

Court No. - 13

Case :- APPLICATION U/S 482 No. - 1248 of 2024

Applicant :- Smt. Manjul Agarwal And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Deptt. U.P. Civil Sectt. Lko. And Another

Counsel for Applicant :- Sunit Kumar, Izhar Ahmad

Counsel for Opposite Party :- G.A., Rama Kant Jayswal

With

Case :- APPLICATION U/S 482 No. - 1204 of 2024

Applicant :- Rohit Agarwal

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

Counsel for Applicant :- Saurabh Misra, Izhar Ahmad, Sunit Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania, J.

1. Cause of subject matter of both the application(s), indicated above, is basically matrimonial dispute/discord between the husband and the wife and with the consent of the learned counsel for the parties, both the applications are being decided by this common judgment.

2. Heard.

3. The applicants of APPLICATION U/S 482 No. - 1248 of 2024 have approached this Court seeking following main relief:

"(i) Quash the entire Criminal Case No. 5077/2013 (Earlier case no. 1908/2010) pending in the Court of Ld. Additional Chief Judicial Magistrate (IV), Lucknow

(ii) Quashing of Chargesheet No. 38/2010; dated 31.03.2010; U/S 498A, 427, 506 I.P.C and 3 / 4 D.P. Act; titled as State of U.P-Vs-Rohit Agarwal and others against all the petitioner; pending in the Court of Ld. Additional Chief Judicial Magistrate (IV), Lucknow; Arising out of F.I.R registered at Crime No. 51/2010 dated 17.02.2010; Police Station: Vikas Nagar; Lucknow which is marked as Annexure No. 1 to this petition

(iii) To pass an Order for abetment of proceedings against Late Dinesh Chandra Agarwal who died on 03.01.2023 arrayed as accused no. 2 in the Chargesheet No. 38/2010; dated 31.03.2010."

4. The applicant of APPLICATION U/S 482 No. 1204 of 2024 has approached this Court seeking following main relief:

"(i) Quash Judgment and Order dated 05.02.2016; Passed in Criminal Case No.246/2010, U/S 125 Cr.P.C; Passed by Ld. Principal Judge, Family Court, Lucknow; Titled as: Garima Goel Vs Rohit Agarwal; Police Station: - Vikas Nagar; Lucknow."

5. The APPLICATION U/S 482 No. 1204 of 2024 relates to the pending proceedings instituted by opposite party no. 2/Garima Goel under Section 125 Cr.P.C for seeking maintenance from her husband namely Rohit Agarwal (applicant).

6. After considering the facts of the case, this Court in APPLICATION U/S 482 No. 1204 of 2024 passed an order on 09.02.2024 and thereafter another order was passed on 11.03.2024 in which the order dated 09.02.2024 has been quoted. The order dated 11.03.2024 is reproduced herein-under.

1. Heard.

2. This Court has passed the order dated 09.02.2024, which reads as under:-

"1. Heard Sri Saurabh Misra, learned counsel for the petitioner and Sri Nirmal Kumar Pandey, learned AGA for the State.

2. Issue notice to opposite party no.2 returnable at an early date.

3. Steps within a week. Office to proceed accordingly.

4. By means of this petition filed under Section 482 Cr.P.C., the petitioner has prayed the following main relief:-

"(i) Quash Judgment and Order dated 05.02.2016; Passed in Criminal Case No.246/2010, U/S 125 Cr.P.C; Passed by Ld. Principal Judge, Family Court, Lucknow; Titled as: Garima Goel Vs Rohit Agarwal; Police Station: - Vikas Nagar; Lucknow."

5. Learned counsel for the petitioner has stated that the parties have entered into settlement agreement on 05.10.2021 before the Mediation and Conciliation Centre of this Court, which has been enclosed as Annexure No.4 with the petition. Thereafter, further attention has been drawn towards Annexure No.5 of the petition, which is a final order dated 13.12.2022 passed by the Division Bench of this Court in First Appeal No.20 of 2016, Smt. Garima Goel Vs. Principal Judge Family Court Lucknow and Another, whereby on the basis of aforesaid settlement agreement, the appeal of private opposite party has been

dismissed being withdrawn. Learned counsel for the petitioner has stated that despite the settlement agreement having attained finality, the private opposite party has not withdrawn the case pending before the Principal Judge, Family Court, Lucknow under Section 125 Cr.P.C.

