

Court No. - 27

Case :- APPLICATION U/S 482 No. - 4831 of 2013

Applicant :- Akbal And Ors.

Opposite Party :- The State Of U.P And Anr.

Counsel for Applicant :- M. Waris Farooqui

Counsel for Opposite Party :- Govt. Advocate, Dinesh Kumar Chaudhary

Hon'ble Shamim Ahmed, J.

1. Heard Mr. M. Waris Farooqui, learned Counsel for the applicants, Ms. Ankita Tripathi, learned A.G.A. for the State-opposite party No.1 and perused the material placed on record.

2. No one has put in appearance on behalf of the opposite party No.2 despite the fact that the instant application is of the year 2013 and learned Counsel for the applicants presses urgency in the matter, thus, this Court has no option but to proceed for final argument in this case.

3. The present application under Section 482 Cr.P.C. has been filed on behalf of the applicants seeking quashing of the entire proceedings of Case No.1522 of 2012; Smt. Sajida vs. Akbal and others, pending in the court of learned Additional Chief Judicial Magistrate, Balrampur including the impugned order dated 16.07.2013 and summoning order dated 28.09.2012 passed by learned Sessions Judge, Balrampur and Additional Chief Judicial Magistrate, Balrampur, respectively.

4. Learned Counsel for the applicants submits that the applicants are innocent persons and have been falsely implicated in the present case due to family dispute. He further submits that the opposite party No.2 on 21.07.2012 file a complaint before the court of Civil Judge (Senior Division)/Additional Chief Judicial Magistrate, Balrampur against the applicants for the offence under Section 498-A, 323, 504 and 506 I.P.C. and Section 3/4 of Dowry Prohibition Act, which was registered as Case No.1522 of 2012 with the allegation that the marriage of the opposite party No.2 was solemnized as per Muslim rites and rituals, she was living with her husband i.e. applicant No.1 and discharging her matrimonial obligations. He further submits that the opposite party No.2 further alleged that since the date of her marriage her husband and his family members were demanding dowry and they used to create pressure upon opposite party No.2, as a result of which the applicants beaten her brutally and threw her away from her matrimonial house. He further submits that the marriage of the opposite party No.2 with applicant No.1 was solemnized about 20 years ago and from their wedlock three children were born, namely- Vakeel aged about 18 years, Aisha aged about 16 years and Yasmin aged about 08 years.

5. Learned Counsel for the applicants further submits that for the last 20 years of

marriage, the opposite party No.2 did not make any complaint against her husband and his family members to any authority and after 20 years of marriage, the opposite party No.2 made a complaint against the applicants regarding demand of dowry due to the pressure created by her family members, thus, it is nothing but a ploy to falsely implicate the present applicants in a criminal case.

6. Learned Counsel for the applicants further submits that against the summoning order dated 28.09.2012, the applicants filed an application under Section 482/378/407 Cr.P.C. No.458 of 2013 and a Coordinate Bench of this Court vide order dated 01.02.2013 dismissed the said application as withdrawn and further observed that the applicants therein will be at liberty to file a revision before the court of session and also granted interim protection to the applicants against arrest. The order dated 01.02.2013 is reproduced hereinunder:-

"1.This petition has been filed under Section 482 Cr.P.C. for quashing/set aside the entire proceedings of Case No.1522 of 2012 (Smt. Sajida Vs. Akbal and others pending in the court of Additional Chief Judicial Magistrate, Balrampur.

2.Petitioner no.1 and respondent no.2 were married.They have three children out of the wedlock. The eldest child is about 18 years. The marriage survived for 20 years. Vide impugned order dated 28.9.2012, the entire family of petitioner no.1 has been summoned to stand trial for commission of offence under Sections 498-A, 323, 504, 506 I.P.C. and Section 3/4 of Dowry Prohibition Act.

3.Learned counsel appearing for the petitioners contends that the petitioners have not approached the court of sessions in revisional jurisdiction. He wants to withdraw the petition with liberty to file revision before the court of session.

4. Accordingly, petition is dismissed as withdrawn with liberty as prayed for.

5. The court dealing with revision petition is directed to consider the age of the children ; that the entire family has been roped in and thereafter shall pass a considered order after taking into account the relevant facts, pleaded and argued.

6.In case the revision is filed on or before 15.2.2013, the arrest of the petitioners shall remain stayed till that date."

