

Court No. - 9

Case :- CRIMINAL MISC. WRIT PETITION No. - 8313 of 2023

Petitioner :- Shubham Jaiswal And Others

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home Govt. Lko. And Others

Counsel for Petitioner :- Sameer Singh, Devansh Vikram Singh, Sakshi Singh, Vivek Gupta

Counsel for Respondent :- G.A., Prashant Singh

Hon'ble Rajan Roy, J.

Hon'ble Ajai Kumar Srivastava-I, J.

Heard.

By means of this petition, the petitioner has challenged the first information report dated 16.09.2023 registered as Case Crime No. 0278 of 2023, under Sections 498-A, 323, 504, 377, 313, 328 I.P.C., Section 3/4 Dowry Prohibition Act and 3(2) (v) of Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act, 1989 (Amendment 2015), Police Station- Aliganj, District-Lucknow.

The caveator/ opposite party No.4, Smt. Saloni Kunwar, is present along with her counsel Shri Prashant Singh. On being asked, she submitted that she does not want mediation as she has suffered a lot and submitted that even prior to marriage, she was being ill treated and this continued even after marriage and therefore, she does not want to live with the petitioner nor she wants mediation. She however wants proper investigation of the F.I.R.

Learned counsel for the petitioners, on the other hand, submits that the marriage between the petitioner No.1 and opposite party No.4 took place in November, 2022. The contention of the petitioner's counsel is that the F.I.R has been lodged only on account of the fact that the petitioner came to know that opposite party No.4 had already married another person prior to her marriage with the petitioner, although she was divorced, but this fact was not disclosed to the petitioner and on objection being raised by the petitioner, differences arose between them. He also contends that no offence is made out under Sections 377, 313 and 328 I.P.C and these offences have been added only to harass and pressurise the petitioners. He also submits that on a bare perusal of the recitals contained therein, it is evident that

it has been lodged after deliberation and seeking advise as every day such F.I.R.s are lodged with similar recitals. He submits that it is a mala fide action. He also submits that petitioners No.2 and 3 are the mother and sister of the petitioner No.1 and they reside separately, but they have been falsely roped in only to harass the entire family, therefore, he says that some protection be given by this Court.

He also invites our attention to an application given by opposite party No.4 before the SHO, Kotwali Aliganj, Lucknow and submits that contents of the said application which was submitted on 11.09.2023 is very different from the contents of the F.I.R. dated 16.09.2023, which itself goes to show that the F.I.R has been lodged after due deliberation and seeking legal advice only with an intent to falsely implicate and harass the petitioners.

Counsel for the opposite party No.4 submits that the factum of earlier marriage and divorce of opposite party No.4 was disclosed to the petitioner No.1 and this is evident from the whats-app chats between the two. He says that the allegations in the F.I.R are correct and all these factual issues could be seen during investigation. It is also contended that the opposite party No.4 belongs to schedule caste and she has been ill treated by the petitioners.

Learned A.G.A also says that F.I.R prima facie discloses a cognizable offence and as to whether the allegations are correct or not would be seen during the investigation.

At this stage, learned counsel for the petitioners says that he may be permitted to not press the petition so far as the petitioners No.2 and 3 are concerned with liberty to file afresh.

We accept this request and dismiss the petition so far as the petitioners No.2 and 3 are concerned with liberty to file afresh.

As regards the petitioner No.1, we are of the opinion that on a bare perusal of the F.I.R., it cannot be said at this stage that no cognizable offence is made out. The truth of the recitals in the F.I.R as to whether any offence is ultimately made out or not would be thrashed out during investigation. The Investigating Officer needless to say will also see as to whether there is any evidence so as to charge petitioner No.1 under Sections 377, 313 and 328 I.P.C. as also the other offences alleged in the F.I.R., in a fair and objective manner.

Subject to the above as we are not interfering in the matter at this stage, we **dismiss** the petition of petitioner No.1, but

without prejudice to the rights of the petitioner No.1 in the pending investigation and to seek such other remedies such as under Section 438 Cr.P.C. etc.

(Ajai Kumar Srivastava-I, J.) (Rajan Roy, J.)

Order Date :- 28.10.2023
Gurpreet Singh