

Court No. - 71

Case :- APPLICATION U/S 482 No. - 22900 of 2024

Applicant :- Shyam Shankar Mishra And Another

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

Counsel for Applicant :- Dr. Dharmesh Chaturvedi, In Person

Counsel for Opposite Party :- G.A., Narendra Kumar Giri

Hon'ble Raj Beer Singh, J.

1. Heard applicant No.1 in person, learned counsel for the opposite party No.2 and perused the material brought on record.

2. This application under Section – 482 Cr.P.C. has been preferred against summoning order dated 18.02.2014, passed by learned A.C.J.M., Court No.4, Agra in Complaint Case No. 260 of 2013 (K.D. Sharma Vs. Vinay Mishra and Others), under Section – 406, 323, 504, 506 I.P.C., Police Station – Shahganj, District – Agra. The order dated 15.06.2024, passed by learned A.C.J.M., Court No.10, Agra in the aforesaid complaint case is also being impugned, whereby the application of applicants for discharge has been rejected.

3. The applicant No.1 Shyam Shankar Mishra appearing in person submitted that the marriage of his son was solemnized with daughter of opposite party no.2 on 17.06.2010 at Noida. After her marriage, the daughter-in-law of the applicants went to join her services at Aligarh, where she was working in Mangalaytan University. Despite all efforts, she did not come to attend the marriage of her sister-in-law. The allegation that the daughter of the complainant has given any jewellery to the applicants is wholly false and improbable. In the case lodged by the daughter of complainant under Sections 498-A, 323, 504, 506 I.P.C. and Section 3/4 D.P. Act against applicants and others, she did not make any complaint regarding any entrustment of jewellery or any other article of 'stridhan' to the applicants or regarding any breach of trust. The proceedings of the case under Sections - 498-A,

323, 504, 506 I.P.C. and Section - 3/4 D.P. Act have already been quashed by this Court vide order dated 22.12.2023, passed in Application U/S 482 No. 30830 of 2013. Some other false and frivolous cases have also been filed against the applicants. The applicants have moved an application for discharge but the same has been rejected by the trial Court vide impugned order dated 15.06.2024, without considering facts and position of law. Pointing out the illegality in the impugned order dated 15.06.2024, it was submitted that the impugned order has been passed without application of judicial mind. The impugned complaint is an offshoot of the matrimonial dispute between the parties, wherein the proceedings of main case under Sections - 498-A, 323, 504, 506 I.P.C. and Section - 3/4 D.P. Act have already been quashed by this Court. Referring to facts of matter, it was submitted that a case for discharge is made out and the impugned order dated 15.06.2024 is liable to be set aside.

4. Learned counsel for the opposite party No.2 has opposed the application and submitted that there is no illegality or perversity in the impugned order. The applicants and their son have harassed the daughter of complainant on account of dowry and they have misappropriated her 'stridhan'. It is incorrect that the entire proceedings of Criminal Case No. 657 of 2013 (State Vs. Vinay Mishra and Others), under Section – 498-A, 323, 504 I.P.C. and Section – ¾ D.P. Act have been quashed. In fact that application under section 482 Cr.P.C. was rejected on behalf of husband of daughter of opposite party no.2 and only in respect of the applicants the relief was granted. While quashing the proceedings of said case against applicants, this Court has relied upon order dated 11.08.2017, passed by the Principal Judge, Family court, Gautam Buddh Nagar, which was not admissible in evidence. Similarly, the Court also placed reliance upon order dated 21.10.2015, passed by the Additional District and Sessions Judge, Court No.3, Agra, wherein the Complaint Case No. 657 of 2013 was dismissed, which is against the law. In fact case under Section – 12 Domestic Violence Act cannot be dismissed on the ground of limitation. It was submitted that applicants have made promise to the daughter of opposite party No.2 to pay an amount of Rs. 11 lakh towards 'stridhan' and even a

bank draft was prepared but no such amount was paid and the said draft was never delivered to the daughter of opposite party No.2. The applicants have not returned the 'stridhan' of the daughter of opposite party No.2. Referring to facts of the matter, it was submitted that there is no illegality or perversity in the impugned orders. The discharge application of the applicants has been rejected by a reasoned order.

5. I have considered the rival submissions and perused the record.

6. Perusal of record shows that the marriage of daughter of opposite party No.2 with son of applicants, namely, Vinay Mishra has taken place on 17.06.2010. It was alleged that in the marriage and other relating ceremonies, cash of about Rs. 6 lakh, jewellery and some other articles were given in dowry. After marriage, the daughter of complainant came to know that her husband Vinay Mishra has married with her under pressure of her parents. The daughter of complainant was neglected by her husband. While she was coming from her matrimonial home (vidai), the applicants have snatched her jewellery on the pretext of putting the same in bank locker and on 05.07.2010 and she was sent with her brother. The complainant has further alleged that the accused persons have pressurised his daughter to pay Rs. 15,000/- per month, so that they can re-pay their debt. The daughter of complainant went to her matrimonial home at Noida for five times but she was subjected to cruelty. Her husband has filed a divorce Petition on false facts. On 17.07.2010, the father-in-law and mother-in-law of daughter of complainant came at the house of complainant at Agra and assaulted the complainant and his daughter and in that connection a complaint was made to the police. The applicants have not returned the cash and 'stridhan' of the daughter of complainant.

