

Court No. - 92

Case :- APPLICATION U/S 482 No. - 37712 of 2023

Applicant :- Bobby Agarwal And 2 Others

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

Counsel for Applicant :- Ajay Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Ajay Kumar Shukla, learned counsel for the applicants and Sri Anish Kumar Upadhyay, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the summoning/cognizance order dated 07.01.2023 in Complaint Case No. 16 of 2021 (Swati Goyal vs. Body Agarwal and Ors.) u/S 498A I.P.C., P.S.- Quarshi, District- Aligarh, pending in the court of learned Judicial Magistrate, Court No.2, Aligarh.

3. Learned counsel for the applicants submits that the instant complaint case was filed by the opposite party no.2 against the applicant nos. 1 and his family members. After filing of the complaint a compromise was executed on 25.08.2021, between the parties, which has been annexed as Annexure '5' to the instant application. Learned counsel for the applicants further submits that subsequent to the said compromise between the parties, the opposite party no.2 has again voluntarily left the matrimonial house and has prosecuted her complaint and after recording the Statements u/S 200 and 202 Cr.P.C., the learned Magistrate has summoned the applicants herein, for the offences u/S 498A I.P.C. and Section 3/4 D.P. Act.

4. Learned counsel for the applicants further submits that after the opposite party no.2 has left the matrimonial house, he has filed a missing report and thereafter, the police has recorded her statement wherein she has categorically stated in her statement that she don't want to live with the applicant no.1 herein. Therefore, learned counsel for the applicants has prayed for quashing of the entire proceedings of the instant complaint case against the applicants herein.

5. Per contra, learned A.G.A for State submits that from the compromise itself it is apparent that the applicant no.1 herein was habitual of gambling and drinking liquor etc., and he has

undertaken in the compromise that he will not do the same again and will return the money to the father of the opposite party no.2, which was advanced to the applicants for purchasing a plot. Learned A.G.A for the State further submits that from the record it appears that since the applicant no.1 herein has not mend his way, therefore, the opposite party no.2 had to leave the matrimonial house again and there are clear and categorical allegations against the applicants with regard to the harassment for demand of dowry. Therefore, after recording the Statements u/S 200 and 202 Cr.P.C., the learned Chief Judicial Magistrate, Aligarh, has summoned the applicants herein for the offences u/S 498A I.P.C. and Section 3/4 of D.P. Act. Therefore, there is no illegality in the summoning order as the same has been passed on the basis of material available before the learned Magistrate.

6. Having heard the submissions made by learned counsels for the parties, this Court has carefully gone through the record of the case, from which it is apparent that on 20.01.2021, the opposite party no.2 has filed the complaint against the applicants and three other persons, making allegations of harassment for demand of dowry by them. Subsequent to the registration of the said complaint, the parties had arrived at the compromise between them and on 25.08.2021, had started living together. In the said compromise, the conditions for living together was agreed between the parties that the applicant no.1 shall not involve himself in the gambling nor he will drink the liquor etc., and shall return Rs. 3,00,000/- to the father of the opposite party no.2, which were advanced to the applicant no.1, for purchasing plot. As per the submissions of learned counsel for the applicants that subsequently, the opposite party no.2 has again left the matrimonial house and has prosecuted the complaint and thereafter, the statements of the complainant and two other witnesses, were recorded by the Magistrate and after having found the *prima facie* case against the applicants herein, out of the six persons named in the complaint, the summoning order has been issued only against three persons, who are the applicants herein. Therefore, in the considered opinion of this Court, there is no illegality in the summoning order passed by the learned Magistrate, which is based on the material available before him.

7. In view thereof and 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***, since there is a *prima facie* case against the applicants herein,

the instant application is devoid of merits and is hereby ***dismissed.***

Order Date :- 2.12.2023
Shubham Arya