

Court No. - 92

Case :- APPLICATION U/S 482 No. - 41358 of 2017

Applicant :- Vibha Devi

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Vijay Kumar Pandey

Counsel for Opposite Party :- G.A., Dharm Raj, Mani Yagyesh
Tripathi, Prashant Kumar Singh, Rajendra Kumar Singh

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Vijay Kumar Pandey, learned Counsel for the applicant, Sri Prashant Kumar Singh, learned Counsel for Opposite Party Nos. 2 and 3 and learned AGA for State.

2. The instant application, under Section 482 Cr.P.C., has been filed seeking quashing of the summoning order dated 02.08.2017 and entire proceedings of Criminal Complaint Case No. 717 of 2016 (Mukesh Kumar vs. Jamuna Prasad), under Section 494 IPC, P.S. Mariahu, District Jaunpur, pending before the Additional Chief Judicial Magistrate- III, Jaunpur.

3. Learned Counsel for the applicant submits that after the marriage of the applicant herein with the Opposite Party No.2, the Opposite Party No.2 was abnormal and has not performed the matrimonial obligations. The Opposite Party No.3, who is the father of the Opposite Party No.2, tried to had physical relation with the applicant. In such circumstances, the complaints were raised and an agreement between the Opposite Party No.3 and father of the applicant herein was entered into on 01.02.2014, wherein, both Opposite Party No. 3 and father of applicant has agreed to dissolve their marriage between the applicant and the opposite Party No.2. It has also been agreed that none of the parties shall file any case against each other.

4. Learned Counsel for the applicant further submits that the subsequent to the such settlement arrived at between the parties, the Opposite Party No.2 has filed the instant complaint case against the applicant and her family members alleging that on 15.05.2016, the applicant herein has remarried with one Rahul son of Mehi Lal alias Manik Chand, resident of Kakopur, Police Station Sureri, District Jaunpur and have settled the marriage on 12.05.2016 and it was alleged that on 15.05.2016, when the Opposite Party No.2 has

visited the house of the applicant, he has seen the marriage of the applicant was being solemnized with said Rahul, therefore, the instant complaint was filed on 13.06.2016. After recording the statements of witnesses, learned Additional Chief Judicial Magistrate had summoned the applicant herein for the offences punishable under Section 494 IPC against which, the instant application has been filed by the applicant herein.

5. Learned Counsel for the Opposite Party Nos. 2 and 3 submits that since there was no agreement between the applicant and Opposite Party No. 2 for dissolution of marriage and no decree of divorce has been passed and the applicant has solemnized the marriage with some other person, therefore, *prima facie* case under Section 494 IPC has been made out, therefore, the learned Magistrate, after recording the statements under Sections 200 and 202 Cr.P.C. has summoned the applicant for the offence punishable under Section 494 IPC, therefore, there is no illegality in the summoning order dated 02.08.2017.

6. Learned Counsel for the Opposite Party Nos. 2 and 3 further submits that with regard to the averments made in paragraph No.9 of the instant application supporting affidavit, wherein the averments with regard to compromise between the father of the applicant and the Opposite Party No. 3 has been made. The said paragraph has not been verified in the said affidavit itself. Learned counsel for the applicant further submits that the said compromise/settlement dated 01.02.2014, as alleged by the applicant, has no consequence in the instant case. *Prima facie*, the factum of second marriage of the applicant has been established from the complaint as well as the statements under Sections 200 and 202 Cr.P.C.

8. Learned AGA for State supports the submissions made by the learned counsel for opposite Party Nos. 2 and 3 and submits that *prima facie* case has been made out against the applicant and there is no illegality in the summoning order issued against the applicant, which has been passed on the basis of material available before the learned Magistrate.

9. Having heard the rival submissions made by the learned counsel for the parties and has carefully gone through the records of the case, a categorical allegations have been made in the affidavit supporting the application that the Opposite Party No. 2 was abnormal and he was not able to perform the matrimonial obligations and Opposite Party No. 3, who is the father of the Opposite Party Po. 2, was used to physically abused the applicant

herein. In such circumstances, the applicant has to leave the matrimonial house and, from the perusal of the complaint and the statement under Sections 200 and 202 Cr.P.C., a *prima facie* case has been made out against the applicant herein. In such circumstances, no ground for quashing of the complaint for summoning order made out in the instant case, therefore, the instant applicant is devoid of merits and is hereby **dismissed**.

10. However, it is provided that the trial court shall proceed in the matter expeditiously and make its endeavour to conclude the proceedings within six months from the date of production of certified copy of this order. The applicant undertakes to cooperate in the trial of the case, subject to such cooperation by the applicant, no coercive steps shall be taken against the applicant till the disposal of the complaint case. It is made clear that if the applicant does not cooperate with the trial or seeks unnecessary adjournment then the Magistrate or trial Court is free to take all appropriate steps in accordance with law against the applicant.

Order Date :- 6.12.2023

Akram