-Pahasu, district Bulandshahar. Learned counsel for the opposite party no.2 further disputes the suicide note itself and submits that the said suicide note is a fabricated document by the applicants herein. On the basis of the aforesaid submissions, learned counsel for the opposite party no.2 submits that the other submissions and documents, which have been relied upon by the applicants are highly disputed documents, which cannot be relied upon unless veracity of the same has been tested during trial. Therefore, he has prayed for dismissal of the instant application.

6. Learned AGA for the State also submits that the disputed question of facts has been raised by the applicants whether they were living separately or at the time of incident alleged in the FIR, whether he was not present at the place of incident or whether the complaint filed by the opposite party no.2 was not prior in time on 22.08.2011 or it was subsequently the FIR was lodged by the applicant no.5 against the opposite party no.2 and her family members. All these questions require a detail enquiry, which can be conducted during trial only. Learned AGA has submitted that in exercise of jurisdiction under

Section 482 Cr.P.C., on such disputed facts and submissions, the proceedings cannot be quashed.

7. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully gone through the record of the case and from perusal of the FIR in the instant case, it appears that the opposite party no.2 has made a complaint to the Police Station – Mahila Thana, District Mahamaya Nagar on 22.08.2011, upon which the present FIR has been registered on 30.08.2011 under Sections 498-A, 323, 504, 506 IPC and 3/4 Dowry Prohibition Act.

8. From the allegations made in the FIR, it is apparent that there were continuous demand of dowry, for which earlier as per own version of the applicants, the father of the opposite party no.2 had issued notice to the husband of the opposite party no.2 and the brother of the applicant nos. 1 to 5. Therefore, on the basis of such demands on the part of the applicants with previous complaints with regard to demand of dowry was made on the part of the father of the opposite party no.2, therefore, it cannot be said that the present FIR was lodged by the opposite party no.2 as an afterthought. From the perusal of the FIR, it is also apparent that the complaint was made by the opposite party no.2 on 22.08.2011 itself prior to the FIR lodged by the applicant no.5 against the opposite party no.2 and her family members with regard to the suicide committed by the husband of the opposite party no.2. Therefore, it cannot be said that the present FIR is a counter blast FIR.

9. So far as the other submissions with regard to the reply to the notice by the opposite party no.2 are concerned, the said document has been categorically denied by the opposite party no.2 in her counter affidavit in paragraph-9 and she has also denied her signature on such documents. On that basis, it cannot be said that there was no demand of dowry on the part of the applicants herein and since as per the admitted document by the applicants themselves, there was the legal notice issued by the father of the opposite party no.2 with the allegations of demand of dowry. So, it cannot be said that there was no demand of dowry or torture for the same by the applicants to the opposite party no.2. So far as the submissions with regard to general allegations is concerned, there are specific allegations with regard to the incident dated 21.08.2011 where all the applicants went to the house of the opposite party no.2 and had assaulted them, therefore, it cannot be said that there are general allegations in the instant case. Therefore, the judgments in Geeta Mehrotra (supra) and Kahkashan Kausar @ Sonam and others (supra) are not applicable in view of the peculiar facts of the instant case.

10. So far as the submissions that the applicants were living separate from the opposite party no.2 or her husband, there is no specific document available on record to substantiate such submissions and further from the fact that the husband of the opposite party no.2 has died in the native place where he was residing with the applicants further substantiate that all the applicants were residing together in their native place. Therefore, submission with regard to separate living is also not substantiated.

11. In view of the aforesaid submissions, the instant application is devoid of merit and is hereby **dismissed**.

Order Date :- 11.12.2023

Ashish Pd.