

High Court of Judicature at Allahabad
Sitting at Lucknow

AFR

Neutral Citation No. - 2024:AHC-LKO:17663

RESERVED

Reserved on 19.01.2024

Delivered on 27.02.2024

Court No. - 27

Case :- APPLICATION U/S 482 No. - 7024 of 2017

Applicant :- Rahul Mishra And Ors.

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

Counsel for Applicant :- Dineysh Agrawal, Dileep Kumar

Counsel for Opposite Party :- Govt. Advocate, Mahesh Kumar, Prabhat Pandey

Hon'ble Subhash Vidyarthi J.

1. Heard Sri D. K. Agrawal and Ms Anupriya Agarwal Advocates, the learned Counsel for the applicants, Sri Virendra Kumar, the learned A.G.A. for the State and Sri Sushil Kumar Singh, Sri Prabhat Pandey and Sri Mahesh Kumar Advocates, 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 Charge Sheet No.14 of 2016 dated 24.12.2016 submitted in furtherance of Case Crime No.10 of 2016, Police Station, Mahila Thana, District Amethi under Sections 498A, 323, 504, 506 IPC and Sections 3/4 Dowry Prohibition Act. They have also sought quashing of the order dated 27.03.2017 passed by the learned Chief Judicial Magistrate, Sultanpur in Case No.1818 of 2017, taking cognizance of the aforesaid offences and summoning the applicants to face trial of the aforesaid offences.
3. The aforesaid case was instituted on the basis of an FIR lodged by the opposite party No. 2 on 22.07.2016 stating that the informant had got his daughter married to the applicant No.1 on 15.02.2015. Wedding ceremony was solemnized at Etawah. The informant had spent Rs.15,00,000/- in the wedding and related ceremonies and he had

given Rs.6,00,000/- in cash, besides several other valuable articles. At the time of settlement of the marriage, the applicants had told that the applicant No.1 had done MBA from Birmingham University in United Kingdom in first division and that he was working as a Manager in a real estate concern at Gurugram. After the marriage, the accused persons started harassing the informant's daughter for demanding a car. Later on, it came to light that the applicant no.1 did not possess a degree, as had been claimed by the applicants and he merely holds a Post Graduate Diploma in Management, in which he had secured second division and perhaps that diploma is not recognized in India. The FIR alleges that the accused persons had beaten up the informant's daughter on 21.12.2015, took away her stridhan and dropped her near the house of the informant in HAL campus at Korba, Munshi Gunj, District Amethi. The informant tried to resolve the disputes, but he was always insulted.

4. During investigation, the informant and his daughter gave statements supporting the FIR allegations. Accordingly, the investigating officer submitted a charge-sheet against the accused persons. The Court took cognizance of the offences and summoned the applicants to face trial by means of impugned order dated 27.03.2017.
5. The applicants have sought quashing of the charge-sheet, summoning order and the proceedings on the ground that the allegations of huge expenditure in wedding ceremonies by the informant or the demand of dowry by the applicants are absolutely false. The informant had paid merely ₹1,50,000/- for making arrangements of reception and entire expenditure of marriage ceremony and the reception was incurred by applicant Nos.1 and 2, which is supported by plenty of evidence including the videograph and photographs of the ceremonies. It has further been contented that the applicant No.2 and 3 had demonstrated expenditure of more than ₹15,00,000/- to the investigating officer with support of documentary and electronic evidence but the investigating officer has not made the same a part of the case diary or the charge sheet.

6. It has further been stated in the application that the applicant No.1 had filed a suit for divorce, which was pending at the time of filing of the application under Section 482 Cr.P.C. However, during pendency of the application, HMA Suit No.314 of 2016 filed by applicant No.1 under Section 13 of the Hindu Marriage Act was decreed by the Additional Principal Judge, Family Court, Etawah by means of judgment dated 21.10.2021. Surbhi Tiwari, wife of applicant No.1 has filed First Appeal No.936 of 2021, which is pending consideration of this Court sitting at Allahabad.
7. A Supplementary affidavit has been filed on behalf of applicants annexing therewith a copy of the judgment dated 21.10.2021 passed by Additional Principal Judge, Etawah decreeing the suit for divorce filed by applicant No.1, the evidence of defendant in that suit and the statement of the informant recorded in that suit.
8. The Superintendent of Police, District Amethi has filed a counter affidavit dated 09.06.2022 replying to the contention of the applicants in the application under Section 482 Cr.P.C. that they had provided documentary evidence of the expenditure to the investigating officer. The Superintendent of Police has stated that the applicant has not given any evidence to the investigating officer.
9. In the rejoinder affidavit, the applicants have stated that they had given (i) a copy of an email sent by the informant's daughter to the applicant no.1 admitting her illicit relation with some other person; (ii) a copy of legal notice dated 08.06.2016; (iii) copies of emails sent by applicant No.1 to the informant (iv) recording of mobile chats dated 20.10.2015 between the applicant and informant's wife (v) screenshots of Karva Chauth and other ceremonies, (vi) email chats between the informant's daughter and the person with whom she allegedly having illicit relations, email chats between applicant No.1 and informant's daughter and phone details.
10. Learned counsel for the applicants has submitted that there was a categorical assertion that the applicants had supplied documentary evidence referred to above to the investigating officer of the case and the counter affidavit has been filed by the Superintendent of Police,

