

Court No. - 28

Case :- APPLICATION U/S 482 No. - 283 of 2022

Applicant :- Bandana Mishra

Opposite Party :- State Of U.P. Through Additional Chief Secretary, Home And Anr.

Counsel for Applicant :- Prashant Vikram Singh, Nan Moon Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh, J.

Heard Sri Prashant Vikram Singh, learned counsel for the applicant, Sri Girijesh Kumar Dwivedi, learned AGA for the State and perused the material placed on record.

Instant application has been filed with the prayer to set aside the order dated 6.10.2021 passed by Sessions Judge 1st, Ambedkar Nagar in Discharge Application No.157 of 2021 filed by the applicant under Sections 227/228 of Cr.P.C. in Session Trial No.67 of 2021 arising out of Crime No.42 of 2019 (State Vs. Bandana Mishra) and also to quash entire proceedings of aforementioned case.

Learned counsel for the applicant submits that on 9.7.2016, an FIR was lodged by the applicant as Case Crime No. 57 of 2017 under Sections 498-A, 323 and 506 IPC and 3 & 4 of Dowry Prohibition Act against the opposite party no.2 and in retaliation thereof, instant FIR has been lodged by the opposite party no. 2 against the applicant which was registered as Case Crime No.42 of 2019 under Sections 147, 323, 352, 324 & 307 I.P.C. Police Station Alapur, District Ambedkar Nagar, where after the matter was investigated and the charge sheet was filed under Sections 147, 323, 352, 324, 307 I.P.C., without collecting any cogent piece of evidence. He further added that the learned trial court ignoring the material doubt in the story of the prosecution, has summoned the applicant and, later on, discharge application moved by the applicant has also been rejected, vide order dated 6.10.2021.

Contention of the learned counsel for the applicant is that the FIR has been lodged after two days of the alleged incident and due to anonymity, name of the applicant has been implicated though she was not present at the time of incident which can be looked into by the records submitted by the applicant. He submits that the FIR has been lodged by the opposite party no.2

only with a view to mount pressure upon the applicant. He also added that the learned trial court has ignored the substances and the contention of the learned counsel for the applicant and has passed the impugned order which vitiates in the eyes of law. Therefore, submission is that the impugned order dated 6.10.2021 may be set aside.

On the other hand, learned counsel for the State has opposed the contention aforesaid and submits that there is allegation against the applicant in the FIR for committing the offence, and after investigation, the charges were found to be proved, and, therefore, the charge sheet has been filed against the applicant. He thus submits that trial court has rightly took cognizance of the offence. He submits that discharge application has been rejected after thoroughly considering the facts and circumstances of the case and, therefore, no interference is warranted.

Considering the submission of the learned counsel for the parties and after the perusal of the record, it transpires that initially an FIR was lodged under Sections 498-A, 323 and 506 IPC and 3 & 4 of Dowry Prohibition Act against the opposite party no.2, and as per the utterances of the learned counsel for the applicant, in retaliation thereof, instant FIR has been lodged against the applicant though fact remains that after charges were found to be proved, charge sheet was filed by the Investigating Officer.

When this Court examines the contention of the learned counsel for the applicant as well as the impugned order by which discharge application of the applicant was rejected, it transpires that the contention raised by the applicant has been discussed and prima facie, the Court came to the conclusion that there is material evidence against the applicant so as to constitute the offence for which charge sheet has been filed. This Court also noticed that though the discharge is valuable right of the accused but it is not a case where no opportunity of discharge was accorded to him, contrary to it after hearing the accused person and going through the substance on record, the order impugned dated 6.10.2021 has been passed by the trial court.

In view of the aforesaid submissions and discussions, this Court finds no merit in this application.

Resultantly, the application is hereby **dismissed**.

Consigned to record.

Order Date :- 17.10.2023/Ram Murti