

Court No. - 11

Case :- APPLICATION U/S 482 No. - 6519 of 2024

Applicant :- Suhail Alam @ Raja And 3 Others

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

Counsel for Applicant :- Rajesh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Abdul Moin,J.

1. Heard learned counsel for the applicants and learned Additional Government Advocate on behalf of respondent no.1.
2. Instant application under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (Old Section 482 Cr.P.C.) has been filed praying for quashing of the entire criminal proceedings so far as it relates to applicants with regard to Complaint Case No.11516/ 2023 under Sections 498-A, 323, 504 IPC and Section 3/4 of the Dowry Prohibition Act, in re: Farha Hasmi vs. Safwan Ali and others, and summoning order dated 16.08.2023 passed by the learned Judicial Magistrate-II, Raebareli, a copy of which is Annexure-1 to the application. A further prayer is for staying the aforesaid criminal proceedings so far as it relates to the applicants.
3. The applicants are all family members of husband of respondent no.2 i.e. Safwan Ali-applicant no.1 being the father of the husband, applicant no.2 being the mother of the husband and applicants no.3 and 4 being the married sisters of the husband.
4. Contention of learned counsel for the applicants is that Sri Safwan Ali got married with respondent no.2 in the year 2020. Sri Safwan Ali along with the applicants reside at Kanpur while respondent no.2, who is a teacher in Primary School, Raebareli,

was residing in Raebareli itself.

5. As there were certain disputes between Sri Safwan Ali and respondent no.2, the respondent no.2 started residing at Raebareli itself. It is contended that a Rukhsati case was filed by Sri Safwan Ali in the year 2022 in order to compel the respondent no.2 to reside with Safwan Ali at Kanpur itself. It is contended that the said case is still pending for consideration before the Court concerned.

6. In a counterblast, a complaint case has been filed by respondent no.2 alleging the harassment on the part of the husband and the applicants. On the basis of the same, the learned court has issued the summoning order in Case No.11516/2023 in re: Farha Hasmi vs. Safwan Ali and others.

7. Raising a challenge to the aforesaid order instant application has been filed.

8. The arguments of learned counsel for the applicants are that (a) the respondent no.2 has failed to disclose her earlier marriage; (b) the complaint case has been filed by respondent no.2 as a counterblast to the Rukhsati case which has been filed by Sri Safwan Ali i.e. the husband of respondent no.2; (c) the allegations levelled in the complaint case are all false and do not make out any case against the applicants, and (d) no allegations were ever levelled against the applicants prior to filing of the said complaint case which is said to have been filed on 26.05.2023.

9. In this regard, reliance has been placed on the judgments of the Hon'ble Supreme Court in the cases of **Geeta Mehrotra and another vs. State of U.P. and another-2012(10 SCC 741** and **Mirza Iqbal @ Golu and another vs. State of Uttar Pradesh and another** passed in Criminal Appeal No.1628 of 2021 decided on December 14, 2021, to contend that the

Hon'ble Supreme Court has been of the view that in case there are bald allegations levelled in a complaint case without any basis thereof then no cognizance can validly be taken by the Court.

10. Heard learned counsels for the contesting parties and perused the record.

11. From perusal of the record, the admitted facts as emerge are that a marriage between Sri Safwan Ali and respondent no.2 took place in the year 2020. The respondent no.2 is residing at Raebareli while Sri Safwan Ali i.e. son of applicants no.1 and 2 and brother of applicants no.3 and 4 is residing at Kanpur. As the respondent no.2 was not residing with her husband i.e. Sri Safwan Ali at Kanpur consequently a Rukhsati case has been filed by Safwan Ali at Kanpur which is said to be still pending for consideration before learned court. Allegedly, as a counterblast to the said case, the complaint has been filed by respondent no.2 on 26.05.2023 levelling serious allegations against the applicants and her husband of having harassed her and having demanded dowry and on account of her inability/her parents inability to pay the same, she has been tortured both physically and mentally and she has also been turned out of the house after a threat to her life being extended by her husband and the applicants.

12. The learned court vide the order impugned dated 16.08.2023 has summoned the applicants including the husband of respondent no.2 i.e. Sri Safwan Ali. Interestingly the husband i.e. Sri Safwan Ali has not challenged the summoning order as of date meaning thereby that he does not have any dispute to the summoning order which has been issued by the learned court and perhaps is also not aggrieved by the said order. It is only the family members of Sri Safwan Ali i.e. the parents of Sri Safwan

Ali and two married sisters of Sri Safwan Ali, who have challenged the impugned summoning order.

13. The grounds on which the said order has been challenged have already been enumerated above. Now, the Court proceeds to consider all the grounds as have been raised by the learned counsel for the applicant individually.

14. So far as ground (a) is concerned that the earlier marriage of respondent no.2/complainant was not disclosed, the same may have got nothing to do with the summoning order inasmuch as it is not the case of the applicants herein nor any such averment has been made in the application that if for the fact that the earlier marriage would have been disclosed then the instant marriage with Sri Safwan Ali would not have taken place. The Court is unable to understand nor the learned counsel for the applicants has been unable to demonstrate the relation between the earlier marriage of the respondent no.2 and the summoning order. Thus, the said ground is rejected.

