

Court No. - 76

Case :- APPLICATION U/S 482 No. - 19345 of 2024

Applicant :- Omkar Nishad And 2 Others

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

Counsel for Applicant :- Jai Shankar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh,J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the material brought on record.

2. This application under Section 482 Cr.P.C. has been preferred for quashing of the entire proceedings, including the charge-sheet and summoning order, of Criminal Case No.494 of 2022 (State versus Omkar Nishad and Others), arising out of Case Crime No.278 of 2021, under Sections - 498-A, 323, 506 IPC and Section 3/4 Dowry Prohibition Act, Police Station- Kerakat, District- Jaunpur, pending before the Court of A.C.J.M. III, Court No.14, Jaunpur

3. Learned counsel for applicants submitted that applicants are innocent and no prima facie case is made out against them. Applicants are husband, mother-in-law and father-in-law of informant/victim and that false allegations have been levelled against them. Learned counsel has given much thrust to the argument that the incident has taken place on 11.12.2020 in Mumbai and thus, the court below has no jurisdiction to try this case. There is also delay in lodging of the first information report. It was also submitted that incident has been shown of Mumbai and during investigation, the investigating officer has prepared site-

plan of the house of applicants in District - Jaunpur. It is also submitted that for offence under Section - 3/4 Dowry Prohibition Act, only Probationary Officer can inquire the matter. In support of his contention, learned counsel for the applicant has referred the judgment of this Court in the case of *Ankit Singh and 3 Others vs . State of U.P. and Another, passed in Application u/s 482 No. 10631 of 2024 dated 23.05.2024.*

4. Learned A.G.A. has opposed the application and submitted that the marriage of victim/opposite party no.2 with applicant no.1 has taken place on 22.11.2019 and thereafter she was harassed on account of dowry. Merely, because part incident of alleged assault has taken place in Mumbai, it cannot be said that the court below has no jurisdiction to try the case. It is also submitted that since a cognizable offence under Section - 498-A I.P.C. has been committed thus, the police has full power to investigate the matter even if Section - 3/4 of Dowry Prohibition Act has been applied along with Section - 498-A I.P.C.. It was submitted that a prima facie case is made out against the applicants.

5. I have considered the rival submissions and perused the record.

6. The legal position on the issue of quashing of criminal proceedings is well-settled that the jurisdiction to quash a complaint, FIR or a charge-sheet should be exercised sparingly and only in exceptional cases. However, where the allegations made in the FIR or the complaint and material on record even if taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, the charge-sheet may be quashed in exercise of inherent powers under Section 482 of the Cr.P.C. In well celebrated judgement reported in **AIR 1992 SC 605 State of Haryana and others Vs. Ch. Bhajan**

Lal, Supreme Court has carved out certain guidelines, wherein FIR or proceedings may be quashed but cautioned that the power to quash FIR or proceedings should be exercised sparingly and that too in the rarest of rare cases. In this connection, a reference may also be made to the case of **R. Kalyani vs. Janak C. Mehta and Others, 2009 (1) SCC 516, Rupan Deol Bajaj vs. K.P.S. Gill (1995) SCC (Cri) 1059, Rajesh Bajaj vs. State of NCT of Delhi, (1999) 3 SCC 259 and Medchl Chemicals & Pharma (P) Ltd vs. Biological E Ltd. & Ors, 2000 SCC (Cri) 615**. It has been held that if a prima facie case is made out disclosing ingredients of the offence, court should not quash the charge sheet/complaint. It is equally well settled that at this stage questions of fact cannot be examined and a mini trial cannot be held.

