

Court No. - 93

Case :- APPLICATION U/S 482 No. - 31718 of 2015

Applicant :- Dr. Shalini Swaroop And Another

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

Counsel for Applicant :- Virendra Kumar Jaiswal, Abhishek Tripathi

Counsel for Opposite Party :- G.A., Atul Kumar, Pankaj Bharti

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Sri Abhishek Tripathi, learned counsel for the applicants and Sri Rajeev Kumar Singh, learned AGA for the State.

2. By means of the present application, the applicants have challenged the proceedings of Complaint Case No. 1673/9 of 2014 under Section 500 IPC as well as order dated 4.9.2015, by which the discharge application of the applicants was rejected by the Ist Additional Chief Judicial Magistrate, Muzaffar Nagar.

3. From the perusal of record, the facts which has come into picture are that the applicant no. 1 got married to brother of the opposite party no. 2 namely Ram Kumar Verma on 28.6.1998. Thereafter matrimonial dispute arose between them, therefore, the applicant no. 1 lodged an FIR against the opposite party no. 1 and brother of the opposite party no. 2 on 4.4.2001 under Sections 498-A, 423, 504, 506 IPC and 3/4 of Dowry Prohibition Act, 1961 at police station - Kavi Nagar, District - Ghaziabad which was registered as Case Crime No. 163 of 2001.

4. The police after investigation has submitted charge sheet against the opposite party no. 2 and his brother. Subsequently, after the trial, the opposite party no. 2 and his brother Ram Kumar Verma and other co-accused persons were acquitted by the Court below/ Chief Judicial Magistrate, Ghaziabad from the charges of Sections 498-A, 423, 504, 506 IPC and 3/4 of Dowry Prohibition Act, 1961 by order dated 5.9.2013.

5. Thereafter against the order of acquittal, the applicant no. 1 has also preferred Criminal Revision No. 150 of 2014 (defective) before this Court. During pendency of this criminal revision, the opposite party no. 2 has filed impugned complaint against the applicants on 1.4.2014 in which the applicants were summoned

under Section 500 IPC by the order dated 23.8.2014 passed by the Chief Judicial Magistrate, Muzaffar Nagar.

6. It is further submitted that the applicant no. 1 has also filed a divorce petition for dissolving of marriage between the applicant no. 1 and brother of the opposite party no. 2, which was allowed on 15.5.2002.

7. Learned counsel for the applicants has challenged the proceedings of Complaint Case No. 1673/9 of 2014 under Section 500 IPC as well as impugned orders dated 4.9.2015 and 23.8.2014 passed by the Ist Additional Chief Judicial Magistrate and Chief Judicial Magistrate, Muzaffar Nagar respectively on the following two grounds :-

(i) The complaint filed by opposite party no. 2 against the applicants on 1.4.2014 is barred by limitation as time for filing the complaint was 3-years from the date of lodging of the FIR; and

(ii) Applicant No. 1 bonafidely lodged the FIR for dowry demand against the opposite party no. 2 and his brother in which the police had also filed charge sheet though during the trial, the opposite party no. 2, his brother and other co-accused persons were acquitted, but criminal revision against the same was also pending on the date of filing of the impugned complaint.

8. In support of his contention, learned counsel for the applicants has relied upon the judgments of the Hon'ble Apex Court in the case of **Surinder Mohan Vikal Vs. Ascharj Lal Chopra**; reported in **AIR 1978 SC 986**, as well as the judgment in the case of **Kishore Balkrishna Nand Vs. State of Maharashtra and another**, reported in **2023 0 AIR (SC) 3804**.

9. Per contra, learned counsel for the opposite party no. 2 - Ms. Roshni Dwivedi, holding brief of Sri Atul Kumar has submitted that because of issuance of process under Sections 82 and 83 Cr.P.C., the opposite party no. 1 as well as his family was defamed and their image was lowered in the eyes of society.

10. Sri Rajeev Kumar Singh, learned AGA also submitted that from the perusal of record, offence under Section 500 IPC is made out against the applicants because the applicant no. 1 has initiated false proceedings against the opposite party no. 2 and his brother.

11. After hearing learned counsel for the parties and from perusal of records, this Court finds that as per Section 469 Cr.P.C., limitation relating to offence was commenced from the date of offence. Section 469 Cr.P.C. is reproduced as under :

"469. Commencement of the period of limitation.

(1). The period of limitation, in relation to an offender shall commence,-

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2). In computing the said period, the day from which such period is to be computed shall be excluded."

