

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 4126 of 2023

Petitioner :- Rubi Devi And 4 Others

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Manoj Kumar Tripathi, Vinod Kumar Tirpathi

Counsel for Respondent :- G.A., Mohammad Akram

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri V.K. Tripathi, learned counsel for the petitioners, Sri Mohd. Akram, learned counsel for the respondent and Sri S.C. Mishra, learned A.G.A. for the State.

2. This petition has been filed challenging the summoning order dated 26.02.2021 passed by Judicial Magistrate/A.C.J. (J.D) Bijnor, in Complaint Case No. 717 of 2020 under section 452, 323, 504, 506 I.P.C., passed by the trial court as well as the order dated 15.02.2023 passed in Criminal Revision No. 323 of 2022, affirming the summoning order.

3. The contention of the petitioners is that earlier, Rubi Devi - the petitioner no.1, filed an F.I.R. Case Crime No. 1142 of 2019 under sections 498A, 323, 324 and 506 I.P.C. and section 3/4 D.P. Act, with the allegation that her husband Anuj and other members of the family were committing atrocities on her for not bringing sufficient dowry and that they wanted that she obtained a divorce and Anuj may remarry. That case is pending. The vehement contention of the petitioners is that her father-in-law Indrapal Singh-respondent no.2 filed a false complaint case against Rubi Devi and other members of her family by concocting an incident which allegedly occurred on 04.10.2020 at 11.00 A.M. The contention is that story is absolutely false and that the complaint has been filed with *mala fide* intention to exert undue pressure on her because she filed a criminal case against her in-laws.

4. It is further submitted that another F.I.R. was lodged against her by her mother-in-law, a subsequent fact which could not find mention in the petition. Further submission is that the machinery of law is being misused and that summoning order has been passed ignoring the weakness of evidence and material facts. Likewise the learned revisional court did not consider the facts and circumstances of the matter and passed the order affirming the summoning order in an arbitrary manner. Both orders are not sustainable in law.

5. The contentions of the petitioners are opposed by respondent no.2 submitting that the case cannot be termed as a counterblast to the case filed by Rubi Devi, as respondent no.2 was never mentioned in the F.I.R., earlier lodged by Rubi Devi. Respondent no.2 is the father-in-law who resides separate from rest of the family. The F.I.R. did not contain any allegation whatsoever against him. The real facts are that Rubi Devi has been misbehaving and maltreating her father-in-law and in fact she, with other accused persons came to his house and physically assaulted him and his wife.

The Police on Dial-112 was called and the matter was handled on the intervention of police only. She threatened the complainant as well as his wife. Rubi Devi had filed F.I.R. naming her husband and his brothers etc., but imputed no allegation against her father-in-law. Another contention is that complainant gave evidence that he has been living separately from her son (husband of Rubi) and that he had cut off all his relations with his son and daughter-in-law as he and his wife were continuously maltreated by her and that the incident of physical assault is real as she wanted the property to be transferred in her name and has been pressurizing her old father and mother-in-law, for long.

6. I went through all the papers on record which include the copy of the complaint, the statement given by the complainant, his wife Santosh Devi and a witness Udaybhan Singh. The perusal of the papers show that the trial court, on the basis of the inquiry conducted under section 202 Cr.P.C., found *prima facie* case having been made out and summoned accused persons under sections 452, 323, 504 and 506 I.P.C., after recording its satisfaction on the basis of oral evidence lead by the complainant. The revisional court went through the material on record and was of the view that the order of the trial court suffered from no illegality/impropriety. This may be noted that the instant case is counterblast to the earlier case registered by the accused, is a fact which can only be decisively adjudicated upon at the stage of trial and not at the summoning stage. At this stage, as per the settled law, Magistrate has to record its satisfaction and has not to meticulously assess or weigh the evidence.

7. The power under Article 227 of the Constitution of India is definitely supervisory in nature, but it should be exercised sparingly and in appropriate cases, only to prevent miscarriage of justice or flagrant violation of law. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected.

8. I do not find any reason of such nature as may justify or compel this Court to exercise its power under Article 227 of Constitution of India, therefore, the petition is hereby **dismissed**.

Order Date :- 13.12.2023

Sumit Kumar