7. Learned Counsel for the applicants further submits that in compliance of the order dated 01.02.2013, the applicants preferred a revision bearing Criminal Revision No.104 of 2013; Akbar and 08 others vs. State of U.P. and Others, before the Session Judge, Balrampur. He further submits that thereafter, the Revisional Court vide impugned order dated 16.07.2013 rejected the revision of the applicants and confirmed the summoning order dated 28.09.2012 and further observed that statements of the complainant recorded under Section 200 Cr.P.C. which was supported by the statements of the witnesses recorded under Section 202 Cr.P.C., prima facie sufficient to summon the accused persons. He further

submits that the revisional court also erred in law while passing the order dated 16.07.2013 and did not consider the factual position of the matter and genuineness and evidences placed on record.

8. Learned Counsel for the applicants further submits that the impugned order dated 28.09.2012 as well as revisional court's order dated 16.07.2013 are bad in the eyes of law as both the courts have failed to appreciate the legal and factual aspect of the case and have proceeded in a cursory manner as the opposite party No.2 and applicant No.1 were happily living as husband and wife for the last twenty years and no such complaint was ever made by the opposite party No.2 to any concerned authority, the present complaint was lodged only upon pressure created by the family members of the opposite party No.2 and with the wedlock of opposite party No.2 and applicant No.1 three children were born, who were aged about 18, 16 and 08 years respectively at the time of lodging of the complaint, thus, he submits that all the children are now adults and have attained the age of marriage.

9. In support of his arguments, learned Counsel for the applicants places reliance on the judgment of the Hon'ble Supreme Court of India in the case of ***Geeta Mehrotra and Another v. State of U.P. and Another*** reported in (2012) 10 SCC 41 and ***Kahkashan Kausar Alias Sonam vs. State of Bihar and Others*** reported in (2022) 6 SCC 599, thus, he submits that ratio of law as applicable in the aforesaid cases is also applicable in the present case, though, the judgment referred above were in respect of the relatives of the husband of the complainant but in the present case, the husband of the opposite party No.2 has also been implicated only a false and fabricated complaint made by opposite party No.2 by which she has implicated all the family members of the applicant No.1. The very basis of the complaint is regarding demand of dowry but it is hard to believe that a person who had been married for twenty years and having three major children from the wedlock, is demanding dowry after twenty years of marriage, this shows that the complaint made by the opposite party No.2 is nothing but a ploy to falsely implicate the applicant No.1 and his family members in a criminal case. He further submits that due to passage of time and pendency of this application, the family members of the applicant No.1 and the applicant No.1 himself has attained the old age and now at this stage, they should not be compelled to face trial on the false and fabricated case and the names of the family members of the applicant No.1 has been taken by the opposite party No.2 only to create pressure on the husband.

10. Learned Counsel for the applicants finally submits that the present application may be allowed and the proceedings of the aforesaid case may be quashed by this Court considering the factual and legal aspects of the case and also considering the fact that the applicants are old age persons and the present complaint has been lodged after twenty years of marriage, which is nothing but a ploy to falsely implicate them in a criminal case.

11. On the other hand, the name of Shri Dinesh Kumar Chaudhary is printed as learned Counsel for the opposite party No.2 but more than 12 years have passed and no counter affidavit has been filed on behalf of the opposite party No.2 and

counter affidavit filed on behalf of the State-opposite party No.1 is a formal counter affidavit, there is nothing to demonstrate that the submissions made by learned Counsel for the applicants is being denied by the State-opposite party No.1.

12. Learned A.G.A. whereas opposed the submissions made by learned Counsel for the applicants and submits that the summoning order as well as the revisional order is rightly passed but she does not dispute this fact that the entire family members of the applicant No.1 have been implicated in the present case which is against the mandate of given by Hon'le Supreme Court in the cases of ***Geeta Mehrotra (supra)*** and ***Kahkashan Kausar Alias Sonam (supra)***. She also submits that from the plain reading of the compliant it is clear that the complaint has been made after twenty years of marriage only due to pressure created by the family members of opposite party No.2 but she also submits that prima facie offence is made out against the applicants and they do not deserve any indulgence by this Court and the present application is liable to be rejected.

