

Court No. - 5

Case :- APPLICATION U/S 482 No. - 36365 of 2023

Applicant :- Krishnapal @ Bhoora And Another

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Najam Uz Zaman Khan

Counsel for Opposite Party :- G.A.

Hon'ble Piyush Agrawal,J.

1. Heard Shri Najam Uz Zaman Khan, learned counsel for the applicants, A.G.A. for the the State.
2. Instant application under Section 482 Cr.P.C. has been filed for quashing of the charge-sheet dated 01.08.2022, cognizance order dated 22.06.2023 and entire criminal proceeding of Case No. 2100 of 2022 (State Vs. Krishnapal @ Bhoora and others), arising out of Case Crime No.927 of 2021, under Sections 498-A, 323, 504, 506, 494 I.P.C. and Section 3/4 of Dowry of Prohibition Act, Police Station- Khurja Nagar, District- Bulandshahr, pending before the Court of Additional Chief Judicial Magistrate, Khurja.
3. Learned counsel for the applicants submitted that the applicants are innocent and the present FIR has been filed with a *malafide* intention in order to harass the applicants. He further submitted that the trial Court before passing the impugned summoning order has not applied its judicial mind. He further submitted that the opposite party no.2 just to take revenge had moved an application before S.S.P., Bulandshahr and the present FIR was lodged after a delay of six months. He further submitted that the informant after a period of almost one year, has given her statement u/S 161 Cr.P.C., which clearly indicates that she was not herself

aware about the actual fact and she was continuously seeking legal help for preparing her mind set in giving her statement. He next contended that the opposite party no.2 has given her statement under Section 164 Cr.P.C., before the Magistrate, in which she narrated the same story as narrated in 161 Cr.P.C. He further submitted that the independent witnesses namely; Vijay, Lait & Ajay Mahor, who resides near the house of the applicants, in their statements recorded under Section 170 Cr.P.C. stated that they used to visit the house of applicants and it appeared that the opposite party no.2 is always eager to fight with the applicants as a result of which, the applicant no.1 is always afraid from opposite party no.2. He next submitted that the opposite party no.2 along with her parents has illegally encroached the house of the applicants and continuously lodging false cases against the applicants with the mala-fide intentions of not to leave their possession over the house of the applicants.

4. He further submitted that the doctor in her statement recorded under Section 161 Cr.P.C., has narrated the fact that on 12.05.2023 tried to conduct the medical of the opposite party no.2, but she refused for her medical examination. He further submitted that the charge-sheet and summoning order is baby of mechanical style of functioning of both police and courts.

5. In support of his submission, learned counsel for the applicants has placed reliance upon the judgment of this Court passed in the case of **Om Yadav and Another Vs. State of U.P., and another, (Criminal Revision No.3727 of 2022)** and prayed for quashing of charge-sheet dated 01.08.2023, summoning order as well as entire proceedings of the aforesaid case. He prays for allowing of the present application.

6. *Per contra*, learned A.G.A. supported the impugned charge-sheet as well summoning order by submitting that from bare perusal of the statement of the opposite party no.2 recorded under Section 164 Cr.P.C, the version of FIR proves the ocular testimony. He further submitted that the case law relied upon by the counsel for the applicants does not give

any aid to them. He further submitted that as per the version of FIR as well as the statements recorded under Sections 161 & 164 Cr.P.C., *prima facie*, it cannot be said that the FIR has not been lodged in order to harass the applicants. He further submitted that, *prima facie*, the prosecution story is corroborated with the statements recorded by the court below. He next contended that the applicant no.1 threatened the opposite party no.2 as well her child with knife and endanger her life and compelled her to do illicit activities with him resultant of which on the same very day, the opposite party no.2 left the in-laws house with her child.

7. In support of his submission, he placed reliance upon the version made in the FIR as well as the oral testimony of the victim. He further placed reliance upon the judgment of Hon'ble Apex Court in the case of **Ushaben Vs. Kishorbhai Chunilal Talpada and others**, reported in **2012 (2) Supreme 597**.

8. He further submitted that the court has to see as to whether there are allegations made in the FIR forms the basis for ingredients that construed certain offences. The case in hand as per the FIR, *prima facie*, the allegations are proved and therefore, he prayed for dismissal of the application.

9. After hearing the parties, the court has perused the record.

10. On perusal of the FIR, it shows that certain allegations have been levelled against the applicants and the same is corroborated with the oral testimony of the opposite party no.2. In the version of the FIR as well as statement of the opposite party no.2, there were no variations. Therefore, *prima facie*, no case for interference is made out in exercise of jurisdiction under Section 482 Cr P C.

11. *Prima facie*, on perusal of the alleged FIR as well as the statements referred under Sections 161 and 164 Cr.P.C., the occurrence of incident is made out and once, any incident has been occurred, the summons has rightly been issued. This is a subject matter of trial whether the applicants

will be held guilty or not but at the present, it cannot be said that only in order to harass the applicants, the aforesaid FIR has been filed as weapon of harassment. In view of the facts of the present case, the judgment relied upon in the case of **Om Yadav (supra)** by the counsel for the applicants is of no help to them.

12. In view of the above, no ground is made out which may call for any interference by this Court in exercise of its inherent power under Section 482 Cr.P.C.

13. The present application under Section 482 Cr.P.C. lacks merit and is, accordingly, **dismissed**.

14. However, it is made clear that any observations made here-in-above, shall not cease any right of the applicants and the trial court shall also not be influenced with the same.

Order Date :- 11.12.2023

Pravesh Mishra