

**Court No. - 87**

**Case :-** APPLICATION U/S 482 No. - 36546 of 2023

**Applicant :-** Sadhana

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

**Counsel for Applicant :-** Kamal Kumar Singh, Sudhir Kumar Mishra

**Counsel for Opposite Party :-** G.A.

**Hon'ble Neeraj Tiwari, J.**

1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. The present 482 Cr.P.C. application has been filed to quash the order dated 04.07.2023 and 27.07.2023 passed by Additional Civil Judge(Jr. Division)/Judicial Magistrate, Court No. 2, Bansi, Siddharth Nagar in Complaint Case No. 4463 of 2022(Sadhna Vs. Vishnu Swaroop Pandey & others), under Sections- 498A, 323, 504 I.P.C. and 3/4 D.P. Act, Police Station- Golhaura, District- Siddharth Nagar, pending in the Court of Additional Civil Judge(Jr. Division)/Judicial Magistrate, Court No. 2, Bansi, Siddharth Nagar.

3. Learned counsel for the applicant submitted that earlier, applicant had solemnized marriage with opposite party No. 2, but the opposite party No. 2 and his family members tortured the applicant and demanded for dowry, therefore, she filed Complaint Case No.157 of 2019, under Sections 498A, 323, 504, 506 IPC & 3/4 of D.P. Act against opposite party No. 2 and family members, in which summoning order was issued on 06.08.2020 against the opposite party No. 2 and other family members. He next submitted that proceeding of the said complaint case is still pending for adjudication.

4. He next submitted that during the pendency of the said complaint, opposite party No. 2 solemnized marriage with opposite party No. 3-Kanchan Mishra without dissolving the marriage with the applicant. He next submitted that on getting the information of second marriage of the opposite party No. 2, applicant filed another complaint, being Complaint Case No. 4463 of 2022 against opposite party No. 2-husband and opposite party No. 3- second wife of opposite party No. 2 and other family

members, upon which, learned Judicial Magistrate/Judicial Magistrate, Court No. 2, Bansi, Siddharth Nagar issued summoning order dated 04.07.2023 against the husband under Section 498A alongwith other sections. He firmly submitted that in the second complaint case, only basic allegation was for second marriage of by husband of the applicant without dissolving marriage with the applicant, therefore, summoning order has to be issued under Section 494 IPC alongwith other sections, but it has been issued under Section 498A IPC alongwith other sections. He next submitted that applicant has moved application dated 10.07.2023 under Section 362 Cr.P.C. for correction of the summoning order dated 04.07.2023, which was rejected vide order dated 27.07.2023 on the ground that there is no mistake in the order and it is based upon merit.

5. He next submitted that as Complaint Case No. 157 of 2019, under Sections 498A and other sections is pending for adjudication, therefore, there is no occasion for applicant to file another application for the same offence and further in the second complaint case, there is specific allegation of second marriage against the opposite party No. 2, without dissolving marriage with the applicant, therefore, it is required on the part of the learned Judicial Magistrate to issue summoning order under Section 494 IPC alongwith other sections. He next submitted that in such view of the matter, impugned summoning order dated 04.07.2023 is bad and liable to be set aside.

6. Learned A.G.A. though opposed the submission of learned counsel for the applicant, but could not oppose the aforesaid facts.

7. I have considered the rival submissions made by learned counsel for the parties and perused the record.

8. Undisputedly, Complaint Case No. 157 of 2019 under Sections 498A and other sections is pending between the parties and from the perusal of the Complaint Case No. 4463 of 2022, it is apparently clear that there is allegation of bigamy against opposite party No. 2, but surprisingly, ignoring this fact, impugned summoning order dated 04.07.2023 has been issued against the opposite party No. 2 under Section 498A alongwith other sections without disclosing any reason as to why Section 494 IPC has not been added. Therefore, under such facts and circumstances of the case, summoning order dated 04.07.2023 is not sustainable.

9. Accordingly, summoning order dated 04.07.2023 is set aside and matter is remanded back to learned Judicial Magistrate/Judicial

Magistrate, Court No. 2, Bansi, Siddharth Nagar to pass fresh order, maximum within four weeks from the date of production of certified copy of this order.

10. With the aforesaid observations, present application is **allowed**.

11. No order as to costs.

**Order Date :- 30.10.2023**

ADY