6. List this case on 11.03.2024.

7. On that date, the petitioner and the opposite party no.2 shall appear in person before this Court.

8. The Station House Officer, Police Station - Vikas Nagar, District- Lucknow shall ensure the presence of opposite party no.2 on the next date intimating her the date fixed by this Court.

9. Learned AGA shall intimate this order to the S.H.O. concerned telephonically/ e-mail/ any other convenient mode for its compliance.

10. Till the next date of listing, proceedings of Criminal Case No.246 of 2010 (supra) shall remain stayed."

3. In compliance of the aforesaid order, the petitioner is present in person before the Court, however, the opposite party No.2 is not present before the Court.

4. As per the office report, the Chief Judicial Magistrate concerned has intimated that the opposite party No.2 was not found at the place where she is taking care of her father, who is presently ill, and she is unable to talk.

5. Learned Additional Government Advocate has also shown a copy of letter dated 28.02.2024 of one Sri Chandra Bahadur Yadav, Sub-Inspector, Police Station-Vikas Nagar, District-Lucknow wherein it has been indicated that the residence of opposite party No.2 was locked and on calling on Mobile Number of father of opposite party No.2, Sri Krishna Gopal Goel, it has been informed by the care taker of Sri Krishna Gopal Goel that he is admitted in the Hospital at Hardoi and is unable to talk and he did not inform about the opposite party No.2. The aforesaid letter dated 28.02.2024 is taken on record.

6. Learned counsel for the petitioner has stated that the petitioner, who is present in person before the Court, comes from Pune (Maharashtra), therefore, his personal appearance may be exempted before the Court on the next date.

7. Considering the aforesaid report of the Chief Judicial Magistrate concerned and the information so given by the learned Additional Government Advocate, it appears that the next date may be fixed to know whereabouts of opposite party No.2, however on that date, the petitioner, who is present today before the Court, need not to appear again on the next date and on his behalf his counsel would be sufficient to assist the Court properly.

8. List this case in the week commencing 06.05.2024.

9. Interim order to continue till the next date of listing.

10. The Station House Officer concerned is directed to ensure the presence of opposite party No.2 (Garima Goel) before this Court on the date fixed and the learned Additional Government Advocate shall apprise the Station House Officer concerned about the order passed by this Court today telephonically or any other mode of service for its compliance."

7. The applicants namely Manju Agarwal and Rohit Agarwal, mother-in-law and husband of opposite party no. 2/Garima Goel in APPLICATION U/S 482 No. 1248 of 2024, have filed this application for the relief quoted herein-above and this Court, upon consideration of the facts of the case passed the order dated 12.02.2024, whereby protected the interest of the applicants.

8. It would be apt to indicate that in the above indicated case, the applicant has sought the relief in relation to Criminal Case No. 5077 of 2013 (State Vs. Rohit Agarwal and Others) and charge-sheet filed therein i.e. charge-sheet no. 38/2010 dated 31.03.2010 under Sections 498-A, 427, 506 IPC and Sections 3/4 Dowry Prohibition Act.

9. Thereafter, in the APPLICATION U/S 482 No. 1248 of 2024, this Court on 11.03.2024 passed the following order in which the order passed on 12.02.2024 has been quoted. The order dated 11.03.2024 reads as under:

1. Heard.

2. This Court has passed the order dated 12.02.2024, which reads as under:-

"1. Heard Sri Saurabh Misra, learned counsel for the petitioners and Ms. Nushrat Zahan, learned AGA for the State.

