

Reserved on 18.09.2023

Delivered on 22.12.2023

Court No. - 18

Case :- APPLICATION U/S 482 No. - 4210 of 2021

Applicant :- Saurabh Shukla And Others

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

Counsel for Applicant :- Manoj Kumar Misra

Counsel for Opposite Party :- G.A.,Abhishek Dwivedi,Ashok Kumar Mishra

Hon'ble Shree Prakash Singh,J.

1. Heard Sri Manoj Kumar Mishra, learned counsel for the applicants, Sri Abhishek Dwivedi, learned counsel for the opposite party no. 2, Sri Aniruddh Kumar Singh, learned A.G.A.-I for the State.

2. By means of the present application, the applicants have assailed the entire proceedings of Criminal Case No.50307 of 2017 (State Vs. Mona @ Ritesh Kumar and others) and have further prayed for quashing the charge sheet dated 13.8.2021 and order dated 5.10.2021 whereby the trial court ordered to keep the supplementary charge sheet on record regarding Case Crime No. 460 of 2016 under Sections 498-A, 323, 504, 506, 354-A I.P.C. Police Station Madaon, District Lucknow.

3. Brief factual matrix of the case are that marriage of the applicant no.1 was solemnized with opposite party no.2 on 9.12.2012 according to the Hindu rituals and after passing of sometime, it came into the knowledge of the applicant no.1 that the opposite party no. 2 is in illicit relationship with one Raj Bahadur, who is working along with the opposite party no. 2 in the same office. As the applicants belong to reputed family, they intervened and tried to convince the opposite party no. 2 for stopping relations with Raj Bahadur whereafter the opposite party no.2 started quarreling and she also intimated this fact to Raj Bahadur, who threatened to the applicant nos.1 and 2. The fact remains that there were three members including the opposite party no. 2 in the matrimonial house. Applicant no.2 is the widowed mother, who suffers

Neutral Citation No. - 2023:AHC-LKO:85789

from old age ailments. The applicant nos. 3 and 4 are residing at District Sitapur and they have no concern except their relation with the applicant no.1 as brother-in-law and sister.

4. After the aforesaid incident, the opposite party no.2 started living with Raj Bahadur since 21.7. 2013 and thereafter the applicant no.1 moved an application to the Senior Superintendent of Police, Lucknow on 12.12.2013 and informed that he received a call from mobile number and a threat was given to him to leave the opposite party no. 2 and this threat was given by Raj Bahadur. On the application of the applicant no.1, an enquiry was instituted whereafter the statement of Raj Bahadur was recorded by the Enquiry Officer wherein he categorically stated that the opposite party no. 2 is in relation with him and they were keen to solemnize their marriage but because of the denial of the parents of the opposite party no.2 as well as their threat so as to commit suicide in case marriage is performed by them, they could not marry. He also stated that under the pressure of the parents, the opposite party no. 2 consented with the marriage with applicant no.1 and after marriage, he never met with the opposite party no.2 but after a call was made by the opposite party no.2, explaining that there is a matrimonial dispute between the opposite party number 2 and her husband, though he never extended any threat to the applicant no. 1. He further assured to the Enquiry Officer that he will not intervene in the matrimonial life of the applicant no.1 and opposite party no.2 and, thus, the proceeding was withdrawn by the applicant no. 1, even then the opposite party no. 2 did not come back to him.

5. As alleged that all of a sudden, on 25.5. 2016 at 7.30 p.m. the opposite party no. 2 came to the house of the applicant no.1 and entered into the house forcibly and started quarrelling and thereafter took away the ornaments and cash. In such circumstances, a written complaint was made by the applicant no.2, which was registered as Case Crime No. 459 of 2016 under Sections 323, 504, 506, 384 I.P.C. at Police Station Madaon, District Lucknow and in retaliation thereof, the opposite party

Neutral Citation No. - 2023:AHC-LKO:85789

no.2 lodged an F.I.R. as Case Crime No.460 of 2016, under Sections 307, 354, 323, 504, 506 I.P.C. wherein the applicants were made as accused. After the aforesaid F.I.R, statement of the opposite party no. 2 could hardly be recorded under section 161 Cr.P.C., wherein she alleged that on 21.11.2013, she was beaten by applicant no.1 being annoyed by the complaint about the molestation by applicant no.3. In her statement, she did not disclose the date of incident though she accepted that she left her matrimonial house and started living in the hostel.

