

**Court No. - 93**

**Case :-** APPLICATION U/S 482 No. - 42898 of 2023

**Applicant :-** Kuljeet Kaur And Another

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

**Counsel for Applicant :-** Aditi Srivastava, Kandarp Srivastava

**Counsel for Opposite Party :-** G.A.

**Hon'ble Manoj Bajaj, J.**

Petitioners being accused in Complaint Case bearing Number 4077 of 2023, titled *Paramjeet versus Kuljeet Kaur and others*, Police Station- Modinagar, District- Ghaziabad have filed this application under Section 482 Cr.P.C. to challenge the Complaint as well as the summoning order dated 17.06.2023 passed by Additional Chief Judicial Magistrate, court no.5, Ghaziabad.

Learned counsel has argued that the marriage between the parties was the second marriage which was solemnized on 21st June, 2022, and the parties stayed for brief period as unfortunately they got separated in August, 2022. Thereafter, the husband falsely implicated the applicant no.1- Kuljeet Kaur and her brother applicant no.2- Harpreet Singh in the above complaint case for alleged commission of offences punishable under Sections 323, 406, 504, 506 IPC. He submits that the complaint is filed with malafide intentions only to harass the applicants and the trial court has also passed the summoning order dated 17.06.2023 without appreciating the material on record. He prays that impugned proceedings be

set aside.

At this stage, learned counsel for the complainant has pointed out that against the summoning order, the applicants had moved a criminal revision bearing criminal revision number 520 of 2023 before the court of sessions and the same is pending, therefore, the simultaneous invoking of jurisdiction under Section 482 Cr.P.C. is bad in law.

In response, learned counsel for the applicants submits that the revision petition filed by the applicants before the sessions court stands withdrawn on 16th November, 2023. However, the copy of the said order has not been received by them so far.

On merits, learned counsel for the complainant submits that complainant has given the relevant particulars in the complaint and in support of the same, pre- summoning evidence was also adduced and considering the same, the court *prima facie* found that the case is made out for issuance of process against the accused. He submits that the impugned order does not warrant any interference.

Upon hearing the learned counsel for the parties and considering their submissions, this Court finds that no doubt, the applicants had availed the revisional jurisdiction before the sessions court, but the said case has not been adjudicated upon merits. Further, a perusal of the impugned order dated 17th June,

2023 shows that the order is absolutely non-speaking as nothing is noticed, much less the date of occurrence or the gist of the evidence adduced by the complainant in support of the complaint. Time and again, the Hon'ble Supreme Court as well as this Court have held that issue of process against an accused is a serious matter and the magistrate should not be casual in issuing process. At this stage, the court must apply its judicious mind to the material on record and upon referring the same, it must observe that a *prima facie* case is made out. In this regard, the reference can be made to the decision of Hon'ble Supreme Court in the case of **S.W. Palanitkar and others versus State of Bihar and another, (2002) 1 Supreme Court Cases 241**. The relevant observations read as under:

*"23. Many a times, complaints are filed under Section 200 Cr.P.C. by the parties with an oblique motive or for collateral purposes to harass, to wreck vengeance, pressurize the accused to bring them to their own terms or to enforce the obligations arising out of breach of contract touching commercial transactions instead of approaching civil courts with a view to realize money at the earliest. It is also to be kept in mind that when parties commit a wrongful act constituting a criminal offence satisfying necessary ingredients of an offence, they cannot be allowed to walk away with an impression that no*

*action could be taken against them on criminal side. A wrongful or illegal act such as criminal breach of trust, misappropriation, cheating or defamation may give rise to action both on civil as well as on criminal side when it is clear from the complaint and sworn statements that necessary ingredients of constituting an offence are made out. May be parties are entitled to proceed on civil side only in a given situation in the absence of an act constituting an offence but not to proceed against the accused in a criminal prosecution. Hence before issuing a process a Magistrate has to essentially keep in mind the scheme contained in the provisions of Section 200-203 of Cr.P.C. keeping in mind the position of law stated above and pass an order judiciously and not mechanically or in routine manner."*

In view of the above, this Court has no hesitation in holding that the impugned order is not sustainable, therefore, the impugned summoning order dated 17.06.2023 passed by Additional Chief Judicial Magistrate, court no.5, Ghaziabad in Complaint Case Number 4077 of 2023, titled *Paramjeet versus Kuljeet Kaur and others*, Police Station- Modinagar, District- Ghaziabad is set aside and the case is remanded back to the trial court to pass a reasoned and speaking order in accordance with law.

This application is **allowed**.

**Order Date :- 23.11.2023/Raj**