7. The complainant was examined under Section – 200 Cr.P.C., wherein he has supported the said version. The daughter of complainant, namely, Manisha Sharma was examined under Section – 202 Cr.P.C. One Prem Dutt Pathak was also examined under Section – 202 Cr.P.C. After considering material on record, the applicants were summoned for offence under Section – 406, 323, 504, 506 I.P.C.

vide order dated 18.02.2014. It appears that the applicants have filed an application under Section - 482 Cr.P.C .vide Application No. 8470 of 2014 before this Court for quashing of proceedings of the complaint case and that application was disposed of with direction to the Trial court that in case applicants file an application for discharge, the same shall be considered and decided expeditiously on merits. In pursuance to that order, the applicants have filed a discharge application before the Trial court, which has been rejected by the learned Trial court vide impugned order dated 15.06.2024.

8. Before proceeding further, it would be apt to peruse the provisions of Section – 245 Cr.P.C., which read as under :-

"(1) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless."

9. Thus, there is a clear difference in Sections - 245(1) and 245(2) of Cr.P.C.. Under Section 245(1), the Magistrate has the advantage of the evidence led by the prosecution before him under Section 244 and he has to consider whether if the evidence remains unrebutted, the conviction of the accused would be warranted. If there is no discernible incriminating material in the evidence, then the Magistrate proceeds to discharge the accused under Section 245(1) CrPC. The situation under Section 245(2) CrPC is, however, different. There, under sub- section (2), the Magistrate has the power of discharging the accused at any previous stage of the case i.e. even before such evidence is led. However, for discharging an accused under Section 245(2) CrPC, the Magistrate has to come to a finding that the charge is groundless. There is no question of any consideration of evidence at that stage, because there is none. The Magistrate can take this decision before the accused appears or is brought before the court or the evidence is led under Section 244 CrPC. The words appearing in Section 245(2) CrPC "at any previous stage of the case", clearly bring out this position. The Magistrate has the power to discharge the accused under Section 245(2) CrPC at any previous stage i.e. before the

evidence is recorded under Section 244(1) CrPC. In this connection reference may be made to case of Cricket Assn. of Bengal v. State of W.B. [(1971) 3 SCC 239 : 1971 SCC (Cri) 446],. Thus, it is well settled that under Section 245(2) CrPC the Magistrate can discharge the accused at any previous stage i.e. even before any evidence is recorded under Section 244(1) CrPC.

10. In the instant matter, the applicants are father-in-law and mother-in-law of the daughter of complainant and they have been summoned in a complaint case. In her statement under Section - 200 Cr.P.C., the complainant / opposite party no.2 has inter-alia alleged that in response to the matrimonial advertisement, he has contacted the accused persons for marriage of his daughter with their son. The marriage of daughter of complainant has taken place with the son of applicants on 17.06.2010. It was further alleged that after marriage, the son of applicants has told his daughter that he has married with her under pressure of his parents and he would not accept her as his wife. On 05.07.2010 the valuable articles of 'stridhan' of his daughter were got deposited in bank locker and she was sent to her parental home. The daughter of complainant went to her matrimonial home for 4-5 times but they did not agree to keep her. On 17.07.2011 accused persons have assaulted the complainant and when his daughter tried to intervene she was also pushed to ground. It was further alleged that he has demanded 'stridhan' and jewellery of his daughter from accused persons but the same was not returned back. The victim (daughter of complainant) has been examined as P.W.-2 under Section - 202 Cr.P.C. and she has inter-alia alleged that after her marriage, her husband has told that he has married her in pressure of his parents and he would not accept her as his wife. They have harassed her on account of dowry and on 17.07.2011 they have assaulted her father. She has further alleged that her all 'stridhan' was kept in locker by the accused persons and it was not returned back. One Prem Dutt Pandey has also been examined under Section - 202 Cr.P.C. and he has also made more or less similar allegations.

