

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 7041 of 2023

Petitioner :- Smt. Pooja Mishra And Another

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Sriram Dhar Dubey, Gaurav Chauhan

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Gaurav Chauhan, learned counsel for the petitioners and Sri R.K. Gupta, learned AGA for the State. None responds on behalf of the respondent no. 4, despite service of notice.

2. This petition under Article 227 of the Constitution has been filed posing challenge to an order dated 14.02.2023 passed by the Chief Judicial Magistrate, Gorakhpur in case arising out of case crime no. 0469 of 2022 under sections 420, 468, 471, 506, 120-B IPC and section 67A of I.T. Act, 2000, Police Station-Ramgarh Tal, District Gorakhpur. The prayer is to quash the order of issuance of non-bailable warrant passed on 14.02.2023 and with a further prayer to direct the investigating officer to investigate the matter in a fair manner.

3. It is submitted on behalf of the petitioner that earlier an FIR case crime no. 0005 of 2022 under sections 498-A, 494, 420, 506 IPC and Sections 3/4 of Dowry Prohibition Act was lodged on 15.07.2022, naming Ramesh Chandra Somnath Joshi (petitioner no. 2) and one more Dhruvan Ramesh Chandra Joshi (son of petitioner no. 2), on the basis of the information given by Seema Dwivedi D/o Rajendra Dwivedi (respondent no. 4). On the same set of facts, second FIR case crime no. 0469 of 2022 under sections 420, 506 IPC and section 67A of I.T. Act was lodged on 09.09.2022 by the first informant-Seema Dwivedi, naming both the petitioners herein and Dhruvan Ramesh Chandra Joshi (not impleaded as party in the instant petition). The investigating officer, without doing proper investigation, introduced sections 468, 471 and 120-B IPC against the petitioners on the premise that Pooja Mishra had prepared a false certificate of marriage and photographs, with co-accused Dhruvan Ramesh Chandra Joshi; The FIR has been lodged with delay of 6 months, as allegedly the marriage between Pooja Mishra (petitioner no. 1) and Dhruvan Ramesh Chandra Joshi took place on 24.01.2021. Both have been imputed allegations against, on false and concocted story; The investigating officer has not been carrying a fair investigation; the petitioners are ready to cooperate in the investigation, however the investigating officer, on the basis of misleading facts, has obtained order from the court concerned for issuance of non-bailable warrant against the petitioners.

It is vehemently contended by the petitioners that both the FIRs have been filed by the same informant on the basis of same set of facts, therefore, second FIR is bad in law and no warrants can be issued against them.

4. Learned AGA vehemently rebutted the aforesaid submissions bringing into this court's notice following facts:-

The first FIR was lodged by Seema Dwivedi with the allegations in nutshell that she came into contact with Dhruvan Ramesh Chandra Joshi of Ahmedabad, Gujarat on the basis of Shaadi.com app. They exchanged the mobile numbers and thereafter he and his father (petitioner no. 2), arranged the meetings of both the families regarding marriage alliance. The marriage of informant with Dhruvan Ramesh Chandra Joshi was solemnized on 24.01.2021, thereafter her husband-Dhruvan Ramesh Chandra Joshi went to America on 16.02.2021 and kept on avoiding the preparation of 'visa' for her. He came to her on 04.06.2021 and took away all her valuables and jewellery etc on some false pretext, as detailed in the FIR. Thereafter he never came back. She came to know that he is a fraudulent person and he used to lure people/girls in his net and performed at least 5 fake marriages. He has been exploiting the women by performing fraudulent marriages and obtaining their valuables etc. It is alleged in the FIR that his father-Ramesh Chandra Somnath Joshi assisted his son-Dhruvan Ramesh Chandra Joshi in execution of this clever and deep rooted conspiracy. While the later FIR case crime no. 0469 of 2022 under sections 420, 506 IPC and section 67A of I.T. Act, though by the same informant has been lodged with largely different allegations which actually revealed to her later on and regarding subsequent conduct of the accused persons, who included Dhruvan Ramesh Chandra Joshi, the main player in the game. The allegation in the second FIR are that Ramesh Chandra Somnath Joshi and Pooja Mishra have been circulating obscene material regarding her. Such obscene messages were sent to her on mobile numbers of her minor daughter and her sister, therefore she lodged second FIR. It is contended that the subject matter of both the FIRs is different and the petitioners cannot say that both the FIRs are based on same set of allegations. Further my attention has been drawn to the fact that the petitioners have challenged the order dated 14.02.2023, which was passed at least 4 months after registration of the second FIR. This fact amply demonstrated that the petitioners were not cooperating with the investigating officer and they never actually cared to appear before him for getting their statement recorded.

5. I went through all the material on record including 2 FIRs, the impugned orders and the submissions as contained in the petition itself.

6. From the bare perusal of the 2 FIRs, it becomes apparent that 2 FIRs have been lodged, though by the same informant, but with different kinds of allegations. In the second FIR, it is said that the petitioners have been sending obscene messages to the first informant, her daughter and sister. The case is under investigation.

The impugned order gives a clear impression that the accused persons have been trying to conceal their identity and that they have been trying to evade process of law. This too is quite apparent that the FIR was lodged in the month of September 2022 and order for issuance of warrants have been obtained thereafter on 14.02.2023. The C.J.M., Gorakhpur passed the order after perusing the relevant C.D. parcha i.e. parcha no. 25 dated 13.02.2023, parcha no. 14 dated 12.02.2023, parcha no. 27 dated 07.02.2023, parcha no. 29 dated 06.02.2023 and parcha no. 28 dated 05.02.2023. It cannot be said that the C.J.M. passed this order, without taking into account the relevant facts and circumstances and that order has been passed ignoring the law on the point. It may be noted that sections 468, 471 and 120-B IPC have been added during the course of investigation. There is no contention that they were available to receive

notice under section 41A Cr.P.C. In fact the papers give an impression that investigating officer was compelled to move the application, as accused persons were not available and therefore he had to apply for issuance of non-bailable warrant. Admittedly the FIR was lodged in September 2022 and order was obtained 5 months thereafter, and there is no contention that accused persons were available for interrogation anytime after filing of FIR.

7. In view of the above, I do not find any good ground to interfere in the order, hence the petition is **dismissed**.

8. Let a copy of the order be transmitted to the court concerned for information.

Order Date :- 16.12.2023

#Vikram/-