

Court No. - 27

Case :- APPLICATION U/S 482 No. - 2220 of 2024

Applicant :- Anurag Tipathi And Others

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

Counsel for Applicant :- Vineet Kumar Mishra

Counsel for Opposite Party :- G.A., Rakesh K. Tripathi

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Vineet Kumar Mishra, the learned counsel for the applicants, Sri Amitabh Chaturvedi, the learned A.G.A. appearing on behalf of the State and Ms. Preeti Kumari, Advocate holding brief of Sri Rakesh Kumar Tripathi, the learned counsel for the opposite party no.2.

2. By means of the instant application filed under Section 482 Cr.P.C. the applicants have sought quashing of the order dated 30.01.2024, passed in Case No.3582 of 2009, under Sections 406, 504, 506 I.P.C. relating to Police Station Bangarmau, District Unnao, pending in the court of the learned Additional Chief Judicial Magistrate, court No.1, District Unnao.

3. The opposite party no.2, who is the wife of the applicant no.1 filed a Complainant No.1288 of 2008 on 07.05.2008 under Sections 406, 504, 506 I.P.C. in the Court of learned Additional Chief Judicial Magistrate, Court No.1, Unnao against all the six persons stating that she got married to the applicant no.1 on 15.02.2002; that all the accused persons used to taunt her for demanding dowry; that they used to keep her jewelry in their possession and they left only a chain and a ring with the opposite party no.2. On 06.03.2008 the accused persons had beaten her up and they were planning to kill her, whereupon she took shelter in the house of her husband's uncle (the applicant no.6) but he also locked her in his house. Her father lodged an F.I.R. on 13.03.2008 and the police got the opposite party no.2

freed from the confinement of the applicant no.6; that the applicant no.6 took away a chain, a locket, two mangalsutras, two rings, a pair of payal (anklets) and three pairs of earrings and Rs.5000/- cash, which were kept in a suitcase being carried by her.

4. The opposite party no.2 got her statement recorded under Section 200 Cr.P.C. By means of an order dated 15.04.2009 the Additional Chief Judicial Magistrate, Court No.1, Unnao had dismissed the complaint under Section 200 (3) Cr.P.C. after taking into consideration the fact that the father of the opposite party no.2 had lodged an F.I.R. alleging harassment for dowry and the present complaint was also filed apparently for the same reason. The opposite party no.2 filed a revision against the aforesaid order, which was allowed by means of the judgment and order dated 28.08.2009 and the matter was remanded.

5. The applicants had filed application under Section 482 Cr.P.C. No.2059 of 2010 and on 14.05.2010 an interim order was passed in their favour, restraining any coercive measures against the applicants in relation to the aforesaid case. The application under Section 482 Cr.P.C. was disposed of by means of an order dated 08.12.2011, whereby the summoning order dated 05.10.2009 was quashed and the matter was remanded for passing the order afresh.

6. After remand, the applicants were again summoned vide order dated 08.10.2015 by the learned trial court and the applicants again challenged the same by filing an application under Section 482 Cr.P.C. No.5475 of 205 and the proceedings were again stayed by means of an order dated 05.11.2015. However, the petition was disposed off by means of an order dated 30.07.2019, leaving it open to the applicants to file an application for their discharge at the appropriate stage.

7. The applicants filed an application for discharge which has been rejected by means of the impugned order dated 16.02.2024.

8. The applicants had sought discharge on the ground that F.I.R. No.95 of 2008, under Sections 498-A, 323, 506 I.P.C. and Section 3/4 of Dowry Prohibition Act was lodged by the father of the opposite party no.2 substantially on similar sets of allegations in which the applicants have been acquitted by means of a judgment and order dated 04.06.2015. However, the learned trial court was of the view that both the cases involve different allegations and different sets of sections.