12. The Apex Court has also considered this issue in the case of **Surinder Mohan Vikal (Supra)** and observed that limitation period for the offence under Section 500 IPC is 3-years and if the complaint is filed after expiry of 3-years from the date of complaint in question then cognizance is barred by Section 468(c) Cr.P.C.. Paragraph nos. 5, 6 and 8 of the said judgment is quoted herein below:-

(5). It will be recalled that the complaint for the commission of the offence under Section 406/420 I.P.C. was filed on March 15, It has specially been stated in the respondents complaint under Section 500 I.P.C. that the defamatory matter was contained in that complaint. So, according to the complaint, the offence under Section 500 I.P.C. was committed on March 15, 1972, which was the date of the within the meaning of Section 469 (1) (a) of the Code, and the of three years' limitation would be calculated with reference to ,date for purposes of the bar provided by Section 468. But, as has b stated, the complaint under Section 500 I.P.C. was filed on February 11, 1976, much after the expiry of that period. It was therefore permissible for the Court of the Magistrate to take cognizance of offence after the expiry of the period of limitation.

(6). he High Court ignored the bar of limitation on the ground the "cause of action for proceeding for defamation could not before he (respondent) was acquitted by the Court of Session." the respondent was acquitted on April 1, 1975, it appears that High Court took the view that the "protection of section 468(c) was not available to the appellant. We are constrained to say the question of "cause of action could not really arise in this as the controversy relates to the commission of an offence. It been stated, sub-section (1) of section 469 of the Code specific provides that the period of limitation prescribed in section 468, relation to an offender, shall commence (inter alia) on the date the offence. It would therefore follow that the date of the of was March 15, 1972, when the defamatory complaint was file the Court of the Magistrate, and that was the starting point for purpose of calculating the

three years' period of limitation. High Court clearly erred in taking a contrary view.

(8) It would thus appear that the appellant was entitled to the benefit of sub-section (1) of section 4689 which prohibits every Court from taking cognizance of an offence of the category specified in sub-section (2) after the expiry of the period of limitation. It is hardly necessary to say that statutes of limitation have legislative policy behind them. For instance, they shut out belated and dormant claims in order to save the accused from unnecessary harassment. They also save the accused from the risk of having to face trial at a time when his evidence might have been lost because of the delay on the part of the prosecutor. As has been stated, a bar to the taking of cognizance has been prescribed under section 469 of the Code of Criminal Procedure and there is no reason why the appellant should not be entitled to it in the facts and circumstances of this case.

13. So far as second ground taken by the applicants is concerned, from perusal of impugned order it is clear that while rejecting the discharge application of the applicants, incorrect finding was recorded that the acquittal order was not challenged by the applicants before higher Court before the summoning order in question passed on 23.8.2014, but a revision against acquittal order was filed prior to that and this Court vide order dated 2.4.2014 had also summoned the record.

14. The Apex Court in the case of **Kishore Balkrishna Nand (Supra)** also has observed in paras-8 and 14 that a person pursuing a case in good faith and even if the same was decided against him by the Court the Exception 8 of Section 499 of IPC is attracted and complaint cannot be presented for offence under Section 500 IPC. Para-8 and 14 of the judgement are quoted here under :-

8. Mr. Anshuman Ashok, the learned counsel appearing for the appellant vehemently submitted that the learned Magistrate committed a serious error in taking cognizance on a complaint, which fails to disclose commission of any offence. According to him even if the entire case, as put up by the complainant, is accepted or believed to be true, none of the ingredients to constitute the offence of defamation as defined under Section 499 of the IPC and made punishable under Section 500 of the IPC are disclosed. He pointed out that his client (appellant), in good faith, brought to the notice of the SDM that the complainant had encroached upon some portion of the land and had put up a shop which was creating nuisance. This, according to the learned counsel, would not constitute any offence of defamation. He submitted that even otherwise since the alleged defamatory words or statements are said to have been made in a complaint in writing addressed to a public authority like SDM and not made public, the same would not attract the rigor of Section 499 of the IPC.

14. Exception 8 of Section 499 clearly indicates that it is not a defamation to prefer in good faith an accusation against any person to any of those who

have lawful authority over that person with regard to the subject-matter of accusation. Even otherwise by perusing the allegations made in the complaint, we are satisfied that no case for defamation has been made out.

15. From the argument advanced by the parties as well as from the perusal of record, it is established beyond doubt that impugned complaint filed by the opposite party no. 2 against the applicants was barred by Section 468(c) of Cr.P.C. and also the applicant no. 1 being wife of brother of the opposite party no. 2 had been pursuing her case for dowry demand in good faith and police had also filed charge sheet against the opposite party no. 2 and his family members, therefore, no case under Section 500 IPC is made out.

16. In view of above, proceeding of Complaint Case No. 1673/9 of 2014 under Section 500 IPC. Police Station - Kotwali Nagar, District - Muzaffar Nagar pending in the Court of Chief Judicial Magistrate, Muzaffar Nagar as well as order dated 4.9.2015 by which the discharge application of the applicants was rejected by the Ist Additional Chief Judicial Magistrate, Muzaffar Nagar are hereby quashed.

17. With the aforesaid direction, the present application is **allowed**.

Order Date :- 30.10.2023
S.K.S.