2. Issue notice to opposite party no.2 returnable at an early date.

3. Steps within a week.

4. Office to proceed accordingly.

5. By means of this petition filed under Section 482 Cr.P.C., the petitioners have prayed the following reliefs:-

"(i) Quash the entire Criminal Case No. 5077/2013 (Earlier case no. 1908/2010) pending in the Court of Ld. Additional Chief Judicial Magistrate (IV), Lucknow.

(ii) Quashing of Chargesheet No. 38/2010; dated 31.03.2010; U/S 498A, 427, 506 I.P.C and 3 / 4 D.P. Act; titled as State of U.P-Vs- Rohit Agarwal and others against all the petitioner; pending in the Court of Ld.

Additional Chief Judicial Magistrate (IV), Lucknow; Arising out of F.I.R registered at Crime No. 51/2010 dated 17.02.2010; Police Station: Vikas Nagar; Lucknow which is marked as Annexure No. 1 to this petition.

(iii) To pass an Order for abetment of proceedings against Late Dinesh Chandra Agarwal who died on 03.01.2023 arrayed as accused no. 2 in the Chargesheet No. 38/2010; dated 31.03.2010."

6. Learned counsel for the petitioners has drawn attention of this Court towards Annexure No.6 of the petition, which is a settlement agreement before the Mediation and Conciliation Centre of this Court dated 05.10.2021 whereby the parties have agreed to settle their dispute amicably. In para-H of the aforesaid settlement agreement, the detail of the present case has been indicated.

7. Learned counsel for the petitioners has stated that in Application U/S 482 No.1204 of 2024, same parties are there and this Court has fixed the date as 11.03.2024 for personal appearance of the parties.

8. List and connect with Application U/S 482 No.1204 of 2024.

9. On that date, petitioner no.2-Rohit Agarwal and opposite party no.2-Garima Goel shall appear in person before this Court.

10. The Station House Officer, Police Station - Vikas Nagar, District- Lucknow shall intimate this order to opposite party no.2.

11. Learned AGA shall intimate this order to the S.H.O. concerned telephonically/ e-mail/ any other convenient mode for its compliance.

12. Till the next date of listing, further proceedings of Criminal Case No.5077/2013 (supra) shall remain stayed."

3. In compliance of the aforesaid order, the petitioner No.2 is present in person before the Court, however, the opposite party No.2 is not present before the Court.

4. As per the office report, the Chief Judicial Magistrate concerned has intimated that the opposite party No.2 was not found at the place where she is taking care of her father, who is presently ill, and she is unable to talk.

5. Learned Additional Government Advocate has also shown a copy of letter dated 10.03.2024 of one Sri Keerti Singh, Sub-Inspector, Police Station-Vikas Nagar, District-Lucknow wherein it has been indicated that the opposite party No.2 however resides at the place in question

but she is not presently available at that place and on calling her Mobile Number she did not respond, therefore, she could not be contacted. The aforesaid letter dated 10.03.2024 is taken on record.

6. Learned counsel for the petitioners has stated that Sri Rohit Agarwal (Petitioner No.2), who is present in person before the Court, comes from Pune (Maharashtra), therefore, his personal appearance may be exempted before the Court on the next date.

7. Considering the aforesaid report of the Chief Judicial Magistrate concerned and the information so given by the learned Additional Government Advocate, it appears that the next date may be fixed to know whereabouts of opposite party No.2, however on that date, the petitioner No.2 who is present today before the Court, need not to appear again and on his behalf his counsel would be sufficient to assist the Court properly.

8. List this case in the week commencing 06.05.2024.

9. Interim order to continue till the next date of listing.

10. The Station House Officer concerned is directed to ensure the presence of opposite party No.2 (Garima Goel) before this Court on the date fixed and the learned Additional Government Advocate shall apprise the Station House Officer concerned about the order passed by this Court today telephonically or any other mode of service for its compliance."

10. From the aforesaid, it is apparent that on that date, the applicant no. 2 appeared in person before this Court and this Court dispensed with his personal appearance on the next date fixed and the opposite party no. 2 was directed to appear in person on the next date fixed i.e. 06.05.2024.

