

Court No. - 89

Case :- APPLICATION U/S 482 No. - 37439 of 2023

Applicant :- Durgesh

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

Counsel for Applicant :- Manu Sharma, Dinesh Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma, J.

1. Heard learned counsel for the applicant and learned AGA for the State.

2. The present 482 Cr.P.C. application has been filed to quash the summoning order dated 14.07.2023 passed in Complaint Case No. 2277 of 2019 (Yashodhara Devi vs. Durgesh), under Sections- 323, 504, 506, 498A I.P.C. and Sections- 3/4 of Dowry Prohibition Act, Police Station- Kotwali, District- Maharajganj, pending in the Court of Civil Judge (Junior Division)/Fast Track Court No.1, Maharajganj.

3. The contention of learned counsel for the applicant is that no offence against the applicant is disclosed and the present prosecution has been instituted with a mala fide intention for the purposes of harassment. Applicant is husband of opposite party no.2 and all allegations are false and not supported by any evidence. The statements recorded under sections 200 and 202 Cr.P.C. also not disclosing any evidence to prosecute the applicant in the present case. The applicant being husband wants to live with the opposite party no.2, filed a petition under section 9 of Hindu Marriage Act in which compromise was filed and petition under section 9 of Hindu Marriage Act was dismissed in view of compromise. Now, opposite party no.2 is not living with the applicant. He next submitted that opposite party no.2 is a working lady as "Anganbadi Karyakarini" and the applicant is an unemployed person. Summoning order passed by learned Magistrate is without application of judicial mind and is liable to be set-aside. He further submitted that being a husband, applicant has been implicated in the present case as no offence against the applicant is made out.

4. Learned A.G.A. has vehemently opposed the submissions raised by counsel for the applicant and submitted that submission raised

by counsel for the applicant cannot be examined at this stage.

5. From perusal of the impugned order, it is apparent that the learned Magistrate has passed the order challenged herein after having found prima facie case made out against the applicant and cognizable offence is disclosed from the perusal of the complaint as well as the statement of the complainant and its witnesses recorded under Section 200 and 202 Cr.P.C.

6. From perusal of material on record and looking into the facts of the case and after considering the arguments made at the Bar, it cannot be said that no offence is made out against the applicant.

7. In view of the above, in the light of judgment of the Apex Court in the matters of **R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283**, no ground for quashing the proceedings of the aforesaid case, is made out which may call for any interference by this Court in exercise of its inherent power under Section 482 Cr.P.C. as the same do not suffer from any illegality or infirmity.

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

9. However, if the applicant surrenders before the concerned Court below within three weeks from today and in case applies for bail, the bail application shall be decided expeditiously by the court below in accordance with law laid down by the Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and another, reported in 2021 SCC OnLine SC 922**.

10. If the above condition is complied by the applicant, for the period of three weeks from today or till the time of surrender of the applicant before the Court below, whichever is earlier, no coercive action shall be taken against him.

Order Date :- 1.12.2023

Saif