

Court No. - 91

Case :- APPLICATION U/S 482 No. - 38931 of 2023

Applicant :- Mohammad Hasim And Another

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

Counsel for Applicant :- Saurabh Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar,J.

Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.

This application under Section 482 Cr.P.C. has been filed by the applicants with the prayer to quash the summoning order dated 25.05.2023, passed by Judicial Magistrate, Fast Track Court/Women, Azamgarh, as well as entire proceeding of Complaint Case No. 237 of 2022 (Tasleem vs. Mohammad Hasim and another), under Sections 498A, 323 IPC and 3/4 D.P. Act, Police Station Saraimeer, District Azamgarh, pending before him.

Submission of learned counsel for the applicants is that an application under Section 156 (3) Cr.P.C. has been moved by opposite party no. 2 against ten persons including the applicants before the court concerned stating therein that she was married with the applicant no. 1 as per Muslim Rites and Rituals on 04.09.2017 and in the marriage her father given sufficient dowry according to his capacity but her in-laws were not satisfied with the dowry and they were demanding Rs. 2 lakhs and one Apache Motorcycle and out of wedlock she was having pregnancy of 8 months and due to assault made by the accused applicants and others she borne a dead baby and due to non-fulfillment of dowry demand she was beaten by the accused persons. On the aforesaid application filed by opposite party no.2, which was treated as complaint case, the learned Judicial Magistrate without application of judicial mind, ignoring the police report as well as the facts and material collected by the investigating officer during investigation, has summoned the applicants for the offence under Sections 498A, 323 IPC and 3/4 D.P. Act to face the trial. He relied only on the statement of opposite party no. 2 and witnesses recorded under Sections 200 and 202 Cr.P.C.

Reliance is also placed upon the judgement of this Court in the case of **Smt. Shiv Kumar and others vs. State of U.P. and**

another, reported in 2017 (2) JIC, 589, (All) (LB). Paragraph No. 10 of the aforesaid judgement is relevant for the controversy in hand. The same is as under:-

"Learned Magistrate was required to atleast mention in the order about the prima facie satisfaction for summoning the accused. The order must reflect that the learned Magistrate has exercised his jurisdiction in accordance with law after satisfying himself about the prima facie allegations made in the complaint. The accused cannot be summoned mechanically merely by writing that perused the statements under Sections 200 and 202 Cr. P. C."

Reference may also be made to the judgement of this Court in the case of **Hariram Verma and 4 Others Vs. State of U.P. and Another, reported in 2017 (99) ALL CC 104**, wherein the following observations have been made in paragraphs 7 to 16:

"7. A perusal of this impugned summoning order indicates that learned Magistrate had noted in the impugned order the contents of complaint and evidences u/s 200 and 202 CrPC but had neither any discussion of evidence was made, nor was it considered as to what overt act had allegedly been committed by accused. This contention of learned counsel for the applicants cannot be ruled out that leaned counsel have noted the contents of complaint and statements without considering its probability or prima facie case, and whether he had actually considered statements u/ss 200, 202 CrPC or the documents of the original. At stage of summoning, the Magistrate is not required to meticulously examine or evaluate the evidence. He is not required to record detailed reasons. A brief order which indicate the application of mind is all that is expected of him at the stage".

Per contra, learned AGA opposed the prayer of the applicants but cannot dispute the above fact

Looking to the facts and circumstances of the case and without going into the merits of the case as of now, the summoning order dated 25.05.2023 is hereby set-aside.

The present application u/s 482 Cr.P.C. is allowed to this extent.

The matter is remanded back to the trial court concerned to pass fresh order in accordance with law within a period of four weeks from the date of production of a certified copy of this order.

Order Date :- 31.10.2023/v.k.updh.