who was not the investigating officer. Therefore, the Superintendent of Police had no personal knowledge of the documents having been supplied by the applicants to the investigating officer and his refusal is meaningless.

11. The second submission of the learned counsel for the applicants is that the applicant No.1 had filed a suit for divorce, which has already been decreed. The Family Court had framed two charges; (i) whether the plaintiff (applicant No.1) was entitled to get a decree of divorce ? and (ii) whether he was entitled to any other relief ?
12. While deciding issue No.1, the Family Court held that the allegation that the informant's daughter had been beaten up by the applicant No.1 and his family members on 21.12.2015 and was turned out of the matrimonial home, could not be established and informant's daughter had herself left her matrimonial home on 20.12.2015. The Family Court further observed that there are contradictions made by the informant's daughter regarding dowry, which makes the allegation suspicious.
13. The learned counsel for the applicants has further submitted that aforesaid findings recorded in the final judgment passed by the Family Court prove that the allegation in the FIR that the applicants had turned out the informant's daughter out of her matrimonial home after beating her on 21.12.2015 is false. Therefore, continuance of the criminal proceedings instituted on the basis of false allegations, would be an abuse of the process of the law and proceedings are liable to be quashed.
14. The informant's daughter has filed First Appeal No. 963 of 2021 before this Court sitting at Allahabad challenging the judgment/decreed dated 21.10.2021 passed by the Additional Principal Judge, Etawah dissolving her marriage with applicant No.1. On 29.11.2021, an interim order was passed by a Division Bench of this Court in the aforesaid case staying the effect and operation of the decree dated 21.10.2021. However, the interim order was vacated by means of the order dated 08.02.2023 after noting submissions of the learned counsel for the appellants that the appellant No.1 has performed a

second marriage and the Court was of the view that at this stage, the interim order cannot be extended.

15. Per contra, Sri S. K. Singh, the learned counsel for opposite party No.2, has submitted that the investigating officer had not made the defence evidence a part of case diary, is no ground to challenge the charge-sheet, cognizance and summoning order and the proceedings of the case.
16. Regarding effect of the observations made in the suit for divorce, the learned counsel for the opposite party No.2 has submitted that the findings of the Family Court recorded in the Civil suit, will not bind the criminal court while trying the accused persons for commission of cognizable offence as the scope of civil and criminal proceedings are entirely different.
17. The learned Counsel for the applicants have supplied written submissions wherein it has been stated that although the FIR alleges that the accused persons assaulted Surabhi on 21.11.2015 and left her near her father's home, in her cross examination recorded in the divorce suit, she has admitted that no harassment or ill treatment was done against her on 21.12.2015. The complainant has also admitted that on the date of the alleged incident, his daughter was not at Noida and she was with him at Amethi. The judgment dated 21.10.2021 passed by the Family Court decreeing the suit for divorce filed by the applicant no. 1 records a finding that Surabhi was not turned out of her matrimonial home on 21.12.2015 and no communication was made between the parties on 20.12.2015. The Family Court has found the allegations to be false.
18. The learned Counsel for the applicant has relied upon the judgment in the case of **Musstt Rehana Begum v. State of Assam**, (2022) SCC OnLine SC 82. In that case, the second respondent had filed a complaint stating that he and the appellant got married on 11.01.1996 but later on she came to know that the appellant was previously married to another person. According to the complaint, the appellant has committed an offence punishable under Section 495 of the IPC since she concealed the fact that she had a subsisting marriage when

