

Court No. - 91

Case :- APPLICATION U/S 482 No. - 38402 of 2023

Applicant :- Kailash Singh Chauhan

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

Counsel for Applicant :- Ajay Sengar

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar,J.

1. Heard Sri Ajay Sengar, learned counsel for the applicant and learned AGA for the State.
2. The present application u/s 482 Cr.P.C. has been filed by the applicant with the prayer to quash the entire proceeding of Complaint Case No.3761 of 2022, under Section 498-A IPC and Section 3/4 of D.P. Act, Police Station Kakarbai, District Mahoba.
3. Learned counsel for the applicant submits that the opposite party no.2 was married with the applicant. Further submission is that although they were in relationship as Jija and Sali, so they have decided to get married even there was no consent of the applicant. Further submission is that just after a month, the opposite party no. 2 has left the house of the applicant's son started to enjoy with one Vikas Ahirwar. As the applicant belongs to another district to which the concerned Magistrate has no jurisdiction. The learned Magistrate has summoned the applicant in a mechanical way without proper inquiry under Section 202(1) Cr.P.C.. Further submission is that the continuation of the aforesaid proceeding is nothing but an abuse of process of Court, which is liable to be set aside.
4. In support of his submission, learned counsel for the applicant has placed reliance laid down by the Supreme Court in *M/s Pepsi*

Foods Ltd. Vs. Special Judicial Magistrate, 1998 (5) SCC 749; National Bank of Oman Vs. Barakara Abdul Aziz & Anr., 2013 (2) SCC 488 and Aroon Poorie Vs. Jayakumar Hiremath, 2017 (7) SCC 767. The above principle is stated to have been followed and explained by a learned Single Judge of this Court in ***Pawan Kumar Yadav & Ors. Vs. State of U.P. & Anr., 2013 (83) ACC 344 as also by Punjab and Haryana High Court in Savera Sidhu Vs. Harieen Sidhu & Anr., 2011 (2) Cri.CC 697.***

5. On the other hand, learned AGA has opposed the prayer but could not dispute the aforesaid fact.

6. I have considered the rival submission made by the learned counsel for the parties and have gone through the entire record.

12. Thus, though no straitjacket test was laid down by the Supreme Court as to the manner in which the inquiry may be conducted, however, the principle categorically laid down is that the order of the learned Magistrate must itself reflect that he had applied his mind to the facts and to the law. He was not to act merely because the complaint had been made and two witness in support of the complaint allegations had been brought before him. He was also obligated to examine the nature of the allegations and the evidence, both oral and documentary in support thereof as would be sufficient for the complainant to succeed in bringing the charge home against the accused. The Magistrate shall not act as a silent spectator, at this stage. It was also made open to the learned Magistrate to put questions to the witness who may have testified before him. The above exercise was required to be done to determine the truthfulness or otherwise of the fact allegations.

13. That test was further explained in National Bank of Oman (supra). In paragraph 9 of the judgment was observed as under:

"9. The duty of a Magistrate receiving a complaint is set out in Section 202 CrPC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of inquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202 CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of inquiry under Section 202 CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

(i) on the materials placed by the complainant before the court;

(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and

(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have."

21. It may be clarified, the points of inquiry noted above are merely indicative and not exhaustive. They have been noted only to illustrate the approach required to be taken but not to lay down a rule or the exact path to be followed by the learned Magistrate, who must act in the spirit of principle laid down by the Supreme Court in ***National Bank of Oman (supra)***.

22. From the perusal of the record of the case and impugned order, it is apparent that no proper inquiry has been conducted by the Magistrate concerned under Section 202(1) Cr.P.C., no question have been put to the complainant as well as the witnesses to test their veracity and the genuineness of the case put up by the complainant, which shows that the application has been passed in a mechanical way without application of judicial mind. The impugned order is not sustainable in the eye of law.

23. Accordingly, the present application is **allowed**. The order

dated 19.11.2022 passed by the Chief Judicial Magistrate, Mahoba is set aside and the matter remitted to the learned Magistrate to pass a fresh order after conducting a proper inquiry, in accordance with law. The aforesaid exercise may be concluded as expeditiously as possible, preferably within a period of three months from the date of production of a certified copy of this order.

Order Date :- 9.11.2023

Sanjeet