9. The learned counsel for the applicants has relied upon a judgment of Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd. and another VS. Special Judicial Magistrate and others: (1998) 5 SCC 749***, wherein the Hon'ble Apex Court has held as under:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

10. He has also relied upon a judgment of the Hon'ble Supreme Court in the case of **S.R. Sukumar Vs. S. Sunaad Raghuram: (2015) 9 SCC 609**, wherein the Hon'ble Supreme Court has observed as under:

"11. Section 200 Cr.P.C. contemplates a Magistrate taking cognizance of an offence on complaint to examine the complaint and examine upon oath the complainant and the witnesses present, if any. Then normally three courses are available to the Magistrate. The Magistrate can either issue summons to the accused or order an inquiry under Section 202 Cr.P.C. or dismiss the complaint under Section 203 Cr.P.C. Upon consideration of the statement of complainant and the material adduced at that stage if the Magistrate is satisfied that there are sufficient grounds to proceed, he can proceed to issue process under Section 204 Cr.P.C. Section 202 Cr.P.C. contemplates 'postponement of issue of process'. It provides that the Magistrate on receipt of a complaint of an offence of which he is authorised to take cognizance may, if he thinks fit, postpones the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself, or have an inquiry made by any Magistrate subordinate to him, or an investigation made by a police officer, or by some other person for the purpose of deciding whether or not there is sufficient ground for proceeding. If the Magistrate finds no sufficient ground for proceeding, he can dismiss the complaint by recording briefly the reasons for doing so as contemplated under Section 203 Cr.P.C. A Magistrate takes cognizance of an offence when he decides to proceed against the person accused of having committed that offence and not at the time when the Magistrate is just informed either by complainant by filing the complaint or by the police report about the commission of an offence.

12. "Cognizance" therefore has a reference to the application of judicial mind by the Magistrate in connection with the commission of an offence and not merely to a Magistrate learning that some offence had been committed. Only upon examination of the complainant, the Magistrate will proceed to apply the judicial mind whether to take cognizance of the offence or not. Under Section 200 Cr.P.C., when the

complainant is examined, the Magistrate cannot be said to have ipso facto taken the cognizance, when the Magistrate was merely gathering the material on the basis of which he will decide whether a prima facie case is made out for taking cognizance of the offence or not. "Cognizance of offence" means taking notice of the accusations and applying the judicial mind to the contents of the complaint and the material filed therewith. It is neither practicable nor desirable to define as to what is meant by taking cognizance. Whether the Magistrate has taken cognizance of the offence or not will depend upon facts and circumstances of the particular case."

11. The third judgment relied upon by the learned counsel for the applicants is in the case of **Mehmood Ul Rehman Vs. Khazir Mohammad Tunda and others: (2015) 12 SCC 420**, wherein following observations have been made:

"22. The steps taken by the Magistrate under Section 190(1) (a) of CrPC followed by Section 204 of CrPC should reflect that the Magistrate has applied his mind to the facts and the statements and he is satisfied that there is ground for proceeding further in the matter by asking the person against whom the violation of law is alleged, to appear before the court. The satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. No doubt, no formal order or a speaking order is required to be passed at that stage. The Code of Criminal Procedure requires speaking order to be passed under Section 203 of CrPC when the complaint is dismissed and that too the reasons need to be stated only briefly. In other words, the Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course. There must be sufficient indication in the order passed by the Magistrate that he is satisfied that the allegations in the complaint constitute an offence and when considered along with the statements recorded and the result of inquiry or report of investigation under Section 202 of CrPC, if any, the accused is answerable before the criminal court, there is ground for proceeding against the accused under Section 204

of CrPC, by issuing process for appearance. Application of mind is best demonstrated by disclosure of mind on the satisfaction. If there is no such indication in a case where the Magistrate proceeds under Sections 190/204 of CrPC, the High Court under Section 482 of CrPC is bound to invoke its inherent power in order to prevent abuse of the power of the criminal court. To be called to appear before criminal court as an accused is serious matter affecting one's dignity, self respect and image in society. Hence, the process of criminal court shall not be made a weapon of harassment.

23. Having gone through the order passed by the Magistrate, we are satisfied that there is no indication on the application of mind by the learned Magistrate in taking cognizance and issuing process to the appellants. The contention that the application of mind has to be inferred cannot be appreciated. The further contention that without application of mind, the process will not be issued cannot also be appreciated. Though no formal or speaking or reasoned orders are required at the stage of Section 190/204 CrPC, there must be sufficient indication on the application of mind by the Magistrate to the facts constituting commission of an offence and the statements recorded under Section 200 of CrPC so as to proceed against the offender. No doubt, the High Court is right in holding that the veracity of the allegations is a question of evidence. Question is not about veracity of the allegations; but whether the respondents are answerable at all before the criminal court. There is no indication in that regard in the order passed by the learned Magistrate."

