

Court No. - 48

Case :- APPLICATION U/S 528 BNSS No. - 14755 of 2025

Applicant :- Vishnu Shankar Gupta

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Zafar Abbas

Counsel for Opposite Party :- G.A., Sushil Shukla

Hon'ble Ashutosh Srivastava, J.

1. Heard Sri Zafar Abbas, learned counsel for the applicant, Sri S. K. Rai, learned A.G.A. for the State and Shri Sushil Shukla, learned counsel, who has put in appearance on behalf of Smt. Namita Gupta, the Opposite Party No. 2 and perused the record.

2. The instant Criminal Misc. Application under Section 528 of B.N.S.S., 2023 has been filed to quash the impugned summoning order dated 24.12.2024 and non bailable warrant dated 12.2.2025 issued by the learned Additional Chief Judicial Magistrate, Court No.1, Kanpur Nagar in Misc. Old Case No. 682 of 2021 (New Case No. 12434 of 2025) (State of U.P./Namita Gupta Vs. Shanker Gupta), arising out of Case Crime No. 246 of 2019, under Sections 420, 468, 471 of I.P.C., Police Station Kotwali City, District Kanpur Nagar as also to quash the entire criminal proceedings of Criminal Misc. Case No. 682 of 2021 (State of U.P./Namita Gupta Vs. Vishnu Shanker Gupta) stated to be pending in the Court of Additional Chief Judicial Magistrate, Court No.1, Kanpur Nagar.

3. It is the case of the applicant that the first marriage of the applicant was solemnized with the Opposite Party No. 2 as per Hindu Custom and rituals on 06.03.2011. Subsequent to the marriage it was revealed to the applicant that the Opposite Party No.2 was already married with one Ram Shanker Gupta S/o Sri Ram Gupta. The factum of earlier marriage was concealed by the Opposite Party No. 2. A dispute arose between the parties and the Opposite Party No. 2 returned back to her parental home on 02.02.2015. The Opposite Party No. 2 thereafter instituted a Complaint Case No.2367 of 2014 (Smt. Namita Gupta Vs. Vishnu Shanker Gupta and others) under Sections 498A, 323, 504, 506 of I.P.C. and Section 3/4 of D.P. Act, P.S. - Chakeri, District- Kanpur Nagar resorting to the provisions of Section 156(3) Cr.P.C. The applicant and other co-accused persons were summoned by the learned trial Court under Sections 498A, 323, 504, 506 I.P.C. and Section 3/4 of the D.P. Act vide the summoning order dated 02.12.2024, however, the said order was set aside in Revision No. 15 of 2015 preferred by the applicant and matter was remanded back to the trial Court. After remand, the learned trial court summoned the applicant and 2 other co-accused, under Sections 498A, 323, 504 I.P.C. vide order dated 22.08.2023. The order dated 22.08.2023 was

also set aside in Revision No. 362 of 2023 and the matter was again remanded back to the trial Court. After remand the case is pending consideration and the applicant and other co-accused persons have been enlarged on bail.

4. The applicant is stated to have filed a Complaint Case No. 1873 of 2016 (Vishnu Shanker Gupta Vs. Namita Gupta) under Section 11(5)(1) of the Hindu Marriage Act to dissolve his marriage with the Opposite Party No. 2 as null and void. The said proceedings is stated to have been decided on the basis of compromise.

5. The Opposite Party No. 2 is stated to have filed an application under Section 125 Cr.P.C. registered as Case No. 805 of 2015 before the Family court which was dismissed. The Opposite Party No. 2 also filed a Criminal Case No.275 of 2018 (Namita Gupta Vs. Vishnu Shankar Gupta), under Sections 13 and 25 of the Hindu Marriage Act which was decided ex-parte against the applicant. The applicant sought recall of the ex-parte decree by moving application under Order IX Rule 13 CPC which has been dismissed on 20.01.2025.

6. The opposite party No.2 is also stated to have filed a Criminal Case No.12642 of 2018 (Namita Gupta Vs. Vishnu Shanker Gupta), under Sections 12, 13, 14, 15, 18, 20, 21, 22 of the Domestic Violence Act, 2005 which is stated to be pending. A compromise dated 20.4.2018 is stated to have been filed which is yet to be verified and case is pending consideration.