6. Statements of the independent witnesses, namely, Pradeep Kumar Shukla and Ankit Shukla were recorded by the Investigating Officer wherein they have stated that the opposite party no. 2 is a quarrelsome lady and she left the house of the applicants in May 2013 and it is also stated that bad behaviour of the opposite party no. 2 was narrated by applicant no. 1 in weeping condition. The behaviour of the opposite party number 2 was so reluctant as she did not properly cooperate for recording of her statements under Sections 161 and 164 of Cr.P.C.

7. Further in Writ Petition No. 29128 (MB) of 2017 (Saurabh Shukla and others Vs. State of UP and others), the Division Bench of this Court observed that the prosecuting agency filed a counter affidavit with the fact that Section 307 of I.P.C. has been dropped. The writ Court directed the Circle Officer concerned to go through the contents of the compact disc and only thereafter conclude the investigation but, without considering the contents of compact disc, charge sheet was filed.

8. The criminal proceedings arising out of Case Crime No. 460 of 2016 was assailed by way of Application U/S 482 No. 895 of 2019 (Saurabh Shukla and others Vs. State of U.p. and another) wherein the co-ordinate Bench of this Court, after thoroughly considering the facts and law, passed the order on 24.4.2020 thereby the charge sheet dated 15.8.2016, summoning order dated 13.10.2017 and the order dated 13.11.2018 were set aside and with the same pen, the Commissioner of Police, Lucknow was directed to depute Investigating Officer not below

Neutral Citation No. - 2023:AHC-LKO:85789

the rank of Circle Officer to conduct further investigation considering the aspect discussed in the order dated 24.4.2020.

9. After the aforesaid order was passed, the Investigating Officer was deputed by the Commissioner of Police, who concluded the proceeding of further investigation and filed a supplementary charge sheet dated 13.8.2021 and thereafter, the learned Judicial Magistrate-III, Lucknow passed the order on 5.10.2021.

10. The charge sheet dated 13.8.2021 and order dated 5.10.2021 passed by the Judicial Magistrate-III, Lucknow are under challenge in the instant application before this court.

11. Learned counsel for the applicants contended that initially, the charge sheet filed by the Investigating Officer on 15.8.2016 as well as the summoning order dated 13.10.2017 were filed along with the Application U/S 482 No.895 of 2019, which was decided on 24.4.2020, wherein this Court has allowed the application while setting aside the charge sheet dated 15.8.2017, the summoning order dated 13.10.2017 and order dated 13.11.2018. The Commissioner of Police was also directed to depute Investigating Officer not below the rank of Circle Officer to conduct further investigation in the matter. He submits that though it was further investigation but all the aspect including the evidence collected earlier and the fresh evidence collected by the subsequent appointed Investigating officer were to be taken into note in filing the charge sheet. He added that perusal of the charge sheet reveals that the Investigating officer under the influence of opposite party no.2 and her father did not record statement of the owner of the girls hostel where the opposite party no.2 is said to be residing after leaving the house of the applicant no.1 while showing him to be dead. He submits that since the father of the opposite party no.2 is working in the police department, therefore, under his influence, the statement of the owner of the hostel was not recorded as well as the call details of the Raj Bahadur, who is said to have extra marital relation with the opposite party no.2, has been ignored. Adding

Neutral Citation No. - 2023:AHC-LKO:85789

his contentions, he submits that from the statement of the complainant under Section 161 Cr.P.C., it is evident that date and time of the incident is untold and further time and again, the opposite party no.2 avoided to get record her statements under Sections 161 and 164 Cr.P.C. and same could be recorded only after well thought by way of making a concocted and false story. He submits that the charge sheet dated 15.8.2016 was filed ignoring the compact disk and this time also, Circle Officer/Investigating officer did not go through the contents of the compact disk and the same was sent to the court below along with the charge sheet. He pointed out that as per the provision of para 107 of the U.P. Police Service Regulations, it is incumbent upon the police officer to find out the truth than to get convicted the accused.