11. On 06.05.2024, the opposite party no. 2 put in appearance through Shri Rama Kant Jayswal, Advocate, who on the instructions received from the opposite party no. 2, stated that his client has no objection if the proceedings of the case are quashed by this Court and the application be allowed as the parties as entered into the settlement and accordingly the statement was incorporated in the order dated 06.05.2024 and ten days' time to file the response was also granted. For ready reference, the order dated 06.05.2024 is extracted herein-under:

"Sri Ramakant Jaiswal, Advocate has filed his vakalatnama on behalf of opposite party No.2, which is taken on record. He prays for and is granted 10 days' time to file an affidavit specifically mentioning therein that his client has no objection if the proceedings of the case be quashed by this Court and petition be allowed as the parties have entered into a settlement.

Ms Garima Goel who is present today, need not appear before this Court on the next date.

Put up this case on 22.05.2024.

Interim order granted earlier shall continue to operate till the next date of listing of the case."

12. Today, when the case was called out, Shri Saurabh Misra, learned counsel for the applicants in APPLICATION U/S 482 No. - 1204 of 2024 along with Jay Prakash Awasthi, Advocate, Shri Puneet Kumar Yadav, Advocate holding brief of Shri Sri Ramakant Jaiswal, learned counsel for the opposite party no. 2 stated before this Court that the Division Bench of this Court vide order dated 28.08.2019 passed in First Appeal No. 20 of 2016 referred the matter to the Mediation and Conciliation Centre of this Court, for amicable settlement between the parties.

13. It is further stated that in compliance of order of this Court dated 28.08.2019, the Mediation and Conciliation Centre of this Court submitted settlement agreement dated 05.10.2021, which has been annexed as 'Annexure- 4' to the APPLICATION U/S 482 No. - 1204 of 2024, wherein it has been mentioned that the parties were present and they have admitted that they have entered into an agreement voluntarily and their signatures have been verified by their respective counsels before the court.

14. It is also stated that in view of the terms of settlement before the Mediation and Conciliation Centre of this Court and the nature of dispute and the law on the subject the prayer(s) sought in the application(s) be granted.

15. Considering the aforesaid as also the submissions made by learned Counsel for the parties as also the observations made by Apex Court in the case of ***Ramgopal and others Vs. State of Madhya Pradesh, 2022 (1) SCJ 536, Gian Singh Vs. State of Punjab [2012 10 SCC 303], Mohd. Ibrahim Vs. State of U.P., 2022 SCC Online ALL 106, Gold Quest International Ltd. Vs. State of Tamilnadu, 2014 (15) SCC 235, B.S. Joshi Vs. State of Haryana, 2003 (4) SCC 675, Jitendra Raghuvanshi Vs. Babita Raghuvanshi, 2013(4) SCC 58, Madhavarao Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre, 1988 1 SCC 692, Nikhil Merchant Vs. C.B.I. and another, 2008(9) SCC 677, Manoj Sharma Vs. State and others, 2008(16) SCC 1, State of M.P. Vs. Laxmi Narayan and others, 2019(5) SCC 688, Narindra Singh and others Vs. State of Punjab and another, (2014) 6 SCC 466, Manoj Kumar and others Vs. State of U.P and others (2008) 8 SCC 781, Union Carbide Corporation and others Vs. Union of India and others (1991) 4 SCC 584, Manohar Lal Sharma Vs. Principal Secretary and others (2014) 2 SCC 532 and Supreme Court Bar Association Vs. Union of India (1998) 4 SCC 409*** as also the nature of dispute/crime, this Court is of the view that the applications are liable to be allowed as chances of ultimate conviction

are extremely bleak and hence no useful purpose would be served by allowing the criminal proceedings to continue. Accordingly, present application is ***allowed***. Consequently, the entire proceedings indicated in the prayer(s) sought in the instant application(s), quoted above, are hereby quashed.

16. Office/Registry is directed to send the copy of this order to the court concerned through email/fax for necessary compliance.

Order Date :- 21.8.2024

Mohit Singh/-