

Court No. - 28

Case :- APPLICATION U/S 482 No. - 11061 of 2023

Applicant :- Pratyush Tripathi

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Lucknow And Another

Counsel for Applicant :- Anand Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh,J.

Since the pure legal question is involved in the instant matter, issuance of notice to opposite party no. 2 is dispensed with.

Heard Sri Anand Dubey, learned counsel for the applicant, Sri Girijesh Kumar Dwivedi, learned A.G.A. for the State and perused the material placed on record.

The instant application under section 482 Cr.P.C. has been filed with the prayer to quash the summoning order dated 04-04-2023 passed by the Judicial Magistrate-II, District-Raebareli in Complaint Case No. 35222 of 2022, thereby the applicant has been summoned under sections 498-A, 323 of I.P.C. and Section 3/4 of the Dowry Prohibition Act, and the proceedings of complaint case no. 35222 of 2022, pending in the court of Judicial Magistrate-II, District-Raebareli.

Learned counsel appearing for the applicant submits that a complaint was instituted by the complainant, wherein, the applicant including other family members were arrayed as parties and the address has been shown at district-Kanpur Nagar though the cognizance has been taken and the summoning order has been issued by the learned trial court at District-Raebareli.

Contention of learned counsel for the applicant is that infact the learned trial court has violated the mandate of provision of Section 202(1) of Cr.P.C. as is evident from the order itself. He also added that even in the statements recorded by the trial court under sections 200 & 202 of Cr.P.C., there is no single whisper with respect to the genuineness

of the applicant as well as the other proposed accused persons and therefore, there is unlawfulness and erroneousness apparent at the face of the record.

In support of his contentions, he has placed reliance on the Judgment and order dated 19-10-2023 passed by the coordinate Bench of this court in the application under section 482 Cr.P.C. bearing no. 31883 of 2023, Danish Khan and 2 Others Vs. State of U.P. and Another and has referred paragraph nos. 8 & 9 of the said Judgment, which are quoted hereinunder :-

"8. In view of the aforesaid settled position that where the accused in a complaint case is residing outside the jurisdiction of the learned Magistrate, it is mandatory for the Magistrate to conduct an inquiry under Section 202 (1) Cr.P.C. and only after such inquiry the Magistrate is empowered to issue summons against the accused persons in a complaint case.

9. In the instant case the learned Magistrate has not conducted any inquiry and has directly summons the applicants herein on the basis of the statements recorded under Sections 200 and 202 Cr.P.C., therefore, the impugned order prima facie is vitiated and is not sustainable in the eye of law and is liable to be quashed."

Referring the aforesaid, he submits that it has been held by the coordinate Bench of this court in the abovesaid case that the provision of Section 202(1) of Cr.P.C. is mandatory and therefore, any order, ignoring the provision abovesaid, vitiates the proceedings. Therefore, submission is that the impugned order dated 04-04-2023 may be set aside.

On the other hand, learned A.G.A. appearing for the State has opposed the contentions aforesaid and submits that the impugned summoning order has been passed in detail and after going through the statement of the complainant. He further added that the instant matter pertains to a matrimonial dispute and therefore, there is no possibility of ingenuineness of the proposed accused persons or their address and thus, no interference is warranted.

Having heard learned counsels for the parties and

after perusal of material placed on record, it transpires that a complaint was made by the complainant with respect to torture of the complainant while demanding the dowry. From the complaint, it is evident that the address, which has been mentioned in the complaint regarding the applicant and other co-accused persons are of district-Kanpur Nagar and the complaint was placed before the trial court at district-Raebareli and the trial court has summoned the applicant including the other co-accused persons without complying with the mandate of the provision of section 202(1) of Cr.P.C.

It is trite law that if the Magistrate is proceeding with a complaint and the proposed accused persons are residing outside of the territorial jurisdiction of such Magistrate, he has to ensure the genuineness of the such proposed accused persons by way of following enquiry or the investigation as prescribed under section 202(1) of Cr.P.C.,but, in the present matter, the same is lacking apparently.

Consequently, the order dated 04-04-2023 passed by the learned Judicial Magistrate-II, District-Raebareli in Complaint Case No. 35222 of 2022, whereby the applicant has been summoned under sections 498-A, 323 of I.P.C. and Section 3/4 of the Dowry Prohibition Act, is hereby set aside.

The matter is remitted back to the trial court concerned to pass a fresh order in accordance with law after taking into consideration the provision of section 202(1) of Cr.P.C. within a period of 45 days from today.

With the aforesaid observations, the instant application is **allowed**.

Order Date :- 8.11.2023
AKS