

Court No. - 93

Case :- APPLICATION U/S 482 No. - 42352 of 2023

Applicant :- Rakesh And 5 Others

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Manish Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj,J.

Applicants being accused have approached this Court through this application under Section 482 Code of Criminal Procedure seeking quashing of the charge sheet dated 20/21.5.2017 filed under Section 173(2) Cr.P.C. in Case Crime No.513 of 2016, under Sections 498-A, 504, 506 I.P.C. and Section 3/4 Dowry Prohibition Act, 1961, Police Station Sahjanwa, District Gorakhpur as well as the cognizance order dated 1.4.2023 passed by Additional Chief Judicial Magistrate/F.T.C., Gorakhpur and the proceedings arising therefrom.

Learned counsel for applicants has argued that the allegations in the impugned F.I.R. are general in nature and vague and even the complainant has implicated the relatives of the husband falsely for the alleged commission of offences, whereas, no such incident as alleged by the complainant took place. He further submits that the registration of F.I.R. and prosecution of the applicants based on the final report under Section 173(2) Cr.P.C. is an abuse of process of law, therefore, the impugned F.I.R., charge sheet and the proceedings arising out of it, be quashed in the interest of justice.

In support of his submissions, learned counsel for applicants has placed reliance upon the decisions of Hon'ble *Apex Court* in the case of **Abhishek Vs. State of Madhya Pradesh, 2023 LiveLaw (SC) 731** and **Kahkashan Kausar @ Sonam and others Vs. State of Bihar and others, 2022 LiveLaw (SC) 141.**

Heard learned counsel for applicants and learned A.G.A. for the State.

During the course of hearing, it is not disputed by learned counsel that final report submitted under Section 173(2) Cr.P.C. is yet to be

evaluated by the trial court, as no charges have been framed against the accused.

Besides, the decisions in the case of **Abhishek Vs. State of Madhya Pradesh, 2023 LiveLaw (SC) 731** and **Kahkashan Kausar @ Sonam and others Vs. State of Bihar and others, 2022 LiveLaw (SC) 141**, passed by Hon'ble Apex Court would not be applicable in this case as in **Abhishek's case (Supra)** the relatives of the husband were living separately and the case by wife was lodged in retaliation to the divorce petition filed by the husband, whereas in the **Kahkashan Kausar @ Sonam's case (Supra)**, the complainant had initially lodged a private complaint under Chapter XV Cr.P.C. and after issuance of process against the accused only for the offence punishable under Section 498-A I.P.C., she levelled the similar allegations for lodging the F.I.R. and considering the facts of the case, the Hon'ble Apex Court had quashed the F.I.R. The facts of this case are different and distinguishable, therefore, it will not be safe for this Court to exercise the inherent powers under Section 482 Cr.P.C.

Further, this Court is of the opinion that the issues and grounds raised by applicants in this application can be effectively raised before the trial court at an appropriate stage. Here, it will be useful to refer the decision of Hon'ble Supreme Court delivered in **Dharmatma Singh vs. Harminder Singh & Ors. report in Criminal Appeal No.1126 of 2011 (3) RCR Criminal 38**, wherein the Hon'ble Supreme Court has observed that if a party can avail alternative remedy according to the provisions of Code of Criminal Procedure, in that eventuality the inherent powers under Section 482 Cr.P.C. cannot be exercised. The relevant observations read as under :

*"13. Section 482 of the Cr.P.C. saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. It has been held by this Court in **R.P. Kapur v. State of Punjab [AIR 1960 SC 866]** that Section 561-A of the Criminal Procedure Code, 1898 (which corresponds to Section 482 of the Criminal Procedure Code, 1973) saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice and such inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code and therefore where the Magistrate has not applied his mind under Section 190 of the Cr.P.C. to the merits of the reports and passed order, the High Court ought not to consider*

a request for quashing the proceedings. In the case of **R.P. Kapur (supra)** on 10.12.1958, M.L. Sethi lodged a First Information Report against R.P. Kapur and alleged that he and his mother-in-law had committed offences under Sections 420-109, 114 and 120B of the Indian Penal Code. R.P. Kapur moved the Punjab High Court under Section 561-A of the Code of Criminal Procedure for quashing the proceedings initiated by the First Information Report. When the petition of R.P. Kapur was pending in the High Court, the police report was submitted under Section 173, Cr.P.C. and the High Court held that no case had been made out for quashing the proceedings under Section 561-A of the Criminal Procedure Code, 1898 and dismissed the petition. R. P. Kapur carried an appeal by way of Special Leave to this Court and this Court dismissed the appeal for *inter alia* the following reasons:

" In the present case the magistrate before whom the police report has been filed under S. 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily, criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage..."

As we have found in the present case that learned Magistrate had not applied his mind to the merits of the reports filed under Section 173, Cr.P.C., we are of the considered opinion that the exercise of power by the High Court under Section 482, Cr.P.C., was at an interlocutory stage and was not warranted in the facts of this case."

In view of the above background of the case as well as law laid down by Hon'ble Supreme Court, this Court without meaning any expression of opinion on the merit of this case, does not find it to be a fit case for exercise of inherent powers under Section 482 Cr.P.C.

The application fails and is dismissed.

Order Date :- 5.12.2023
P.S.Parihar