12. Further contention of the learned counsel for the applicants is that the Investigating officer did not consider the angle of the relation of the opposite party no.2 with Raj Bahadur as Raj Bahadur himself has admitted in his statement that he was having relations with the opposite party no.2 for a quite long time and they were willing to perform marriage but the family members of the opposite party no.2 were not agreed with the relations of opposite party no.2 and Raj Bahadur. He submits that this is one of the strong reasons which compelled the opposite party no.2 to lodge the F.I.R. while concocting story of torture for dowry demand though there is no truthfulness in the same.

13. Concluding his arguments, he submits that the order dated 24.4.2020 is very clear in its terms as while quashing the charge sheet dated 15.8.2017, and setting aside the summoning orders dated 13.10.2017 and the order dated 13.11.2018, it was directed to get the matter further investigated by an Investigating Officer, not below the rank of Circle Officer, meaning thereby that the matter was to be investigated afresh as not only the summoning order but the charge sheet was also quashed but when the charge sheet was filed, the learned trial court treating it as a supplementary charge sheet and without taking

Neutral Citation No. - 2023:AHC-LKO:85789

cognizance, fixed the date for hearing in the matter. He added that the cognizance which was taken by the trial court on the charge sheet dated 15.8.2016, is treated as cognizance at this stage though the cognizance order and the summoning order have already been set aside, vide order dated 24.4.2020 passed by this Court and, therefore, the charge sheet as well as the order dated 5.10.2021 are not sustainable in the eyes of law.

14. Learned A.G.A.-I for the State controverted the above-said contentions and submitted that the F.I.R. bearing Case Crime No. 460 of 2016 was lodged on the written complaint of opposite party no. 2 on 30.5.2016 as the applicant no.1 had brutally beaten the opposite party no. 2 and the applicant number 3 outraged the modesty and after thorough investigation, it was found proved and thereafter the charge sheet was filed by the Investigating Officer on 15.8.2016 though the same was set aside by this Court in Application U/S 482 No.895 of 2019 only on the premises that a compact disc, which was sent through the registered post to the Investigating officer was not considered at the time of filing the charge sheet but when further investigation was done in compliance of the order dated 24.4.2020, again the charges were found true and therefore, the supplementary charge sheet was filed which indicates that the incident has taken place. He added that the opposite party no. 2 was beaten by the applicant no. 1 on 21.11.2013 and she was medically examined in the Balrampur hospital and after victimisation, she left the house and started living in the hostel. Thus, submission is that the investigation in compliance of the order dated 24.4.2020 has rightly been done and supplementary charge sheet has been filed by the Investigating Officer appointed in compliance of the direction issued by this Court.

15. Learned counsel for the opposite party no.2 has also supported the version of the State counsel and submitted that in the statement under section 161 of Cr.P.C., the opposite party no.2 has categorically stated that her brother-in-law unwarrantedly and badly touched her, many times and whenever this fact was apprised to her husband and mother-in-law,

Neutral Citation No. - 2023:AHC-LKO:85789

she was threatened to life and on one day, she was also beaten by the applicant nos. 1 and 2. Adding his arguments, he submits that the applicant no.1 was having extra marital relations with someone else and, therefore, he otherwise concocted story and victimized the opposite party no. 2 and created such an atmosphere so that she may leave the matrimonial house. He further submits that the Investigating Officer after thorough investigation submitted supplementary charge sheet and thereafter the order dated 5.10.2021 has also rightly been passed by the trial court, making an order for putting the supplementary charge sheet on record though he could not rebut the issue of cognizance as the learned trial court treated the earlier cognizance order in existence.

