

Neutral Citation No. - 2024:AHC-LKO:42821

Reserved on 16.05.2024

Delivered on 11.06.2024

Court No. - 13

Case :- APPLICATION U/S 482 No. - 9012 of 2022

Applicant :- Ravindra Singh

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

Counsel for Applicant :- Anil Kumar Maurya, Manish Mani Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed, J.

1. Heard Sri Anil Kumar Maurya, learned counsel for the applicant as well as Sri Ashok Kumar Singh, learned A.G.A.-1 for the State.

2. As per Office report dated 09.12.2022 notice has been served personally on opposite party No.2, but till date neither anyone has put in appearance nor any counter affidavit has been filed on behalf of the opposite party No.2.

3. The present application under Section 482 Cr.P.C. has been filed for quashing of impugned charge sheet dated 19.11.2020 and cognizance / summoning order dated 13.01.2022 along with entire proceedings of Criminal Case No.3295/2022: State of U.P. Vs Ravindra Singh, arising out of Case Crime No.845/2019, under Section 494 I.P.C., Police Station Gomti Nagar, District Lucknow, pending before the court of Chief Judicial Magistrate Gomti Nagar Lucknow.

4. Learned counsel for the applicant submits that the marriage of applicant and opposite party no.2 was solemnized on 21.04.2014 as per Hindu rites and rituals without any dowry.

5. Learned counsel for the applicant further submits that due to some matrimonial dispute, applicant and opposite party no.2 are living separately and no relationship as husband and wife was made between them after marriage.

6. Learned counsel for the applicant further submits that the applicant filed a case under section 13 of Hindu Marriage Act 1955 for divorce bearing Case No.1033/2015 Ravindra Singh Vs Mithlesh against opposite party no.2, which is pending disposal before Additional Principal Judge Family Court Lucknow.

7. Learned counsel for the applicant further submits that the opposite party no.2 lodged an F.I.R. dated 17.01.2015 which is registered as Case Crime No.38/2015 for offence under Section 498-A, 323 I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station Gomti Nagar, District Lucknow in which charge sheet has been filed and the case is registered as Criminal Case No.680/2016 and trial proceedings is pending disposal before the court of Chief Judicial Magistrate Gomti Nagar, Lucknow.

8. Learned counsel for the applicant further submits that the opposite party No.2 filed an application under Section 125 Cr. P.C. for maintenance bearing Case No.466/2015: Mithlesh Vs Ravindra Singh, which is pending disposal before Additional Principal Judge-8 Family Court Lucknow.

9. Learned counsel for the applicant further submits that the matrimonial disputes between applicant and opposite party no.2 are going on and same is pending disposal before competent court of law.

10. Learned counsel for the applicant further submits that the opposite party No.2 lodged another F.I.R. dated 23.07.2019 against the applicant and his family members which is registered in case crime No.845/2019 for offence under section 494 I.P.C., Police Station Gomti Nagar, District Lucknow.

11. Learned counsel for the applicant further submits that after lodging of the First Information Report, Investigating Officer recorded the statement under section 161 Cr.P.C. and on 19.11.2020 filed charge sheet under section 494 I.P.C. against the applicant.

12. Learned counsel for the applicant further submits that the learned Magistrate concerned took cognizance upon the impugned charge sheet dated 19.11.2020 in a routine manner without application of mind and the case is registered as Criminal Case No.3295/2022: State Vs Ravindra Singh and summon the applicant under Section 494 I.P.C., Police Station Gomti Nagar, District Pratapgarh vide its impugned summoning order dated 13.01.2022.

13. Learned counsel for the applicant further submits that the learned Magistrate concerned did not apply judicial mind at the time of taking cognizance for the offence under section 494 I.P.C. Cognizance and entire proceedings are unlawful which vitiates the entire proceedings of the case, therefore impugned charge sheet and entire proceedings of criminal case no.3295/2022 State Vs Ravindra Singh in offence under section 494 I.P.C., Police Station Gomti Nagar, District Pratapgarh is liable to be quashed in proceedings under Section 482 Cr. P.C. by this Hon'ble Court.

14. Learned counsel for the applicant while drawing attention of this Court towards the Section 198 Cr.P.C. as well as 2(b) of Cr.P.C. submits that with regard to the offence falling under Chapter XX of

I.P.C. the cognizance under Section 198 could only be taken on a complaint filed by the wife and if the wife is not in a position to file complaint then further procedure provided under Section 198 Cr.P.C. shall be followed. However, in this case F.I.R. under Section 494 I.P.C. has been filed by the opposite party no.2, who is the wife of the applicant/accused person and therefore, the magistrate has committed patent illegality in taking the cognizance of the offence under Section 494 I.P.C. on a police report submitted under Section 173(2) Cr.P.C. after investigation.

Elaborating further, it is submitted that under Section 2(d) Cr.P.C. complaint has been defined to be any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code with regard to commission of an offence, but does not include a police report and therefore, the magistrate in this case was not empowered to take cognizance on the basis of police report. It is further submitted that even if the explanation appended with Section 2(d) Cr.P.C. is taken into account, the same would not come to the rescue of the prosecution as the same would cover only those cases, wherein charge sheet has been submitted after investigation with regard to non cognizable offence and in this regard the investigating officer, who has submitted the charge sheet or police report under Section 173(2) Cr.P.C. shall be deemed to be a complaint while the requirement of taking of cognizance with regard to the offence under Section 494 I.P.C. read with Section 198 Cr.P.C. is that the cognizance could only be taken on a complaint made by the aggrieved wife or anybody on her behalf.

