

Court No. - 92

Case :- APPLICATION U/S 482 No. - 5456 of 2017

Applicant :- Amit Kumar And 2 Others

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

Counsel for Applicant :- Rishikesh Tripathi

Counsel for Opposite Party :- G.A., Ray Sahab Yadav

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Rishikesh Tripathi, learned counsel for the applicants and Sri Pankaj Srivastava, learned A.G.A. for the State. None is present on behalf of the opposite party no.2.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the charge-sheet dated 19.01.2017 and entire criminal proceedings in Criminal Case No. 234 of 2017 (State of U.P. vs. and Amit Kumar and Others), arising out of Case Crime No. 55 of 2016 u/S 498A, 494, 323, 506, 495 I.P.C., P.S.- Mahila Thana, District- Jhansi, pending in the court of learned Additional Civil Judge (Jr. Division)/ Judicial Magistrate, Court No.1, Jhansi.

3. Learned counsel for the applicants submits that vide order dated 17.02.2017, the application on behalf of the applicants has already been rejected and now the application is pending only on behalf of the applicant nos. 2 & 3. Learned counsel for the applicants further submits that despite the service of notice on the opposite party no.2, though Sri Rai Saheb Yadav, has appeared but has not filed counter affidavit till date nor any counter affidavit has been filed on behalf of the State. Learned counsel for the applicants further submits that from the plain reading of the F.I.R. as well as the statement of opposite party no.2 u/S 161 Cr.P.C., no offence u/S 494 or 498A I.P.C., is made out against the applicants herein. Therefore, he has prayed for quashing of the entire proceedings against the applicants nos. 2 and 3 herein.

4. Learned A.G.A for State also submits that from the plain reading of the F.I.R. as well as Statement u/S 161 Cr.P.C., there is no offence which can be said to have been alleged against the applicant nos. 2 and 3. In view thereof, learned A.G.A for the State has no objection to quashing of the proceedings against the applicant nos. 2 and 3 herein.

5. Having heard the submissions made by learned counsels for the parties, this Court has carefully gone through the records of the case. In the instant case, the F.I.R., was lodged on the

complaint of the opposite party no.2 dated 04.08.2016 on 12.08.2016. From the allegations as made in the F.I.R., it is apparent that there is no involvement of the applicant nos. 2 and 3 in the alleged second marriage of the applicant no.1 with the opposite party no.2. The applicant no.1 was married as per the version of the F.I.R. with one Kavita on 06.12.2008, with the consent and support of the applicant nos. 2 and 3 herein. Subsequent thereto, it is alleged in the F.I.R., that on 27.02.2016, the applicant no.1 and the opposite party no.2 have secretly married each other and since after their marriage they have never come to the house of the applicants together as husband and wife and she was living with the applicant no. 1, separate from the house of the applicant nos. 2 and 3 herein, in the rented accommodation. The only allegation against the applicant nos. 2 & 3 is that they were aware about the relationship of the opposite party no.2 with the applicants since last eleven years, from the date of filing of the F.I.R. and despite that they have married the applicant to one Kavita on 06.10.2008. Since, prior to 06.10.2008, when the applicant no.1 had married the said Kavita, there was no matrimonial relationship between the applicant no.1 and opposite party no.2. Therefore, no offence can be alleged against the applicant nos. 2 and 3 with regard to Section 494 I.P.C. and so far as offence u/S 498A I.P.C. is concerned, there is no allegation at all for any physical harassment or torture committed by the applicant nos. 2 and 3.

6. In view of the aforesaid facts, no offence is made out against the applicant nos. 2 and 3. Therefore, in the light of the judgements of the Apex Court in *State of Haryana v. Bhajan Lal* [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], *Zandu Pharmaceutical Works Ltd. vs. Mohd. Saraful Haque* : (2005) 1 SCC 122 and *Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others* : 2021 SCC OnLine SC 315, the instant application is **allowed** and the charge-sheet dated 19.01.2017 and entire criminal proceedings Criminal Case No. 234 of 2017 (State of U.P. vs. and Amit Kumar and Others), arising out of Case Crime No. 55 of 2016 u/S 498A, 494, 323, 506, 495 I.P.C., P.S.- Mahila Thana, District- Jhansi, pending in the court of learned Additional Civil Judge (Jr. Division)/ Judicial Magistrate, Court No.1, Jhansi, are hereby **quashed**.

Order Date :- 1.12.2023
Shubham Arya