16. Having heard learned counsel for the parties and after perusal of the record, it transpires that the petitioners have already assailed the charge sheet dated 15.8.2016 and summoning order dated 13.10.2017 and 13.11.2018 which were set aside by this court and the direction was made for further investigation in the matter, by an Investigating Officer not below the rank of Circle Officer, whereafter the charge sheet has been filed and the learned trial court treating it as a supplementary charge sheet and assuming that the cognizance order, which was taken on the charge sheet dated 15.8.2016, is alive as yet, fixed the date for hearing in the matter which prima facie shows that the trial court has passed the order in a very cursory manner and even in the event of non existing cognizance order, he proceeded in the matter. Now, again remitting back the matter to the trial court would put the petitioners in a mental agony and in a tiresome proceedings.

17. Time and again, the Apex Court has held that where the High Court finds that remitting back the matter would create further prolonging the proceedings before the court below, the same can be looked into by the High Court while exercising its inherent power, therefore, this Court is proceeding to decide the matter at this stage.

Neutral Citation No. - 2023:AHC-LKO:85789

18. While examining the matter on its facts and law, it emerges that marriage of the petitioner no.1 and the opposite party no.2 was solemnized in the year 2012 and thereafter, the opposite party no.2 went back in 2013 to hostel and since then the petitioner no.1 is living in desertion and the opposite party no.2 admittedly never came back to the matrimonial home.

19. In the matrimonial house, the petitioner no.1, i.e., the husband is living with his old age widowed mother, and his sister and brother-in-law are living separately after their marriage. Further, the opposite party no.2, after quarrel with the petitioner no.1, started living with one Raj Bahadur Singh since 21.7.2013 and the petitioner no.1 made a complaint to the Superintendent of Police on 12.12.2013 with the allegation that Raj Bahadur threatened him to life, on instance of the opposite party no.2.

20. It is noticed by this Court that when Raj Bahadur was interrogated on the complaint of the petitioner no.1, by the police authorities, he gave his statement and admitted his illicit relationship with the opposite party no.2, continuing prior to her marriage with the petitioner no.1 and also stated that under the pressure of the parents of opposite party no.2, the opposite party no.2 performed the marriage, though, she was never willing for the same. He further stated that the opposite party no.2 had also threatened her parents for committing suicide but any way, her marriage was performed with petitioner no.1. This fact itself is enough to show that there was something fishy in the conduct and behaviour of the opposite party no.2, whereas the Investigating officer ignored the statement of Raj Bahadur while filing the charge sheet.

21. It is also borne out that the opposite party no.2 herself left out the matrimonial home prior to the date of incident though it seems that for the one reason or the other, the opposite party no.2 wanted to get rid off the petitioner no.1 as is evident from the fact itself that she started living with Raj Bahadur since 21.7.2013.

Neutral Citation No. - 2023:AHC-LKO:85789

22. It is also evident that after the F.I.R. was lodged, several times the opposite party no.2 avoided to get her statement recorded before the police authorities and after several efforts, her statement could be recorded which also shows that the opposite party no.2 was less interested in pressing the prosecution so as to keep the matter pending for long time to harass the applicants.

23. This Court has also taken note of the statement of the independent witnesses, namely, Pratap Kumar Singh and Ankit Kumar Shukla, which were recorded by the Investigating Officer wherein they have stated that the opposite party no.2 is a quarrelsome lady and she, on her own, left the matrimonial house in the month of May 2013. They further stated that the petitioner no.1 intimated them regarding uncalled for behaviour of the opposite party no.2.

24. Further in the Judgement and order, passed in Regular Suit No. 239 of 2018, Sarju Shukla Vs. Shikha Tripathi, on 14.10.2022, under Section 13 of the Hindu Marriage Act, whereby the suit of the petitioner/plaintiff was decided in favour of the petitioner no.1 and decree of divorce is also passed. The opposite party no.2 in her statement as D.W.2 in the regular suit, admitted that she is residing separately since 2013 and she lived in Girls Hostel upto March 2014. The decree of divorce is submitted before this Court, vide supplementary affidavit dated 3.8.2013 whereas, the respondent could not dispute regarding the intactness of the same.