15. Learned counsel for the applicant further submits that it is necessary to mention here that there is no such case is made out against the applicant in respect of offence under section 494 I.P.C. since there is no proof of alleged allegation, therefore entire proceedings are nothing but clear abuse of process of law. However it

is agreed that the applicant is falsely implicated in the aforesaid case crime just to harass mentally and physical

16. Learned counsel for the applicant further submits that the learned trial Court concerned without considering the factual and legal aspect of the matter only on the basis of impugned charge sheet filed on behalf of concerned Investigation Officer, taken cognizance and summoning the applicant for facing trial in offence under section 494 I.P.C. Police Station Gomti Nagar, District Pratapgarh vide its impugned summoning order dated 13.01.2022.

17. Sri Ashok Kumar Singh, learned A.G.A-I for the State opposed the argument advanced by learned Counsel for the applicant and submitted that the summoning order dated 13.01.2022 is rightly passed and no interference by this Court is required in the instant matter.

18. After considering the argument advanced by learned counsel for the applicant and learned A.G.A. for the State, this Court finds that a first information report dated 23.07.2019 was lodged by opposite party no.2 against the applicant and his family members under section 494 I.P.C., alleging bigamy. However, it is pertinent to note that under Section 198 Cr.P.C., the offense of bigamy under section 494 I.P.C. can only be prosecuted based on a complaint made by the aggrieved person, not through a first information report.

The provision of Section 494 I.P.C. is being quoted as under:

"Section - 494 I.P.C. Marrying again during lifetime of husband or wife.- Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

The offence under section 494 I.P.C. is mentioned under chapter XX of Indian Penal Code and offence punishable under Chapter XX of I.P.C. shall be taken cognizance by the court only on the basis of complaint made by some person aggrieved by offence, **as provided under Section 198 Cr. P.C. which is quoted as under:-**

"198. Prosecution for offences against marriage.

(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that-

a) Where such person is under the age of eighteen years or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf;

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other person authorized by the husband in accordance with the provisions of sub- section (4) may make a complaint on his behalf;

(c) where the person aggrieved by an offence punishable under (Section 494 or Section 495) of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father' s or mother's brother or sister, or, with the leave of the Court, by any other person related to her by blood, marriage or adoption."

Hence it is clear that the Magistrate did not apply his mind before taking cognizance and passing the summoning order.

21. **In M/s Pepsi Food Ltd. and another Vs. Special Judicial Magistrate and others: 1998 UPCR 118**, Hon'ble Apex Court has observed:

“Summoning of an accused in a criminal case, is a serious matter. Criminal law can not 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 the accused. Magistrate had 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.”

22. 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.”

23. 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."

24. 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.*

25. 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.

26. In the instant case, the marriage between petitioner no.1 and opposite party no.2 was solemnized on 21.04.2014 as per Hindu customs and rites without any dowry. However, due to matrimonial disputes, they have been living separately, and legal proceedings, including a divorce case and a maintenance application, are ongoing.

It is evident that there is no concrete evidence of the alleged second marriage, and therefore, the entire proceedings initiated against the applicant under Section 494 I.P.C. lack merit and are an abuse of the legal process and as per Section 198 Cr. P.C., First Information Report cannot be lodged for the offence of bigamy under Section 494 I.P.C. and for the alleged offence only complaint case can be filed by aggrieved person, which has not been done by the opposite party No.2 in the present case.

Hence it is clear that the Magistrate did not apply his mind before taking cognizance. Hence the cognizance is bad in eye of law and resultantly it is not sustainable.

27. Thus, in view of the law laid down by the Hon'ble Apex Court and the facts and circumstances, as narrated above, impugned charge sheet dated 19.11.2020 and cognizance/summoning order dated 13.01.2022 along with entire proceedings of Criminal Case No.3295/2022: State of U.P. Vs Ravindra Singh, arising out of Case Crime No.845/2019, under Section 494 I.P.C., Police Station Gomti Nagar, District Lucknow, pending before the court of Chief Judicial Magistrate Gomti Nagar Lucknow are liable to be quashed.

28. Accordingly, keeping in view the discussions/observations and judgments of Hon'ble the Apex Court referred above and the facts and circumstances, the charge sheet dated 19.11.2020 and cognizance / summoning order dated 13.01.2022 along with entire proceedings of Criminal Case No.3295/2022: State of U.P. Vs Ravindra Singh, arising out of Case Crime No.845/2019, under Section 494 I.P.C., Police Station Gomti Nagar, District Lucknow, pending before the court of Chief Judicial Magistrate Gomti Nagar Lucknow are hereby quashed.

29. For the reasons discussed above, the instant application under Section 482 Cr.P.C. is **allowed** in respect of the instant applicants.

30. Learned Senior Registrar of this Court is directed to transmit a copy of this order to the trial court concerned for its necessary compliance.

Order Date :- 11.06.2024

Arvind

(Shamim Ahmed, J.)