7. In the instant matter, there are allegations against the accused persons that marriage of informant/opposite party no.2 has taken place with applicant no.1 on 22.11.2019 and after marriage, she was harassed on account of dowry and they used to demand a four wheeler in dowry. Merely because one of the incident of assaulting the victim has been shown of Mumbai, wherein it was alleged that she was assaulted by the accused persons and turned out from matrimonial home, it cannot be said that the court below has no jurisdiction to try this case. So far the case of Ankit Singh and 3 Others (*supra*) is concerned, the co-ordinate bench of this Court after considering the provisions of Dowry Prohibition Act as well as the Rules of 1999, held as under :-

"32. In view of the above-mentioned, the following directions are issued :-

A. The State Government shall explain as to why the provisions of Rule 10 of Rules of 1999 as well as Rules of 1985 are not being implemented in letter and spirit and why the parties to the marriage not being mandated to submit the list before the Dowry Prohibition Officer by following standard operating procedure in this respect. The government is reminded that the Rule 10 of Rules of 1999 are mandatory nature. The government shall on affidavit also explain the steps taken for encouraging the parties to marriage to submit the list as per the

Rules of 1985 read with Rules 10 of the Rules of 1999 even where the marriage is not being registered.

B. The Chief Dowry Prohibition Officer shall on affidavit disclose the data as to awareness program initiated by government through radio, television, newspaper, NGOs and how the citizens have been involved in prevention of dowry in last two years. It shall also be disclosed as to how many hoardings in public place (district wise) with regard to ante-dowry movement and compliance of Rules of 1985 have been put in place in last two years.

C. The State Government shall examine as to why the offence under the Dowry Prohibition Act is not being proceeded as per the Rules of 1999 and why the principles provided under the Rule 6 (4) of Rules of 1999 are not being resorted to in letter and spirit.

D. The State government shall also examine the necessity for exercising the power under Section 8B (3) of the Dowry Prohibition Act.

E. The Chief Dowry Prohibition Officer shall provide the details as to how many complaints have been received by Dowry Prohibition Officer under Rule 7 of the Uttar Pradesh Dowry Prohibition Rules, 1999 in last two years and in how many cases the prosecution has been lodged in last two years by Dowry Prohibition Officer.

F. The Director General of Police shall file an affidavit in respect of following:-

i) As to why the source of dowry alleged to be paid by bride or her family members to the groom or his family members is not being investigated more particularly when huge amount in cash beyond limit prescribed under the Income Tax Act, is involved.

ii) why the utilisation aspect of dowry by the groom or his family members is not being investigated.

iii) The huge cash amount given in dowry or otherwise are proceeds of crime, why the aforesaid proceeds of crime are not being recovered by investigating officer during investigation more particularly in view of section 6 of the Dowry Prohibition Act, 1961 and same being handed over to the wife.

G. The State Government shall explore the possibility of putting a notice on the marriage hall or venue with regard to ante-dowry campaign and in respect of preparation of the list of gifts in accordance with Dowry Prohibition (Maintenance of Lists of presents to the bride and bridegroom) Rules, 1985.

33. List this case on 16.7.2024 in top ten cases."

8. It is apparent from the said case law that the said matter is still pending and no such law has been laid down that if section - 3/4 D.P. Act has been applied along with other cognizable offences of Indian Penal Code, such matter cannot be investigated by the police. In the instant matter, charge sheet has been submitted for offences under Section – 498-A, 323, 506, I.P.C. and 3/4 D.P. Act. Even if there has been some defect in investigation regarding the offence under Section – 3/4 D.P. Act, the entire impugned proceedings cannot be quashed. Further, the applicants would be at

liberty to raise their contentions at the time of hearing on charge before the trial court. Applicants are husband, father-in-law and mother-in-law of opposite party no.2 and in view of the allegations levelled in the first information report against applicants and material collected during investigation, it cannot be said that no prima facie case is made out against the applicants. So far arguments of learned counsel for the applicants regarding factual aspect are concerned, those submissions call for determination on questions of fact, which may adequately be discerned/adjudicated only by the trial court. Even the submissions made on point of law can also be more appropriately gone into by the trial court. In the instant matter, in view of allegations made in the first information report and the material collected during investigation, it cannot be said that no prima facie case is made out against the applicants.

9. In view of aforesaid, it is apparent that no case for quashing of impugned proceedings/charge sheet/cognizance order is made out and thus, the present application under Section 482 Cr.P.C. is liable to be dismissed.

9. Accordingly, the instant application u/s 482 Cr.P.C. lacks merit and the same is hereby *dismissed*.

Order Date :- 15.7.2024
S Rawat