

Court No. - 15

Case :- APPLICATION U/S 482 No. - 12199 of 2023

Applicant :- Smt. Kusum Gupta And 5 Others

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Home Civil Sectr. Lko. And Another

Counsel for Applicant :- Pal Singh Yadav, Ashish Kumar Singh, Prathama Singh

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed, J.

1. Heard Sri Pal Singh Yadav, learned counsel for the applicants and Sri Ashok Kumar Srivastava, learned A.G.A. for the State and perused the record.

2. This application under Section 482 Cr.P.C. has been filed with a prayer to quash the charge-sheet No.111 of 2008 dated 23.05.2008 filed in Crime No. 257 of 2008, under Sections 498A, 504, 506, 323 I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Aliganj, District Lucknow as well as summoning order dated 13.08.2008 passed in Case No. 2658/13 Crime No. 257 of 2008, under Section 498A, 504, 506, 323 I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Aliganj, District Lucknow and to quash the impugned order of bailable warrant of Rs.20,000/- dated 19.05.2022 against the applicants and thereafter non-bailable warrant issued against the applicants vide order dated 29.08.2023.

3. Learned counsel for the applicants submits that brief facts of the case are that the marriage of the son of applicant No.1 viz Nitin Raj Gupta and daughter of opposite party No.2 viz Samiksha Varshney has been solemnized on 12.02.2007 in present of parents and relatives of both the parties. After some time of marriage the differences occurred between the Nitin Raj Gupta and Samiksha Varshney, which resulted the complainant (mother of the Samiksha Varshney) lodged a First Information Report on 03.05.2008 at Police Station Aliganj, Lucknow which registered at Crime No.257 of 2008, under Section 498A, 504, 506, 323 I.P.C. and Section 3/4 Dowry Prohibition Act alleging therein that her daughter tortured and maltreated by the applicants due to dowry. The F.I.R. was registered against the applicant and two other including Nitin Raj Gupta and after investigation the Investigating Officer submitted charge-sheet against the applicants only under Sections 498A, 323, 504, 506 I.P.C. and Section 3/4 Dowry Prohibition Act on 23.05.2008 and the trial Court on the basis of submission of charge-sheet summoned the applicants for facing trial of the case vide summoning order dated 13.08.2008 in a casual and illegal manner by fixing date 15.10.2008 for appearance.

4. Learned counsel for the applicants further submits that in the aforesaid case on 19.05.2022 the applicants moved an application for adjournment but the same was not considered by the learned trial court and issued bailable warrant against the applicants thereafter issued non-bailable warrant dated 29.08.2023.

5. Learned counsel for the applicants has relied upon the judgment of Hon'ble Apex Court in the case of ***Geeta Mehrotra Vs. State of U.P., (2012) 10 SCC 741*** and submits that due to matrimonial dispute the implication of applicants without any specific reasons and evidence is not warranted. Learned counsel for the applicants has relied upon the judgment of Hon'ble Apex Court in the case of ***Avinash Versus State of Maharastra and another, Criminal Appeal arising out of From S.L.P. (Crl) No. 11996 of 2023*** and submits that Hon'ble Supreme Court has held that non-appearance in proceeding since long cause miscarriage to the petitioners and as such proceedings are liable to be quashed. He further submits that the case of applicants are fully covered with the case of ***Geeta Mehrotra (supra) and Avinash (supra)***.

6. The contention of the learned counsel for the applicants is that the present prosecution has been instituted with a malafide intention for the purposes of harassment.

7. Per contra, the learned AGA has contended that the impugned charge-sheet and summoning orders were of the year 2008 and which have been challenged in the year 2023 and the applicants have not explained the reason for the same and further submits that the case laws as referred by the learned counsel for the applicant are not applicable in the case of the applicants.