7. It is further submitted that the Opposite Party No. 2 lodged the F.I.R. dated 25.09.2019 registered as Case Crime No.246 of 2019, under Sections 420, 468, 471 I.P.C., Police Station Kotwali City and District Kanpur Nagar. In the said case, it is stated that the Investigating Officer after doing fair investigation and recording the statement of the Civil Court employee and certified copy of the compromise and order passed by the Court concerned submitted a final report on 24.02.2021. On the submission of the final report, the Chief Judicial Magistrate concerned issued notices to the Opposite Party No. 2 on 12.04.2021. Meanwhile the Opposite Party No. 2 approached the Additional Police Commissioner, Kanpur Nagar requesting for re-investigation which was permitted vide order dated 06.08.2021.

8. The applicant is also stated to have lodged an F.I.R. against the Opposite Party on 27.10.2019 giving rise to Case Crime No. 268 of 2019, under Sections 420, 406, 504, 506 I.P.C., Police Station Kotwali City, District Kanpur Nagar. The Investigating Officer submitted charge-sheet against the opposite party on 29.05.2021. The learned Magistrate took cognizance of the same on 12.7.2021, under Sections 420, 406, 504, 506 I.P.C. The charge-sheet dated 29.05.2021 as also the cognizance order was assailed before this Court by means of Criminal Misc. Application U/S 482 No.3287 of 2023 (Namita Gupta Vs. State of U.P. and Another). This Court vide its order dated 28.11.2023 while inviting a counter affidavit from the State by way of affidavit of Commissioner of Police Kanpur Nagar has also issued notice and meanwhile stayed the further proceedings of the Criminal Case No. 90119 of 2021 (State Vs. Namita Gupta) arising out of Case

Crime No. 268 of 2019, under Sections 420, 406, 504, 506 of I.P.C., Police Station Kotwali, District Kanpur Nagar pending in the Court of Additional Chief Judicial Magistrate-III, Kanpur Nagar.

9. In the aforesaid backdrop, learned counsel for the applicant vehemently contends that in the Case Crime No. 246 of 2019, under Sections 420, 468, 471 of I.P.C., the Investigating Officer had submitted final report. However, the same was not accepted and further investigation has been ordered which is pending and the applicant has been summoned. Further, in the other Case Crime No. 268 of 2019 instituted by the applicant against the Opposite Party No. 2, charge-sheet has been filed against the Opposite Party No. 2. However, further proceedings of that case has been stayed by this Court and the matter is subjudice before this court. Learned counsel submits that the present application may also be tagged along with the Criminal Misc. Application No. 43287 of 2023 and the further proceedings of the Case Crime No. 268 of 2019, under Sections 420, 406, 504, 506 I.P.C., Police Station Kotwali City and District Kanpur Nagar be directed to remain stayed in the interest of justice.

10. Mr. S. K. Rai, learned A.G.A. for the State-respondents as also Sri Sushil Shukla, learned counsel for the Opposite Party No. 2 have vehemently opposed the petition and the relief prayed for by the learned counsel for the applicant. They submit that the applicant is prima-facie guilty of forging and fabricating documents (compromise deed) and orders of the Court acknowledging the forged and fictitious compromise and with such a conduct to his credit does not deserve the sympathy of the Court or the relief as prayed for. They submit that the instant petition deserves to be dismissed at the threshold.

