

Reserved on 5.10.2023

Delivered on 17.10.2023

Neutral Citation No. - 2023:AHC:200169

Court No. - 86

Case :- APPLICATION U/S 482 No. - 28496 of 2022

Applicant :- Shivji Singh And 2 Others

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

Counsel for Applicant :- Ashok Kumar Mishra, Nagendra Kumar Singh

Counsel for Opposite Party :- G.A., Shobhanath Singh Yadav

Hon'ble Rajiv Gupta, J.

1. Heard learned counsel for the applicants, Shri Shobhnath Singh Yadav, learned counsel for the opposite party No. 2, learned AGA for the State and perused the record.

2. The present application under Section 482 Cr.P.C. has been filed for quashing the entire proceeding of Complaint Case No. 11793 of 2021 (Vinay Singh Vs. Shivji Singh and others), under Sections 323, 325, 379, 452, 504, 506, 354-B IPC, P.S. Karanda, District-Ghazipur, pending in the Court of Civil Judge (Junior Division) F.T.C.-I, Ghazipur.

3. As per the allegations made in the complaint, it is alleged that on 4.11.2021 at about 6:30 p.m., the applicants forcibly entered in his house and started hurling abuses and when his wife Kusum Singh asked them not to hurl abuse, then all three tried to outrage her modesty and disrobe her and forcibly had snatched her mangal sutra and ear rings. On raising alarm by his wife, he alongwith his five years old daughter rushed to rescue her, then they extended

death threats to him by putting country made pistol on his temple and forcibly snatched Rs. 450/- from him. It is further alleged that Satyendra Singh @ Tillu Singh and Nagendra Singh started assaulting his daughter and forcibly threw her on the ground, consequent to which, her teeth were broken and lips were cut. On raising alarm, number of people reached there and rescued them. Thereafter, opposite party No. 2 tried to lodge a report at the police station, however to no avail. Even her daughter, who received injuries, was not medically examined, consequent to which, the present complaint has been lodged.

4. It is pertinent to note that the allegations made in the complaint has also been reiterated in the statement of the witnesses recorded under Sections 200 and 202 Cr.P.C., on the basis of which the learned Magistrate passed a detailed order dated 22.8.2022 summoning Shivji Singh, applicant No. 1 under Sections 323, 452, 504, 506, 354-B IPC. Further applicant No. 2- Nagendra Singh was summonsed for the offence under Sections 323, 379, 452, 504, 506, 354-B IPC whereas applicant No. 3 Satyendra Singh @ Tillu Singh was summoned under Sections 323, 325, 379, 452, 504, 506, 354-B IPC.

5. Being aggrieved and dissatisfied by the said order, the present application u/s 482 Cr.P.C. has been filed.

6. Learned counsel for the applicants has submitted that applicants are wholly innocent and have been falsely implicated in the present case due to ulterior motive. He has next submitted that from the perusal of the allegations made in the complaint and the material collected during the course of enquiry, no offence is disclosed against the applicants and the present prosecution has been instituted with a malafide intention for the purposes of

harassment. He has pointed out certain documents and statements in support of his contention and has submitted that no offence is disclosed against the applicants, as such the entire proceeding be quashed.

7. Per contra, learned AGA as well as learned counsel for the opposite party No. 2 has vehemently opposed the said prayer and has supported the impugned order. He has next drawn the attention of the Court to the statement of the witnesses recorded u/s 200 Cr.P.C. and 202 Cr.P.C., in which, it has been categorically stated that the applicants forcibly entered in her house and extended death threats to her. It is further stated that the applicants tried to outrage the modesty of the wife of opposite party No. 2 and tried to disrobe her and has snatched her mangal sutra and ear rings.

8. It has been further alleged that when the complainant and his minor daughter rushed to rescue his wife, she was mercilessly beaten and forcibly thrown on the ground causing injuries on her lips and her two teeth were broken. It is further alleged that when the opposite party No. 2 tried to lodge a report and asked for medical examination, the police did not lodge her report nor got her medically examined. Thus, from the said allegations prima facie offence, complained of, is clearly made out against the applicants and as such, the entire proceedings cannot be quashed.

9. Moreover, all the submissions made at the bar relates to the disputed question of fact, which cannot be adjudicated upon by this Court under Section 482 CrPC. At this stage, only prima facie case is to be seen in the light of the law laid down by the Hon'ble Apex Court in the cases of **R.P. Kapur Vs. State of Punjab, AIR 1960 SC 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cri.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cri.) 192**

and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283. The disputed defence of the accused cannot be considered at this stage.

10. Considering the rival submissions of counsel for the parties and looking to the allegations made in the complaint as well as statement of the witnesses recorded under Sections 200 and 202 Cr.P.C. and specific allegations made against the applicants prima facie, offence complained of, is clearly made out against the applicants, for which they have been summoned to fact trial. There does not appear to be any illegality or error in passing the impugned order dated 22.3.2022.

11. In view of the foregoing discussion made above, prayer for quashing the summoning order as well as entire proceedings based on the complaint is refused.

12. The present application under Section 482 Cr.P.C. is devoid of merit and is accordingly dismissed.

Order Date :- 17.10.2023
KU