she married the second respondent. The appellant had lodged a complaint under Section 498A of IPC. The second respondent claimed that his earlier marriage had been dissolved by a divorce on 18.08.2011. On 17.09.2011, the appellant instituted proceedings before the Principal Judge of Family Court - I, Kamrup to challenge the purported divorce. By a judgment dated 20.07.2017, the Family Court declared the divorce purportedly given by the second respondent to the appellant as null and void. A Complaint Case under Sections 420, 406, 468 and 34 of IPC was registered on 11.09. 2015, alleging that the second respondent had produced a forged divorce certificate. On 16.10.2015, the second respondent lodged a complaint alleging that the appellant had committed the offence of bigamy. The appellant filed an application under Section 482 of CrPC, which was dismissed by the High Court holding that it was highly disputed whether the appellant had entered into a marital tie with another person prior to the marriage with the complainant and whether the earlier marriage had ended in a valid divorce. Moreover, the High Court held that the appellant had not come up with a specific case that she was neither married earlier or that there was a divorce. Allowing the appeal, the Hon'ble supreme Court held that: -

“17....As between the appellant and the second respondent the issue as to whether she had a subsisting marriage on the date on which she entered into a marriage with the second respondent, had been conclusively decided by the Family Court, which has attained finality. Explanation (b) to Section 7(1) of the Family Courts Act 1984 expressly confers the Family Court with jurisdiction to determine the matrimonial status of a person. Thus, relying on the judgement of the Family Court which has jurisdiction to decide the gravamen of the offence alleged in the criminal complaint, would not be same as relying on evidentiary materials that are due for appreciation by the Trial Court, such as the investigation report before it is forwarded to the Magistrate.

Therefore, in this case, the Single Judge of the High Court was not justified in coming to the conclusion that the issue as to whether the appellant had a subsisting prior marriage was a 'highly contentious matter' which has to be tried on the basis of the evidence on the record.

19. The only contention raised in **Rehana Begum** (Supra) was regarding whether the appellant was already married at the time she married the second respondent and the issue as to whether she had a subsisting marriage on the date on which she entered into a marriage with the second respondent, had been conclusively decided by the Family Court, which had attained finality. In the present case, the complainant alleges harassment of his daughter for demanding a car, regarding which a finding can be returned only after the trial of the criminal case. Therefore, **Rehana Begum**, which was decided on the basis of the peculiar factual background, would not apply to the present case.

20. The learned Counsel for the applicants has next relied upon a judgment in the case of **Seth Ramdayal Jat v. Laxmi Prasad**, (2009) 11 SCC 545, in which it was held that: -

“20. It is now almost well settled that save and except for Section 43 of the Evidence Act which refers to Sections 40, 41 and 42 thereof, a judgment of a criminal court shall not be admissible in a civil suit. What, however, would be admissible is the admission made by a party in a previous proceeding.

21. The admission of the appellant was recorded in writing. While he was deposing in the suit, he was confronted with the question as to whether he had admitted his guilt and pleaded guilty of the charges framed. He did so. Having, thus, accepted that he had made an admission in the criminal case, the same was admissible in evidence. He could have resiled therefrom or explained away his admission. He offered an explanation that he was wrongly advised by the counsel to do so. The said explanation was not accepted by the trial court. It was considered to be an afterthought. His admission in the civil proceeding was admissible in evidence.”

21. There can be no dispute against the aforesaid proposition of law, but that judgment was given in an appeal arising out of an order passed in a Second Appeal under Section 100 of the Civil Procedure Code and the question of scope of interference under Section 482 Cr.P.C. was not involved in that case. It is settled law that the questions of admissibility, relevancy or sufficiency of evidence cannot be decided while deciding an application under Section 482 Cr.P.C.

22. The learned Counsel for the applicant has next relied upon a judgment in the case of **Sardool Singh v. Nasib Kaur**, 1987 Supp SCC 146, in which a civil suit between the parties was pending wherein the respondent was contending that no will had been executed whereas the contention of the appellants was that a will had been executed by the testator. A case for grant of probate was also pending. The civil court was seized of the question as regards the validity of the will. In view of these facts, the Hon'ble Supreme Court held that: -

“At this juncture the respondent cannot therefore be permitted to institute a criminal prosecution on the allegation that the will is a forged one. That question will have to be decided by the civil court after recording the evidence and hearing the parties in accordance with law. It would not be proper to permit the respondent to prosecute the appellants on this allegation when the validity of the will is being tested before a civil court.”

