

Court No. - 92

Case :- APPLICATION U/S 482 No. - 43322 of 2022

Applicant :- Banshidhar Dubey And Another

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

Counsel for Applicant :- Praveen Kumar Shukla, Reenika Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Praveen Kumar Shukla, learned counsel for the applicants and Sri Prashant Saxena, learned AGA for the State.
2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the charge sheet dated 15.06.2022 and cognizance/summoning order dated 02.07.2022 as well as the entire criminal proceeding of Case No. 5294 of 2022 (State of U.P. vs. Banshidhar Dubey and others) arising out of Case Crime No. 186 of 2021, under Sections 498-A, 304-B, 328 IPC and Section 3/4 Dowry Prohibition Act, P.S. Mau, District Chitrakoot, pending before the Chief Judicial Magistrate Chitrakoot.
3. On 20.02.2023, notice was issued to opposite party no.2. As per the office report dated 22.05.2023, the notice has already been served on the opposite party no.2, however none has put in appearance.
4. Learned counsel for the State had filed the counter affidavit but the same was not on record and vide order dated 23.05.2023, the office was directed to trace out the same and place it on record. However, the same is still not available on record.
5. Learned counsel for the applicants submits that he does not want to file any rejoinder affidavit to the counter affidavit filed by the State. Therefore, he has requested for final hearing of this case.
6. The brief facts of the case are that the son of the applicants namely Tukesh Dubey was married on 02.05.2021 with the daughter of the opposite party no.2 namely, Hema @ Ritambhara as per hindu rites and customs. As per the

averments made in the application, the said Hema @ Ritambhara was having love relationship with one Shiva prior to the marriage and the said relationship continued between them and they were in continuous touch through the mobile phones. The said Hema has gone to her parental house in August 2021 and returned on 06.10.2021 back to her in-laws house and in the intervening night of 12/13.10.2021, she consumed some poisonous material. When she started vomiting, on 13.10.2021, the applicants took her away to the nearest clinic and the doctor suggested them to admit her immediately in a good hospital. Thereafter the applicant no.2 informed the opposite party no.2 regarding the ill health of the victim and immediately took her to Savitri Nursing Home, Sankargarh where she died on 13.10.2021. The postmortem was conducted, viscera was preserved and in the viscera report, presence of Aluminum Phosphide was found. The cremation of the victim was conducted in the presence of the opposite party no.2 and the other family members. Till cremation was conducted, there was no whisper of any allegation by the opposite party no.2 and her family members but subsequently, on 16.10.2021, the FIR being Case Crime No. 0186 of 2021 under Section 498-A, 304-B, 328 IPC and Section 3/4 Dowry Prohibition Act was registered at Police Station Mau, District Chitrakoot by the family members of opposite party no.2 against the applicants.

7. Learned counsel for the applicants submits that the applicants herein have been granted anticipatory bail and the son of the applicants being husband of the victim has also been granted regular bail in the matter. Learned counsel for the applicants has annexed the chat messages between the victim and her paramour Shiva, which suggest that there was a continuous relationship between them and she has committed suicide due to failure in her love relationship, as the son of the applicants had married the victim against her wishes. Therefore, learned counsel for the applicants submits that the instant case has been lodged on the false and fabricated facts and there was no demand of dowry and there was no allegation prior to the incident with regard to any torture or harassment immediately before the death of the victim as was required to be lodged under Section 304B IPC. Therefore, he has prayed for quashing of the entire proceedings against the applicants herein.

8. Learned AGA for the State submits that there are clear and

categorical allegations with regard to harassment and torture immediately before the death of the victim has been made in the FIR as well as in the statements recorded under Section 161 Cr.P.C. and thereupon after due investigation and on the basis of material available before the investigating agency, the charge sheet was filed and subsequently on the basis of the material available before the Magistrate, the applicants have been summoned for trial. Therefore, there is no illegality in the charge sheet as well as the summoning order against the applicants herein. The chat messages, which have been relied upon by learned counsel for the applicants are the subject matter of trial and on such unverified material, the criminal proceedings cannot be quashed.

9. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully perused the record of the case. From perusal of the record of the case and FIR as well as the statements under Section 161 Cr.P.C. recorded during investigation, it is apparent that the FIR and categorical allegations with regard to torture and harassment with regard to demand of dowry immediately before the death of the victim have been made against the applicants as well as the husband of the victim.

10. In the considered opinion of this Court, there is no ground for interference in the instant case. The other material, which has been highly relied upon such as chat messages etc. with regard to love relationship with one Shiva is an unverified material, which should be proved by the applicants. Therefore, this Court is of the opinion that there being a cognizable offence alleged against the applicants and since it was a case of unnatural death of the victim within one year of her marriage for which the learned Magistrate has rightly taken cognizance, therefore, no interference is required in exercise of power under Section 482 Cr.P.C. and the instant application is devoid of merits and is accordingly **dismissed** in the light of judgments of Apex Court in **R. P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others : 2021 SCC OnLine SC 315.**

Order Date :- 24.11.2023

Ashish Pd.