15. So far as grounds (b) and (c) are concerned that a Rukhsati case has been filed by the husband of respondent no.2 at Kanpur and the complaint filed by respondent no.2 is a counterblast to the said Rukhsati case, it is not the case of the applicants that the said Rukhsati case has been decided by the competent court rather admittedly the said case is still pending for consideration before the said court. A perusal of the complaint which has been filed by the complainant dated 26.05.2023, a copy of which has been filed as Annexure-2 to the application, would indicate that the complainant/respondent no.2 herein has levelled serious allegations against her husband as well as the family members. This would be apparent from perusal of paragraphs 4, 6 and 7 of the said complaint wherein the applicant no.2 Smt. Farhat Jahan, the applicant no.1 Suhail

Alam, both the married sisters-in-law namely Smt. Eram as well as Km. Kaynat, the applicants no.3 & 4, who are said to be married, have all prevailed upon respondent no.2 and are said to have compelled her to give her entire salary to the applicants and her husband. A specific averment has also been made against applicant no.3 in paragraph 6 of the said complaint to indicate that although she is married and should be residing with her in-laws yet invariably she remains inside the house of the husband of respondent no.2. Further in paragraph 7, it has been indicated that all the family members of her husband including the husband got together on 14.05.2023 and compelled her to get them a four wheeler/car and in case the complainant is unable to give them a car then she should give cash in lieu of the above, failing which she would be divorced. Certain other allegations have also been levelled against the family members/applicants herein including of the respondent no.2 being threatened by all the applicants of being implicated in false case and of being killed.

16. As regards the ground (d) that no allegations were ever levelled against the applicants prior to filing of the instant case, the said ground may not detain the Court inasmuch as the version of respondent no.2 is not before this Court. However, perusal of the averments made in paragraph 4 of the complaint itself would indicate that respondent no.2/complainant was regularly going to her own house and to the house of her in-laws but all along the applicants along with complainant's husband were pressurizing her to give her entire salary in the house itself which resulted in the applicants physically and mentally torturing her. Thus, the aforesaid ground is also rejected.

17. Thus, from a perusal of the complaint, it cannot be said that there are only general allegations which have been levelled

against the family members of Sri Safwan Ali-the husband, rather specific allegations have been levelled against all the family members, who are the applicants herein. The contention that the said complaint is a counterblast to the Rukhsati case which has been filed by Sri Safwan Ali, as already indicated above, cannot be said to be true considering the fact that there are serious allegations as have been levelled in the said complaint. The complainant in her statement under Section 200 Cr.P.C. along with the statement given under Section 202 Cr.P.C. by Sri Amir Ali and PW-2 Sabir Ali, as indicated by the learned court in its order, all indicate serious allegations as have been levelled against the applicants herein, wherein a prima facie case is made out against all the applicants.

18. Hon'ble Supreme Court in the case of **Geeta Mehrotra (supra)** after placing reliance on the earlier judgment of **Ramesh vs. State of Tamilnadu-2005 (3) SCC 507** has observed as under:

*"18. Their Lordships of the Supreme Court in this matter had been pleased to hold that the **bald allegations made against the sister in law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband's relatives as possible.** It was held that neither the FIR nor the charge sheet furnished the legal basis for the magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge sheet, none of the alleged offences under Section 498 A, 406 and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's husband who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister in law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed.....*

20. Coming to the facts of this case, when the contents of the

FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

19. Likewise, Hon'ble Apex Court in the case of **Mirza Iqbal (supra)** has observed as under:

"11. The appellants are brother-in-law and mother-in-law respectively of the deceased. A perusal of the complaint filed by the 2nd respondent, pursuant to which a crime was registered, does not indicate any specific allegations by disclosing the involvement of the appellants. It is the specific case of the 1st appellant that he was working as a cashier in ICICI Bank at Khalilabad branch, which is at about 40 kms from Gorakhpur. The alleged incident was on 24.07.2018 at about 8 p.m. When the investigation was pending, the 1st appellant has filed affidavit before Senior Superintendent of Police on 08.08.2018, giving his employment details and stated that he was falsely implicated. It was his specific case that during the relevant time, he was working at ICICI Bank, Khalilabad branch, Gorakhpur and his mother was also staying with him. The Branch Manager has endorsed his presence in the branch, showing in-time at 09:49 a.m. and out-time at 06:25 p.m. Even in the statement of 2nd respondent recorded by the police and also in the final report filed under Section 173(2) of Cr.P.C., except omnibus and vague allegations, there is no specific allegation against the appellants to show their involvement for the offences alleged. This Court, time and again, has noticed making the family members of husband as accused by making casual reference to them in matrimonial disputes. Learned senior counsel for the appellants, in support of her case, placed reliance on the judgment of this Court in the case of Geeta Mehrotra and Anr. v. State of Uttar Pradesh and Anr.1. In the aforesaid case, this Court in identical circumstances, has quashed the proceedings

by observing that family members of husband were shown as accused by making casual (2012) 10 SCC 741 reference to them. In the very same judgment, it is held that a large number of family members are shown in the FIR by casually mentioning their names and the contents do not disclose their active involvement, as such, taking cognizance of the matter against them was not justified. It is further held that taking cognizance in such type of cases results in abuse of judicial process. Paras 18 and 25 of the said judgment, which are relevant for the purpose of this case, read as under:

“18. Their Lordships of the Supreme Court in Ramesh case [(2005)3 SCC 507 : 2005 SCC (Cri) 735] had been pleased to hold that the bald allegations made against the sister- in-law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband's relatives as possible. It was held that neither the FIR nor the charge- sheet furnished the legal basis for the Magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge-sheet, none of the alleged offences under Sections 498-A, 406 IPC and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's husband who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister-in-law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed.

25. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegations of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasise by highlighting is that, if the FIR as it stands does not disclose specific allegation against the accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the

main accused who are prima facie not found to have indulged in physical and mental torture of the complainant wife. It is the well-settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of process of law.

Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing, especially in cases of matrimonial disputes whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of overimplication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.

12. From a perusal of the complaint filed by the 2nd respondent and the final report filed by the police under Section 173(2) of Cr.P.C., We are of the view that the aforesaid judgment fully supports the case of the appellants. Even in the counter affidavits filed on behalf of respondent nos.1 and 2, it is not disputed that the 1st appellant was working in ICICI Bank at Khalilabad branch, but merely stated that there was a possibility to reach Gorakhpur by 8 p.m. Though there is an allegation of causing injuries, there are no other external injuries noticed in the postmortem certificate, except the single ante-mortem injury i.e. ligature mark around the neck, and the cause of death is shown as asphyxia. Having regard to the case of the appellants and the material placed on record, we are of the considered view that except vague and bald allegations against the appellants, there are no specific allegations disclosing the involvement of the appellants to prosecute them for the offences alleged. In view of the judgment of this Court in the case of Geeta Mehrotra and Anr.1, which squarely applies to the case of the appellants, we are of the view that it is a fit case to quash the proceedings."

20. From a perusal of the judgment of the Apex Court in the case of **Geeta Mehrotra (supra)**, it clearly emerges that Hon'ble Apex Court was considering a matter wherein neither the first information report nor the charge sheet had furnished

legal basis for the learned Magistrate to have taken cognizance of the offences levelled against the appellants.

21. Hon'ble Apex Court was also of the view that when the contents of the FIR were perused it was apparent that there were no allegations levelled against Km. Geeta Mehrotra and Ramji Mehrotra except casual reference of their names which have been included in the FIR.

22. Likewise, Hon'ble Apex Court in the case of **Mirza Iqbal (supra)** has also been of the view that where there are general, vague and bald allegations levelled in the complaint and there are no specific allegations disclosing the involvement of the persons to prosecute them then such proceedings may not continue against the family members.

23. Both the judgments of Hon'ble Apex Court in the cases of **Geeta Mehrotra (supra)** and **Mirza Iqbal (supra)** would have no applicability in the facts of the instant case more particularly considering the specific allegations that have been levelled by the respondent no.2/complainant against each and every member of the family of her husband namely Sri Safwan Ali as indicated above.

24. Keeping in view the aforesaid specific allegations which have also been considered by the learned court while issuing the summoning order dated 16.08.2023 wherein the statements of respondent no.2 as well as other witnesses have also been examined, it is thus apparent that considering the specific allegations as levelled in the complaint filed by respondent no.2 it cannot be said that there are only general allegations and that a case for interference is made out.

25. Before parting with the case, the Court may also consider that the instant application has been filed under Section 482 Cr.P.C. Hon'ble Supreme Court in a recent judgment of **Central**

Bureau of Investigation vs. Aryan Singh-2023 SCC OnLine SC 379 has held that High Court's power under Section 482 is very limited and that High Court cannot conduct a mini trial at the stage of discharge and/or quashing of the criminal proceedings.

26. Likewise, Hon'ble Supreme Court in the case of *State of Haryana vs. Bhajan Lal*-1992 Supp. (1) SCC 335 held more than two decades back that the power of quashing a criminal proceeding should be exercised very sparingly while exercising power under Section 482 of the Code of Criminal Procedure and that too in the rarest of rare cases and 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 complaint.

27. The aforesaid proposition of law has again been reiterated by Hon'ble Supreme Court in the case of **Prabhu Chawla vs. State of Rajasthan - (2016) 16 SCC 30** and again recently in the case of **Manik B. vs. Kadapala Sreyes Reddy and another - 2023 LiveLaw (SC) 642**.

28. Accordingly, keeping in view the aforesaid discussion, no case for interference is made out. The petition is **dismissed**.

Order Date :- 25.7.2024

A. Katiyar