11. I have heard the learned counsel for the parties and have perused the record. From the perusal of the records and the facts recorded herein-before in this order. It is more than apparent that multiple litigations are pending between the applicant and the Opposite Party No. 2. The applicant has been made accused of relying upon a forged and fabricated compromise deed dated 20.04.2018 and a judicial order of even date purportedly reflecting the acceptance of the compromise by the Opposite Party No. 2 (wife) after accepting a sum of Rs. 2,00,000/- (Two Lacs) from the applicant for settling the dispute. The compromise deed and the judicial order admittedly have been found to have been forged in an enquiry by the Additional Principle Judge Court No. 4, Family Court, Kanpur Nagar and report submitted on 14.08.2019. Based on the forged and fictitious compromise deed and order of even date passed by the learned Magistrate in Case No. 1873 of 2016, under Section 11 of the Hindu Marriage Act, Case No. 805 of 2013, under Section 125 Cr.P.C. and Case No. 275 of 2018, under Section 13 of the Hindu Marriage Act prima-facie have not legal sanctity. The present proceedings of Misc. Case No. 682 of 2021 arising out of Case Crime No. 246 of 2019, under Sections 420, 468, 471 I.P.C., Police Station Kotwali City and District Kanpur Nagar are the outcome of the enquiry report dated 14.08.2019 submitted against the applicant.

12. Prima-facie, the Court finds that there is sufficient ground to proceed against the applicant and no ground exists for quashing the entire criminal proceedings against the applicant. The Apex Court in ***State of Madhya Pradesh Vs. Deepak*** reported in **2019 (13) SCC 62** has laid down a set of principles which the High Courts must keep in mind while exercising their jurisdiction under the provisions of Section 397 or Section 482 of the Code or together in Paras 11 and 12 of the judgment which is being reproduced herein under:-

"11. The Court also enunciated a set of principles which the High Courts must keep in mind while exercising their jurisdiction under the provision:

"27. ... At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

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.

27.9. 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.

27.13. 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."
(Emphasis supplied)

12. In [*State of Rajasthan v Fatehkaran Mehdu*](#) 6, a two-judge bench of this Court has elucidated on the scope of the interference permissible under Section 397 with regard to the framing of a charge. Justice Ashok Bhushan held thus:

"26. The scope of interference and exercise of jurisdiction under [Section 397](#) CrPC has been time and again explained by this Court. Further, the scope of interference under [Section 397](#) CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold 6 (2017) 3 SCC 198 something which is neither permissible nor is in consonance with the scheme of the [Code of Criminal Procedure](#)." (Emphasis supplied)

13. The said principle has been reiterated by the Apex Court in the case of **Saranya Vs. Bharate and Another (Crl. Appeal No.873 of 2021)** reported in **LL 2021 SC 402** by holding that a High Court while exercising powers under Section 482 Cr.P.C.(Section 528 B.N.S.S. 2023) is not required to appreciate the evidence to find out whether the accused is likely to be convicted or not and the same is not permissible at all at the stage of considering an application under Section 482 Cr.P.C.

14. In State of **Madhya Pradesh Vs. Kunwar Singh (Crl. Appeal No.709 of 2021)** arising out of **SLP (Crl) No. 5517 of 2021 (Diary No.47744 of 2018)**, wherein their Lordships of the Apex Court have held that the high Court transgressed the limits of the jurisdiction under Section 482 Cr.P.C. by enquiring into the merits of the allegations, at the stage of the trial. The High Court ought not to be scrutinizing the material in the manner in which the Trial Court would do in the course of the criminal trial after evidence is adduced.

15. Appreciation of evidence is not permissible at the state of quashing or proceedings in exercise of powers under Section 482 Cr.P.C. as has been held by the Apex Court in **Kaptan Singh Vs. State of Uttar Pradesh** reported in **LL 2021 SC 379**. The High Court is not expected to embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint as laid down in **State of Odhisha Vs. Pratima Mohanty** reported in **LL 2021 SC 730**.

16. In view of the above, this Court finds no good ground to quash the entire criminal proceedings of Crl. Case No. 682 of 2021 (State of U.P./Namita Gupta Vs. Vishnu Shankar Gupta) pending in the Court of Additional Chief Judicial Magistrate, Court No.1, Kanpur Nagar or cause interference with the summoning order dated 24.12.2024 and Non-Bailable Warrant dated 10.12.2025 issued in Misc. Case No. 682 of 2021 arising out of Case Crime No. 246 of 2019, under Sections 420, 468, 471 I.P.C., Police Station Kotwali City and District Kanpur Nagar.

17. There is no merit in this petition and the same stands **dismissed**.

Order Date :- 10.6.2025