25. Apart from above, there are material contradictions in the story narrated by the complainant as the criminal prosecution was initiated by lodging the F.I.R. after about three years and in the statement of the opposite party no.2, which was recorded by the Investigating officer, the opposite party no.2 and her father never levelled any allegation for demand of dowry and it was alleged that the applicant no.3 tried to molest her and the applicant nos. 1 and 2 had threatened to the opposite party no.2 for keeping mum with respect to the incident of molestation. It is also admitted by the opposite party no.2 that she was residing in hostel

Neutral Citation No. - 2023:AHC-LKO:85789

separately, as soon she left the matrimonial house. The Investigating Officer not only ignored the aforesaid circumstances but also escaped from the conclusion regarding call details between Raj Bahadur and the opposite party no.2 and also the statements given by the independent witnesses. After going through all the statements of the opposite party no.2 and the witnesses including other materials, it does not transpire that there was any demand of dowry which is one of the ingredients required for constituting an offence under Section 498A I.P.C. It is also a fact that the opposite party no.2 herself made a call on 25.5.2016 to the Control Room and, thereafter, local police reached on the spot and the opposite party no.2 went to the police station along with the police but no complaint was made then and no request was made for her medical examination.

26. In common manner and mode, this time also, the complaint has been made against the relative of the applicant no.1, i.e., brother-in-law and the sister though it is not evident that whether applicant nos. 3 & 4 were regularly visiting the matrimonial house of the opposite party no.2 and were involved in the day to day business of the family. Only the bald statement is got recorded wherein the allegation of molestation is levelled though no medical examination has ever got done.

27. This Court is not unmindful regarding the Judgements and orders rendered in the cases of **Geeta Mehrotra and another Vs. State of Uttar Pradesh and another, (2012) 10 SCC 741; B.S. Joshi and others Vs. State Of Haryana and another, (2003) 4 SCC 675; R.P. Kapur Vs. The State of Punjab, 1960 AIR 862; Rajesh Sharma and others Vs. State of Uttar Pradesh and another, (2018) 10 SCC 472; Mirza Iqbal alias Golu and another Vs. State of Uttar Pradesh and another, 2021 SCC OnLine SC 1251; Kahkashan Kausar @ Sonam and others Vs. State of Bihar and others, 2022 SCC Online SC 162; Preeti Gupta and another Vs. State of Jharkhand and another, (2010) 7 SCC 667; Abhishek Vs. State of Madhya Pradesh, 2023 SCC**

Neutral Citation No. - 2023:AHC-LKO:85789

OnLine SC 1083; and Ramesh and others Vs. State of T.N. (2005) 3 SCC 507 wherein the Apex Court has found that inherent power can be exercised wherein there is every likelihood of misuse of process of law. Further the Apex Court also held that there has been tendency of involving the entire family members of household in the domestic quarrel in matrimonial dispute soon after the wedding and, therefore, mere casual reference of the names of the family members or relatives without there being any active involvement in the matter, would not justify to take cognizance. Thus, so far as the applicant nos. 3 and 4 are concerned, they in fact, are living separately but they have been dragged without being any proof that they are actively indulged in the family dispute.

28. In view of the abovesaid submissions and discussions, this Court is of considered opinion that the criminal prosecution of the applicants are sheer abuse of process of law. Resultantly, the criminal proceedings, against the applicants, arising out of Case Crime No. 460 of 2016 under Sections 498-A, 323, 504, 506, 354-A I.P.C. Police Station Madiakon, District Lucknow are quashed.

29. The instant application is hereby allowed.

30. The office is directed to communicate this order to the trial court concerned forthwith.

Order Date :-22.12.2023

Ram Murti