

HIGH COURT OF UTTARAKHAND AT NAINITAL

Hon'ble Justice Sri Rakesh Thapliyal

23rd July 2024

Criminal Misc. Application(C482) No. 672 of 2024

Satish Chandra Joshi	 Applicant
	Vs.
State and others	Respondent
Counsel for the Applicant:	Mr. G.C. Lakhchaura
Counsel for the State:	Mr. Devendra Singh, A.G.A and Mr. Akshay Latwal, learned Brief Holder
Counsel for the respondent:	Mr. Mani Kumar

Upon hearing the learned Counsel, the Court made the following Judgment:
(Per Mr. Rakesh Thapliyal, J.)

1. By the instant C482 application, the applicant is challenging the proceedings of Criminal Case No. 991 of 2023, arising out of FIR dated 25.02.2023 lodged at P.S. Tanakpur bearing FIR No. 23 of 2023 wherein the present applicant has been summoned for the offences punishable under Sections 323, 498A, 504 and 506 IPC read with Section 3/4 of the Dowry Prohibition Act. After lodging of the FIR, investigation was initiated and concluded by submitting the charge sheet on 03.06.2023 for the offences punishable under Section 498A and 504 IPC in which after taking cognizance applicant has been summoned.

2. Earlier ,this Court stayed the proceedings by order dated 18.04.2024, and while staying the proceeding this Court in para 3 of the order recorded the statement of the learned counsel for the applicant that earlier efforts made for amicable settlement between the parties was unsuccessful, subsequently, he submits that the applicant is still ready to live with respondent-wife, therefore, for that

purposes both the parties were called for mediation. While staying the proceedings, this Court also directed the applicant and respondent no. 2 to appear before this Court on 21.05.2024. On 21.05.2024, both the applicant and respondent no. 2 were present and they were directed to make share parenting plan, as per the judgment of this Court passed in WPPIL No. 28 of 2024. On 04.06.2024, this Court directed the applicant to pay a sum of Rs. 1.50 lakh and he will credit the said amount by 07.06.2024.

3. At this juncture it is relevant to mention here that the applicant married with the respondent no. 2 on 04.12.2018 and out of the wedlock one male child was born on 23.9.2019. After a month some differences arose between both of them and respondent/wife left the matrimonial house with minor child on 30.10.2019 and since then she is living separately. At the time when the order was passed by this Court on 04.06.2024, the applicant was directed to pay a sum of Rs. 1.50 lakhs taking into consideration that the respondent/ wife is living with the minor child but not a single penny has been paid to the respondent/wife. The maintenance of Rs. 4000/- was granted in a proceeding initiated under Section 9 of the Hindu Marriage Act which was filed by the wife/respondent. In the said proceeding the respondent/wife also sought relief for restitution of conjugal right in which she has moved an application under Section 24 of Hindu Marriage Act for maintenance of *pendente lite* and expenses of proceeding. On the said proceeding, maintenance of Rs. 4,000/- was granted on 19.08.2023, however, the said maintenance has been paid to the respondent /wife only for three months, since then not a single penny has been paid by the applicant to the respondent. Thereafter, the matter was again listed on

10.06.2024 and on that day on the request of the applicant an amount of Rs. 1.5 lakh reduced to Rs. 1 lakh. Again this matter was listed on 15.07.2024 and the applicant appeared through V.C. and respondent/wife was present physically. Again on that day this Court interact with each of them but after interaction this Court was of the view that present applicant has no regard to the direction issued by this court by order dated 10.06.2024. On that day certain whatsapp messages send by both the parties were also placed before the Court and after perusing the messages this Court further observed in the order about the adamant bahaviour of the husband- applicant who in fact blocked the mobile number of the respondent/wife despite the direction issued by this Court that both of them will be in talking terms from their mobile. Consequently, this Court gave last chance to the applicant to comply with the remaining directions issued by this Court by order dated 10.06.2024, and the matter was posted for 23.07.2024 and both the parties were directed to appear before the Court.

4. Today, both the parties are present with minor child. This Court further interact with both the parties but it is very shocking that the applicant is not willing to live with the wife and the minor child. This Court also interacts with the respondent/ wife and she fairly submits that she is ready to go with her husband. This Court instruct the applicant to interact with his minor child but what the court has realized that he is not interested to meet his minor child.

5. Learned counsel for the applicant submits that initiation of this proceeding is absolutely a glaring example of malicious prosecution and in support of this the learned counsel for the applicant submits that the present applicant filed a divorce petition on the ground of cruelty in the court

of Judge, Family Court Haldwani on 26.10.2021 and in February 2022 instead of participating in the divorce proceeding, the respondent/wife made a complaint to the Women Help line on 26.02.2022 and thereafter counseling was also done on 21.03.2022 and the Incharge, Women Helpline submit its report to Circle Officer, Champawat on 21.03.2022.

6. I perused the report of the Incharge, Women Helpline and as per this report it appears that respondent no. 2/ wife was agreed to live with the husband but the husband was not agreed since he was seriously hurt due to the complaint made by the respondent/wife to the Women Helpline.

7. It is submitted by the learned counsel for the respondent/wife that after submission of the report of the Incharge, Women Helpline, respondent/wife lodged the FIR on 25.02.2023 in which after thorough investigation charge sheet has been filed.

8. Learned counsel for the applicant vehemently argued that the applicant filed divorce petition on the ground of cruelty on 26.10.2021 whereas much prior to that the respondent/complainant left the house in the month of October 2019 and thereafter she lodged the FIR and therefore, the conduct of the respondent/wife appears to be cruel against the applicant.

9. I am not convinced with the argument of the learned counsel for the applicant. This Court stayed the proceeding by observing that applicant is ready to live with the respondent/wife and both the parties were called for the purpose of mediation. Repeated efforts were made for their amicable settlement but due to the adamant behaviour of

the applicant he refused to come up with the amicable settlement. This Court also interact with the respondent/wife and she is very eager to live with the applicant. The conduct of the applicant appears to be very cruel against the wife.

10. This Court stayed the proceedings merely on the ground that since submission has been advanced on behalf of the applicant that he is ready to live with the respondent/wife. Today when so many attempts for their amicable settlement have been made, the applicant who is present in Court submits that he is not ready to live with the wife. Apart from this, by order dated 04.02.2024, the applicant was directed to pay a sum of Rs. 1.5 lakh but today out of Rs. 1 lakh he has paid only Rs. 40,000/-. This fact cannot be ruled out that the applicant filed a divorce petition but the respondent/wife also filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights in which application was moved for seeking maintenance in which maintenance was granted for a sum of Rs. 4000/- per month but only for three months the applicant has paid such maintenance and further he has not complied with the order passed by this Court on 10.06.2024. Such a conduct of the applicant reveals that he is very cruel to respondent no.2/wife as well as to his minor child. Being a father he has a great responsibility towards his minor son and despite the direction of this Court he is not coming forward to make share parenting plan to secure the future of minor son. After thorough investigation and after collecting material evidence charge sheet has been filed, therefore, I do not find any merit in the present C482 application.

11. Accordingly, the present C482 application is dismissed. The Trial Court is directed to expedite the proceedings of Criminal Case 991 of 2023, pending in the court of In-charge Judicial Magistrate, Tanakpur District Champawat as expeditiously as possible but not later than three months from the date of receipt of certified copy of this order. The trial court is also directed to expedite the hearing on day to day basis and no unnecessary adjournment shall be granted to either party. Apart from this, the applicant is also directed to make remaining payment of Rs. 60,000/- within a period of two weeks from today.

(Rakesh Thapliyal, J.)

Parul