

Court No. - 92

Case :- APPLICATION U/S 482 No. - 40531 of 2023

Applicant :- Sachin Alias Ashish Pratap Singh And 2 Others

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

Counsel for Applicant :- Radhey Shyam Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Radhey Shyam Yadav, learned counsel for the applicants and Sri Rajeev Kumar Singh, learned AGA for the State.

2. The instant application has been filed seeking quashing of the summoning order dated 03.11.2022 as well as the entire proceeding of Complaint Case No. 2050 of 2022 (Smt. Hirdesh alias Lavi Vs. Sachin alias Ashish Pratap Singh and others), under Sections 498-A, 323 IPC and Section 3/4 Dowry Prohibition Act, P.S. Sikandarpur Vaish, District Kasganj, pending in the Court of Judicial Magistrate, Kasganj.

3. Learned counsel for the applicants submits that for the same allegations, earlier the applicants has filed an FIR being Case Crime No. 226 of 2020, which was investigated by the police and the charge sheet was filed on 15.09.2020 against the applicants herein, which was stayed and further investigation was directed on 29.10.2020 and subsequent thereto on 03.08.2022, cognizance was taken on the aforesaid charge sheet. Learned counsel for the applicants submits that after the cognizance was taken in the aforesaid matter, the opposite party no.2 has filed another complaint case for the same cause of action on 23.08.2022, on which after recording the statements under Section 200 and 202 Cr.P.C., the learned Judicial Magistrate, Kasganj summoned the applicants herein for the offences under Section 498-A, 323 and 3/4 Dowry Prohibition Act on 03.11.2022. Therefore, learned counsel for the applicants submits that for the same cause of action, the applicants cannot be held to face two separate trials for the same allegations. Therefore, he has prayed for quashing of the entire proceeding of the complaint case filed later by the opposite party no.2. Learned counsel for the applicants further submit that in the earlier FIR lodged, the applicants have already been released on bail.

4. Per contra, learned AGA for the State submits that Section

210 Cr.P.C. provides complete remedy to the applicants in the situation where the charge sheet has already been filed, the cognizance has been taken and subsequently a complaint case has been lodged. On such application made by the applicants, the Trial Court shall try together the complaint case and the case arising out of the police report as both the cases are instituted on a police report. Therefore, learned AGA submits that no interference is called at this stage as Section 210 Cr.P.C. provides complete remedy to the applicants.

5. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully gone through the record of the case. From the record, it is apparent that an FIR being Case Crime No. 226 of 2020, 498-A, 323 IPC and Section 3/4 Dowry Prohibition Act was registered against the applicants herein including some other persons as well. On the said FIR, the investigation was done and after investigation, the charge sheet was filed against seven persons including the applicants and subsequently on 03.08.2022, cognizance was taken. Subsequent thereto the opposite party no.2 has filed another complaint case leveling similar offences against the applicants herein, on which after recording the statements under Sections 200 and 202 Cr.P.C., vide order dated 03.11.2022, the learned Judicial Magistrate, Kasganj has summoned the applicants for the offences under Sections 498-A, 323 IPC and Section 3/4 Dowry Prohibition Act. Section 210 Cr.P.C. reads as under:

"210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code."

6. Sub-clause (2) of Section 210 Cr.P.C. provides that where a cognizance on police report has already been taken by the

Magistrate against an accused, who is also an accused in the complaint case, then the Magistrate is duty bound to enquire both the cases i.e. the complaint case as well as the case registered on police report together and Clause (3) of Section 210 further provides that the police report does not relate to any accused in the complaint case or the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

7. Therefore, in the situation as arisen in the instant case, a complete remedy is provided under Section 210 Cr.P.C. to the applicants herein.

8. Therefore, the instant application is **disposed of** with a direction to the applicants to approach the concerned Magistrate by moving an appropriate application under Section 210 Cr.P.C. within a period of two weeks from today. The learned Magistrate is directed to consider and dispose of such application within a period of four weeks thereafter.

9. For a period of six weeks, no coercive steps shall be taken against the applicants in Complaint Case No. 2050 of 2022 (Smt. Hirdesh alias Lavi Vs. Sachin alias Ashish Pratap Singh and others), under Sections 498-A, 323 IPC and Section 3/4 Dowry Prohibition Act, P.S. Sikandarpur Vaish, District Kasganj,

Order Date :- 6.12.2023
Ashish Pd.