

Court No. - 87

Case :- APPLICATION U/S 482 No. - 39424 of 2023

Applicant :- Nasima Begam

Opposite Party :- State Of U.P. And 4 Others

Counsel for Applicant :- Rajesh Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Neeraj Tiwari,J.

1. Heard Sri Rajesh Kumar Mishra, learned counsel for the applicant and learned A.G.A. for the State.

2. The present 482 Cr.P.C. application has been filed to quash the judgment and order dated 28.02.2022 passed by Chief Judicial Magistrate, Rampur and other order dated 02.06.2023 passed by Additional Sessions Judge/F.T.C., Court No. 1, Rampur in Criminal Case No. 125 of 2019 (State Vs. Mustakeem and others), arising out of Case Crime No. 165 of 2018, under Sections- 498-A, 323 I.P.C., Police Station- Ajeemnagar, District- Rampur, pending in the court of Additional Civil Judge (Junior Division)-III, Rampur.

3. Learned counsel for the applicant submitted that F.I.R. dated 23.05.2018 has been lodged under sections 498-A, 323, 304-B IPC and section 3/4 D.P. Act, but charge sheet was submitted only under sections 498-A, 323 IPC. It is next submitted that after statement of P.W.-1 and another witness namely Laeek Ahmad were recorded, applicant has given application under section 323 Cr.P.C. for adding section 304-B IPC and to commit the trial to Sessions Court, but the said application was rejected vide order dated 28.02.2022. Against the said order, applicant has also preferred Revision No. 40 of 2022 which was also rejected vide order dated 02.06.2023. It is further submitted that once the statements of witnesses were recorded having reference of dowry death, it is required on the part of Magistrate to commit the matter to Sessions Court for trial.

4. Per contra, learned A.G.A. opposed the submissions of learned counsel for applicant and submitted that order dated 28.02.2022 is well reasoned order having clear cut finding that in post mortem report, no external or internal injury was found. Further, as per forensic report of viscera, no poison was found inside the body.

Apart that, death has taken place in hospital. It is also mentioned in the order that report of doctor dated 24.09.2018 has also been produced and according to that report, post mortem was conducted on 23.05.2018 by a panel of two doctors and he was one of them. Report is having same facts, therefore, death appears to be natural due to heart attack. Considering all these facts, application was rightly rejected and also affirmed by the Revisional Court.

5. I have considered rival submissions advanced by counsel for parties and perused the records as well as impugned orders. The facts so mentioned in the impugned orders and argued by learned A.G.A. could not be disputed by learned counsel for applicant.

6. Once it is undisputed that as per post mortem report, no internal or external injury was found and further as per forensic report of viscera, no poison was found in the body and the death would be treated a natural death. Therefore, no case is made out under section 304-B IPC and application has rightly been rejected by the impugned orders.

7. Accordingly, instant 482 application lacks merit and is hereby **dismissed**.

8. No order as to costs.

Order Date :- 9.11.2023

Sartaj