

Court No. - 53

Case :- MATTERS UNDER ARTICLE 227 No. - 10420 of 2023

Petitioner :- Ali Husain And 5 Others

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Harendra Yadav

Counsel for Respondent :- G.A.,Chandra Bhushan Tiwari

Hon'ble Syed Aftab Husain Rizvi,J.

Heard learned counsel for the petitioners, learned counsel for the opposite party no. 2 and learned A.G.A. for the State.

This petition has been filed against the order dated 8.9.2023 passed by Special Judge, E.C. Act/Additional Sessions Judge, Court No. 4, Ghazipur, in Criminal Revision No. 9 of 2022 (Ali Husain and others vs. State of U.P. and others). By the impugned order, Revisional Court has dismissed the revision filed against the order dated 14.2.2020 passed by Judicial Magistrate, Ghazipur in CrI. Case No. 1839 of 2011 (Shakila Khatoun vs. Ali Husain), under Sections 498-A, 323-A, 504 and 506 IPC and 3/4 D.P. Act, P.S. Marda, District Ghazipur.

The opposite party no. 2 filed an application under Section 156(3) Cr.P.C. making various allegations of demand of dowry, harassment and torture etc. against the petitioners. It was treated as a complaint. After enquiry under Section 200 and 202 Cr.P.C., learned magistrate summoned the petitioners for offence under Section 498-A, 323, 504 and 506 IPC and Section 3/4 D.P. Act. The petitioners filed an application under Section 482 Cr.P.C. against summoning order dated 26.9.2012 and this Court vide order dated 26.9.2012 directed the petitioners to move an application under Section 245(2) Cr.P.C. before the court concerned through their counsel. In compliance of that order, petitioners filed an application under Section 245(2) Cr.P.C. seeking discharge. The said application was rejected by the Judicial Magistrate vide order dated 18.5.2016. Aggrieved by it, petitioners filed a Criminal Revision No. 167 of 2016. The Revisional Court vide order dated 7.1.2017 remanded the matter to Magistrate to pass afresh order in the light of observations made in the order. Thereafter, learned Magistrate vide order dated 14.2.2020 has again rejected the discharge application under Section 245(2) Cr.P.C.. Petitioners preferred a Criminal Revision

No. 9 of 2022 against the order dated 14.2.2020 and the revisional court has dismissed the revision by the impugned order.

Learned counsel for the petitioners submitted that there was some matrimonial dispute between the parties and a compromise was entered into on 20.8.2009 and husband and wife started living separately. Thereafter, on false and concocted version, an application under Section 156(3) Cr.P.C. was filed by the opposite party no. 2 implicating husband and other family members which is just to harass and humiliate them. Learned Magistrate without properly appreciating the facts and evidence passed the summoning order in a casual manner. It is further contended that petitioners filed a revision and the Revisional Court has remanded the matter making certain observations, but the learned Magistrate without taking into consideration the directions of the Revisional Court, has again rejected the discharge application. It is further contended that the entire family have been implicated and there are general allegations against them. The Revisional Court has also failed to appreciate facts and material on record and has rejected the revision in an arbitrary manner. The impugned order suffers from illegality.

Learned counsel for the opposite parties submitted that there are clear and specific allegations against the petitioners in the application/complaint. The opposite party no. 2 (complainant) with her evidence under Sections 200 and 202 Cr.P.C. has corroborated the allegations of the complaint. Satisfied with the material and evidence on record, the summoning order has been passed. There is no sufficient ground to discharge the accused.

Complainant has made various allegations against the petitioners in her complaint. She has also led evidence under Section 200 and 202 Cr.P.C.. It is settled principle of law that at the stage of summoning, only prima facie case is to be seen. Being satisfied with the evidence on record, summoning order was passed against the petitioners.

Under Section 245(2) Cr.P.C., the magistrate is empowered to discharge the accused at any previous stage for reasons to be recorded, if he considers the charges to be groundless. At this stage the defense of the accused cannot be considered. There is no material on record to establish that the charges are groundless, hence the order rejecting the discharge application under Section 245(2) Cr.P.C. passed by the Magistrate concerned and the order passed by the Revisional Court rejecting the revision, have no illegality.

Revision is devoid of merit and is, hereby, **dismissed.**

Order Date :- 17.11.2023

A.P. Pandey