13. I have heard learned Counsel for the parties.

14. On careful perusal of averments made in this application under Section 482 Cr.P.C. as well as after hearing the learned Counsel for the parties, the factual matrix discloses that the opposite party No.2 lodged an F.I.R. against the applicants alleging therein that the applicant No.1 alongwith his family members started torturing her for dowry after twenty years of marriage and from the wedlock of the applicant No.1 and opposite party No.2 three children were born and all of them are now adults due to passage of time and for the last 20 years of marriage, the opposite party No.2 did not make any complaint against her husband and his family members to any authority and after 20 years of marriage, the opposite party No.2 made a complaint against the applicants regarding demand of dowry due to the pressure created by her family members, thus, it is nothing but a ploy to falsely implicate the present applicants in a criminal case. There also appears force in the argument of learned Counsel for the applicants that the very basis of the complaint is regarding demand of dowry but it is hard to believe that a person who had been married for twenty years and having three major children from the wedlock, is demanding dowry after twenty years of marriage, this shows that the complaint made by the opposite party No.2 is nothing but a ploy to falsely implicate the applicant No.1 and his family members in a criminal case and there also appears force in the argument of learned Counsel for the applicants that due to passage of time and pendency of this application, the family members of the applicant No.1 and the applicant No.1 himself has attained the old age and now at this stage, they should not be compelled to face trial on the false and fabricated case and the names of the family members of the applicant No.1 has been taken by the opposite party No.2 only to create pressure on the husband. Further, the trial court has failed to appreciate the fact that while filing the charge sheet, the Investigating officer has failed to comply with the mandatory provisions of criminal law and has passed the impugned summoning order 28.09.2012 and the revisional court has also erred in law while passing the order dated 16.07.2013, which is nothing but an abuse of process of law.

15. Further the Hon'ble Supreme Court of India in the case ***Inder Mohan Goswami v. State of Uttaranchal (2007)12 SCC 1*** has held that it would be relevant to keep into mind the scope and ambit of section 482 Cr.PC and circumstances under which the extra ordinary power of the court inherent therein as provisioned in the said section of the Cr.P.C. can be exercised, para 23 is being quoted here under:-

"23. This court in a number of cases has laid down the scope and ambit of courts powers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:

- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of court, and*
- (iii) to otherwise secure the ends of justice."*

16. Further Hon'ble the Supreme Court of India in the case of ***Lalankumar Singh and Others vs. State of Maharashtra*** reported in **2022 SCC Online SC 1383** has specifically held in paragraph No.38 that the order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. Paragraph No.38 of Lalankumar Singh and Others (supra) is being quoted hereunder:-

"38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus:

"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is *prima facie* case against the accused, though the order need not contain detailed reasons. A *fortiori*, the order would be bad in law if the reason given turns out to be *ex facie* incorrect."

17. Further, the Hon'ble Supreme Court of India in the case of **Pepsi Foods Ltd. v. Judicial Magistrate** reported in (1998) 5 SCC 749 has been pleased to observe paragraph No.28, which is reproduced hereinunder:-

"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. The Magistrate has to carefully scrutinize 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."

18. Further, the Hon'ble Supreme Court of India in the case of **Mehmood UL Rehman v. Khazir Mohammad Tunda and Others** reported in (2015) 12 SCC 420 has been pleased to observe paragraph No.20, which is reproduced hereinunder:-

"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in *Pepsi Foods Ltd. v. Judicial Magistrate*, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter."

19. Further, Hon'ble the Supreme Court of India has provided guidelines in case of **State of Haryana Vs. Bhajan Lal** reported in 1992 Supp (1) SCC 335 for the exercise of power under Section 482 Cr.P.C. which is extraordinary power and

used separately in following conditions:-

"102.(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 F.I.R. 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."

20. Further the Apex Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:- **(i) R.P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866, (ii) State of Bihar Vs. P.P. Sharma, 1992 SCC (Cri.)192, (iii) Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283 and (iv) Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, AIR 2021 SC 1918.**

21. In **S.W. Palankattkar & others Vs. State of Bihar, 2002 (44) ACC 168**, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

22. Thus, in view of the law laid down by the Hon'ble Apex Court and in light of the observations and discussions made above and keeping view the facts and circumstances of the case, and from the perusal of the record, the entire proceedings of Case No.1522 of 2012; Smt. Sajida vs. Akbal and others, pending in the court of learned Additional Chief Judicial Magistrate, Balrampur including the impugned order dated 16.07.2013 and summoning order dated 28.09.2012 passed by learned Sessions Judge, Balrampur and Additional Chief Judicial Magistrate, Balrampur are liable to be quashed and the present application is liable to be allowed.

23. Accordingly, the entire proceedings of Case No.1522 of 2012; Smt. Sajida vs. Akbal and others, pending in the court of learned Additional Chief Judicial Magistrate, Balrampur including the impugned order dated 16.07.2013 and summoning order dated 28.09.2012 passed by learned Sessions Judge, Balrampur and Additional Chief Judicial Magistrate, Balrampur are hereby ***set aside*** and ***reversed***.

24. For the reasons discussed above, the instant application under Section 482 Cr.P.C. is ***allowed*** in respect of the instant applicants, namely-Akbal, Liyaqat Ali, Noorain, Levanga alias Kitabunnisa, Jannat, Koyla, Aslam, Tipur and Bano.

Order Date :- 21.5.2024

Piyush/-