23. The aforesaid judgment was also given keeping in view the particular facts of the case and it does not lay down any general proposition of law of universal application. The question of commission of offence under Section 498-A involved in the present case, is not directly is issue in the appeal against divorce decree pending in this Court and, therefore, the pendency of the appeal will not give rise to a good ground for quashing of the criminal proceedings.
24. The learned Counsel for the applicants has submitted that there are some contradictions in the testimony of Surabhi recorded by the Family Court, but the value of her evidence will have to be assessed by the trial Court, where she can explain or even resile from her admission. The evidence recorded by the Family Court in the divorce suit, the decree passed wherein is under challenge in appeal filed before this Court, cannot give rise to a good ground for quashing the proceedings without trial.
25. The learned Counsel for the applicant next submitted that the allegations leveled in the FIR are false and the informant has converted the matrimonial disputes into a criminal case. He has relied upon the judgments in the case of **Abhishek v. State of M.P.**, 2023 SCC OnLine SC 1083, wherein it was observed that: -

“13. Instances of a husband's family members filing a petition to quash criminal proceedings launched against them by his wife in the midst of matrimonial disputes are neither a rarity nor of recent origin. Precedents aplenty abound on this score. We may now take note of some decisions of particular relevance. Recently, in Kahkashan Kausar alias Sonam v. State of Bihar [(2022) 6 SCC 599], this Court had occasion to deal with a similar situation where the High Court had refused to quash a FIR registered for various offences, including Section 498A IPC. Noting that the foremost issue that required determination was whether allegations made against the in-laws were general omnibus allegations which would be liable to be quashed, this Court referred to earlier decisions wherein concern was expressed over the misuse of Section 498A IPC and the increased tendency to implicate relatives of the husband in matrimonial disputes. This Court observed that false implications by way of general omnibus allegations made in the course of matrimonial disputes, if left unchecked, would result in misuse of the process of law. On the facts of that case, it was found that no specific allegations were made against the in-laws by the wife and it was held that allowing their prosecution in the absence of clear allegations against the in-laws would result in an abuse of the process of law. It was also noted that a criminal trial, leading to an eventual acquittal, would inflict severe scars upon the accused and such an exercise ought to be discouraged.”

- 26.** The learned Counsel for the applicants has also relied upon a judgment in the case of **Kahkashan Kausar v. State of Bihar**, (2022) 6 SCC 599. In that case, the complainant was married to Md. Ikram on 18.09.2017. She filed a criminal complaint on 11-12-2017 against her husband and the appellants, who were her in-laws, alleging demand for dowry and harassment. The learned Magistrate found that upon perusal of material evidence no prima facie case was made against the in-laws and that the allegations levelled against them were not specific in nature and the Magistrate took cognizance for the offence under Sections 498-A, 323 IPC against the husband and summoned him only. This dispute was eventually resolved and the complainant came back to the matrimonial home. Subsequently, on 01.04.2019, the complainant lodged an FIR under Sections 341, 323, 379, 354, 498-A read with Section 34 IPC against her husband and his relatives alleging that all the accused persons were pressurising her to purchase a car as dowry and they threatened to forcibly terminate her

pregnancy if the demands were not met. A Writ Petition filed by the husband and his relatives for quashing the FIR was dismissed. In appeal, the Hon'ble Supreme Court referred to various precedents on the point and concluded that: -

“17. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

18. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 1-4-2019, it is revealed that general allegations are levelled against the appellants. The complainant alleged that “all accused harassed her mentally and threatened her of terminating her pregnancy”. Furthermore, no specific and distinct allegations have been made against either of the appellants herein i.e. none of the appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are, therefore, general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High Court, we have not examined the veracity of allegations made against him. However, as far as the appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.

19. Furthermore, regarding similar allegations of harassment and demand for car as dowry made in a previous FIR Respondent 1 i.e. the State of Bihar, contends that the present FIR pertained to offences committed in the year 2019, after assurance was given by the husband Md. Ikram before the learned Principal Judge, Purnea, to not harass the respondent wife herein for dowry, and treat her properly. However, despite the assurances, all accused continued their demands and harassment. It is thereby contended that the acts constitute a fresh cause of action and therefore the FIR in question herein dated 1-4-2019, is distinct and independent, and cannot be termed as a repetition of an earlier FIR dated 11-12-2017.

20. Here it must be borne in mind that although the two FIRs may constitute two independent instances, based on separate transactions, the present complaint fails to establish specific allegations against the in-laws of the respondent wife. Allowing prosecution in the absence of clear allegations against the appellant in-laws would simply result in an abuse of the process of law.

21. Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the appellant-accused, it would be unjust if the appellants are forced to go through the tribulations of a trial i.e. general and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It has been highlighted by this Court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must, therefore, be discouraged.”