12. When this court examines the facts of the present case in the light of the law laid down by the Hon'ble Supreme Court in the aforesaid cses, it appears that the father of the opposite party no.2 had lodged an F.I.R. No.95 of 2008, under Sections 498-A, 323, 506 I.P.C. and Section 3/4 of Dowry Prohibition Act, wherein he had stated that the accused persons used to harass the opposite party no.2 since one year after her marriage which was held on 15.02.2002. The applicants had beaten her up on 06.03.2008 and again the applicant no.1 beaten her on 09.03.2008. On 10.03.2008 the opposite party no.2 some how

went out of her matrimonial home. The opposite party no.2 was found in the house of applicant no.6 on 12.03.2008.

13. After investigation, a charge sheet was submitted for the offence under Sections 498-A, 323, 506 I.P.C. and Section 3/4 of Dowry Prohibition Act.

14. During trial the opposite party no.2 appeared as PW-2, her father and mother appeared as PW-1 and PW-3 respectively and three other witnesses were also examined. The learned trial court has recorded that the medico legal examination report did not support the allegations levelled in the F.I.R. The statements of the prosecution witnesses were not found to be believable and the court recorded that it appears that the prosecution witnesss were trying to hide some important fact from the court. No independent witnesses had been examined on behalf of the prosecution. In view of the aforesaid facts, the learned Special Chief Judicial Magistrate (Customs), Lucknow has acquitted the applicants of all the charges by means of a judgment and order dated 04.06.2015, passed in Case No.2766 of 2008.

15. In F.I.R. No.95 of 2008 or in the statements of the opposite party no.2 or her father or mother recorded in Case No.2766 of 2008 no such allegations were levelled as have been levelled in the present complaint. As such, it appears that the allegations made in the complaint are the outcome of an afterthought. There are serious contradictions in the allegations levelled in the complaint. On the one hand the complainant states that the applicants had taken away her all the jewelry items and had left only a chain and ring with her, at the same time she stated that she had been badly beaten up by the accused persons on 06.03.2008 and they had tried to kill her and she some how saved her life by taking shelter in the house of the applicant no.6 and while she had gone to save her life in such a distress

situation, she claims that she was carrying a suitcase and she had with her a chain, a locket, two mangalsutras, two rings, a pair of payal (anklets) and three pairs of earrings and Rs.5000/- cash kept in the suitcase. These contradictions made in the complaint itself indicate that the complainant had cooked up a story to implicate her husband and his family members by levelling allegations which could not have been and not raised in the earlier F.I.R. and the statements recorded in furtherance thereof.

16. In the case of ***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335***, the Hon'ble Supreme Court considered the law laid down in various precedents regarding scope of interference under Section 482 Cr.P.C. and summarized the law in the following words:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a

Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Immediately after mentioning the aforesaid categories, the Hon'ble Supreme Court has cautioned that the power has to be exercised in rarest of rare cases by adding that:-

"103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

17. The expression "rarest of rare cases" used by the Hon'ble Supreme Court in ***Bhajan Lal (Supra)*** has been explained in *Som Mittal (2) v. State of Karnataka*, (2008) 3 SCC 574 in the following words:—

"9. When the words "rarest of rare cases" are used after the words "sparingly and with circumspection" while describing the scope of Section 482, those words merely emphasise and reiterate what is intended to be conveyed by the words "sparingly and with circumspection". They mean that the power under Section 482 to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression "rarest of rare cases" is not used in the sense in which it is used with reference to punishment for offences under Section 302 IPC, but to emphasise that the power under Section 482 CrPC to quash the FIR or criminal proceedings should be used sparingly and with circumspection."

18. In view of the foregoing discussions, the complaint lodged by the opposite party no.2 clearly appears to be a mala fide step designed to put undue pressure on her husband and his family members which is an abuse of the process of law. Accordingly, the application under Section 482 Cr.P.C. is **allowed** and the order dated 30.01.2024, passed in Case No.3582 of 2009, under Sections 406, 504, 506 I.P.C. relating to Police Station Bangarmau, District Unnao, pending in the court of the learned Additional Chief Judicial Magistrate, court No.1, District Unnao is hereby quashed, resultantly the discharge application stands allowed and the applicants are discharged.

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(Subhash Vidyarthi, J.)

Order Date :- 20.3.2024
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