8. An application under Section 482 of the CrPC must be filed within a reasonable time and it should not be vitiated by inordinate delay and laches on the part of the petitioner, the bench comprising Justice Sanjay Dhar observed in the case of ***Eapen Chakoo Vs U.T. of J & K in CRM(M) No. 78/2020:-***

"Within what time a petitioner should approach the Court under Section 482 of the Cr. P. C depends upon the facts and circumstances of the case. Reasonable time generally means any time which is not manifestly unreasonable and which is fairly necessary for approaching the Court. Reasonable time would mean a time required by a prudent litigant to approach the Court in the given facts and circumstances of the case."

9. It is worthwhile to record the observations made by Delhi High Court in ***Vipin Kumar Gupta v. Sarvesh Mahajan*** wherein it had been held that:-

"if a Court fails to take into consideration delay and laches while invoking the powers of the High Court under Section 482 of the Cr. P. C without any reasonable ground, there would be no end to the litigation, as a consequence whereof, neither any trial would be proceeded nor any trial would be concluded before the trial court".

10. In ***Neeraj Bhargava v. State of NCT, Delhi (Crl. M. C Nos.3844/2015 & Crl. M. Nos.13675-13676/2015*** decided on 28.09.2015), the High Court of Delhi has, while considering the aspect of delay in filing a petition under Section 428 of Cr. P. C, held that jurisdiction under Section 482 of Cr. P. C. need not to be exercised in a case where delay has been caused on the part of the petitioner by not challenging the proceedings. In the said case, there was a delay of 19 years in filing the petition under Section 482 of Cr. P. C. It was held that inherent powers of the High Court are meant to prevent the abuse of process of law and to meet the ends of

justice, which is available to an aggrieved person to avoid unnecessary delay and to put an end to the proceedings.

11. In ***Gopal Chauhan vs. Smt. Satya, 1979 Cri. L.J 446, Himachal Pradesh High Court*** has held that a petition under Section 482 of Cr. P. C and Article 227 of the Constitution of India filed after expiry of three years from the date of summoning ought not to be entertained when the case is fixed for the stage of evidence.

12. The Supreme Court ***Londhe Prakash Bhagwan vs. Dattatraya Eknath Mane, (2013) 10 SCC 627***, has held that if no time limit has been prescribed in a statute to apply before the appropriate forum, in that case, the aggrieved person has to come before the Court within a reasonable time.

13. Within what time the applicant should approach the Court under Section 482 of the Cr. P. C depends upon the facts and circumstances of the case. Reasonable time generally means any time which is not manifestly unreasonable and which is fairly necessary for approaching the Court. Reasonable time would mean a time required by a prudent litigant to approach the Court in the given facts and circumstances of the case.

14. Analyzing the facts of the instant case in the backdrop of aforesaid legal position, it is absolutely clear that the applicant has approached this Court at a highly belated stage after about 15 years. The applicant after waking up from deep slumber, approached this Court, without any iota of explanation for the delay as per his choice, caprice and whim. Thus, it can by no stretch of imagination be stated that the applicant has approached this Court within a reasonable time. The applicant wants this Court to exercise its jurisdiction under Section 482 of Cr. P. C, which, in the facts and circumstances of the case, this Court would be reluctant to do.

15. From the perusal of the materials on record and looking into the facts of the case and after considering the arguments made at the bar, it does not appear that no offence has been made out against the appellants. The learned trial court has rightly passed the impugned orders. There is no illegality or infirmity in the impugned orders.

16. The present application lacks merit and substance and is liable to be dismissed.

17. Accordingly, ***dismissed.***

18. It is clarified that the observations, if any, made in this order are strictly confined to the disposal of the application and must not be construed to have any reflection on the ultimate merit of the case.

19. The trial court is also directed to expedite the trial of the aforesaid case, within a period of six months from today, by following the provisions of Section 309 Cr.P.C., strictly without granting any unnecessary adjournments to the parties, in case there is no other legal impediment.

Order Date :- 15.12.2023

Arvind