27. Thus in **Kahkashan Kausar** (Supra) the Hon’ble Supreme Court had taken into consideration the entire facts and circumstances of the case, including the fact that earlier also an FIR was lodged on similar allegations, the allegations against the relatives of the husband could not be established in investigation and a charge-sheet was filed against the husband only and the complainant had entered into a settlement and resumed cohabitation with the husband. The second FIR was lodged without any specific allegations against the in-laws of the wife. The husband had not challenged the FIR. In view of these facts, it was held that allowing prosecution in the absence of clear allegations against the appellant in-laws would result in an abuse of the process of law. In the present case, it is the FIR alleges that the informant had spent Rs.15,00,000/- in the wedding and related ceremonies and he had given Rs.6,00,000/- in cash, besides several other valuable articles, the applicants had claimed that the applicant No.1 had done MBA from Birmingham University, which claim turned out to be false, the accused persons used to harass the informant's daughter for demanding a car. The accused persons had beaten up the informant's daughter on 21.12.2015, took away her stridhan and dropped her near the house of the informant in HAL campus at Korba, Munshi Gunj, District Amethi. The husband also seeks quashing of the proceedings.

The ground for quashing is that the allegations are false and contrary to the findings recorded by the Family Court.

28. In Taramani Parakh v. State of M.P., (2015) 11 SCC 260, the Hon'ble Supreme Court held that: -

“10. The law relating to quashing is well settled. If the allegations are absurd or do not make out any case or if it can be held that there is abuse of process of law, the proceedings can be quashed but if there is a triable case the court does not go into reliability or otherwise of the version or the counter-version. In matrimonial cases, the courts have to be cautious when omnibus allegations are made particularly against relatives who are not generally concerned with the affairs of the couple. We may refer to the decisions of this Court dealing with the issue.

11. Referring to earlier decisions, in Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460, it was observed :

“27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal

proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

* * *

14. From a reading of the complaint, it cannot be held that even if the allegations are taken as proved no case is made out. There are allegations against Respondent 2 and his parents for harassing the complainant which forced her to leave the matrimonial home. Even now she continues to be separated from the matrimonial home as she apprehends lack of security and safety and proper environment in the matrimonial home. The question whether the appellant has in fact been harassed and treated with cruelty is a matter of trial but at this stage, it cannot be said that no case is made out. Thus, quashing of proceedings before the trial is not permissible.”

(Emphasis Supplied)

29. The learned Counsel for the applicants next submitted that the allegations levelled are false and this fact is established from documentary evidence, which has not been made a part of the case diary in spite of the same having been provided to the Investigating Officer. He has further stressed upon the Court that this contention has not been denied by the Investigating Officer himself by filing an affidavit and it has been denied by the Superintendent of Police.
30. In this regard, it is to be considered firstly that while deciding an Application under Section 482 Cr.P.C. seeking quashing of the

criminal proceedings, this Court is not expected to consider and scrutinize the material relied upon in defence and only this much has to be seen as to whether a case for trial of the accused is made out by the allegations levelled in the complaint / FIR and the material collected by the prosecution Secondly, the Superintendent of Police is a responsible superior officer and his personal affidavit cannot be doubted by this Court to the extent that it may give rise to a ground for quashing of the proceedings.

31. The learned Counsel for the applicant has also relied upon a judgment in the case of **Rajaram Sharma versus State of U.P.**, Criminal Appeal No. 63 of 2024. In that case, the appeal was allowed and the proceedings were quashed after recording a satisfaction that the ingredients necessary to constitute the offences under Sections 420, 406, 504 and 506 IPC were not made out, whereas it is not so in the present case.
32. Daughter of the informant has filed First Appeal No. 936 of 2021 in this High Court sitting at Allahabad challenging the decree of divorce granted by the Family Court and, therefore, the findings of the Family Court have not yet attained finality. Although an interim order dated 29.11.2021 was passed in First Appeal No. 963 of 2021 staying the operation and effect of the judgment/decreed of divorce dated 21.10.2021, the appellant No.1 has performed a second marriage. When the entire facts and circumstances of the case are scrutinized keeping in view this conduct of the applicant no. 1, in light of the law laid down by the Hon'ble Supreme Court in **Taramani Parakh** (Supra), it appears that the uncontroverted allegations as made from the record of the case prima facie establish the offence. This Court cannot take into consideration the materials relied upon by the accused persons for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution. This Court cannot unduly interfere by examining the evidence meticulously for considering whether the case would end in conviction or not at the stage quashing of charge. The allegations

taken constitute a case for trial of the applicants and the criminal proceedings are not an abuse of the process of court leading to injustice.

- 33.** In view of the aforesaid discussion, there is no good ground to quash the proceedings of the criminal case against the applicants. The application under Section 482 Cr.P.C. lacks merits and the same is hereby **dismissed**.

(Subhash Vidyarthi, J.)

Order Date :- 27.02.2024

Prateek