11. It may be seen that earlier the victim has lodged a first information report

against applicants on 10.09.2012 under Section - 498-A, 420, 323, 504, 506 I.P.C. and Section - 3/4 D.P. Act but in that first information report she did not make any allegation regarding breach of trust in respect of her dowry articles. In that matter, after investigation police have submitted charge-sheet for offence under Section - 498-A, 323, 504, 506 I.P.C. and Section - 3/4 D.P. Act. The applicants have challenged the proceedings of that case before this Court by filing Application under Section - 482 No. 30830 of 2013, wherein the proceedings of said case against the applicants were quashed by this Court vide judgment dated 22.12.2023, by considering merits of the matter. Further, the son of applicants, namely, Vinay Mishra (husband) has filed a petition under Section - 13 Hindu Marriage Act for dissolution of marriage and the marriage was dissolved by the Principal Judge, Family Court, Gautam Buddh Nagar vide judgment and order dated 11.08.2017. In that judgment the learned Family court has rendered findings that the wife (daughter of complainant) has been living separately since July 2010 and that she had lived at her matrimonial home only for about 15 days. The Family court held that the wife was not willing to live with her husband at any cost and that she has permanently deserted her husband continuously for more than three years. On the basis of evidence, the Family Court has dissolved marriage by holding that the husband has been able to prove the ground of divorce as provided in Section - 13 (1) (i-b) of Hindu Marriage Act. Generally the findings rendered by Civil courts are binding in criminal matters. Further, the daughter of complainant has also initiated proceedings under Section - 12 Domestic Violence Act and the said case against applicants was also dismissed. On perusal of impugned order it appears that learned Magistrate has not considered the statements of complainant and of witnesses recorded under Section - 200 / 202 Cr.P.C. or statements under Section - 244 Cr.P.C..

12. It appears from record that the daughter of complainant has not been examined under Section - 244 Cr.P.C.. She was the most important witness as to whether her dowry articles / 'stridhan' were taken by applicants but she was not produced under Section - 244 Cr.P.C. for cross examination. In his cross examination under Section

- 244 Cr.P.C., P.W.-1 / complainant has inter-alia stated that in the receipts of articles submitted in the Court there were no names of purchaser and thus, it cannot be said that the same were in respect of dowry articles / 'stridhan' of the daughter of complainant. In his cross examination P.W.-1 could not deny the judgment passed in Criminal Appeal No. 173 of 2015 against the proceedings of Section - 12 Domestic Violence Act, wherein case under Section - 12 Domestic Violence Act was dismissed. In response to question that after staying fifteen days at her matrimonial home, his daughter did not went back to her matrimonial home, the complainant has stated that despite efforts of the family of husband, his daughter Manisha did not went back to her matrimonial home. P.W.-1 has also stated in his cross examination that regarding incident of 17.07.2011 his medical examination was not conducted and he has not made any complaint for lodging of the first information report. When the complainant was asked that he has filed application under Section - 156 (3) Cr.P.C. after one year of the alleged incident dated 17.07.2011, complainant / P.W.-1 has stated that he tried to contact the police but no action was taken and after that he has filed application under Section - 156 (3) Cr.P.C.. In his cross examination under Section - 244 Cr.P.C., P.W.-2 Prem Dutt Pathak was asked whether he has seen the receipt of dowry articles / 'stridhan' submitted before the court and that there was no name of purchaser in the receipts, he has replied that he does not remember the same. It appears that statement of P.W.-2 Prem Dutt Pathak under Section - 244 Cr.P.C. is quite vague and inconsistent. It appears that learned Trial court has not considered the statement of complainant and said witnesses in correct perspective. The Trial court has also not taken into consideration the fact that marriage of the victim with son of applicants has already been dissolved on the ground of desertion, on the petition filed by the husband, and the findings rendered in that case were also not taken into consideration. Though, learned Trial court has passed a detailed order but several relevant aspects of the matter have not been taken into consideration and only a passing reference has been made that the witnesses have supported complainant's version in statements under Section - 244 Cr.P.C..

13. Considering entire facts of the matter, it appears that the allegation regarding breach of trust in respect of dowry articles / 'stridhan' of daughter of complainant lack cogency and efficacy and there is no credible evidence to support the same. In view of attending facts, particularly when the proceedings of case under Section 498-A, 323, 504, 506 I.P.C. and Section - 3/4 D.P. Act against applicants have already been quashed by this Court, the divorce petition filed by the husband has been allowed by the Family Court, rendering findings that the daughter of complainant has been living separately since July 2010 and that she has permanently deserted her husband continuously for more than three years, as well as the fact that complaint under Section – 12 Domestic Violence Act has been dismissed, the charge regarding breach of trust in respect of dowry articles / 'stridhan' has been rendered groundless. At this stage it would be relevant to state that there are several pronouncements of Apex Court, which show that there is tendency of implicating the relatives of husband in matrimonial dispute. It was held that false implication by way of general and omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. In this connection, a reference may also be made to case of Kahkashan Kaushar @ Sonam & Others Vs. State of Bihar & Others (2022) 6 SCC 599 and Geeta Mehrotra & Anr. Vs. State of UP & Anr. (2012) 10 SCC 741.

14. So far the case regarding case under section 323, 504, 506 I.P.C. is concerned, only general and vague allegations have been levelled that on 17.07.2011 accused persons came at the house of complainant at Agra and did 'hathapai' and when his daughter tried to intervene she was also pushed to ground. Applicants are residents of Noida and it does not appear believable that applicants would have indulged in such an incident at the house of complainant at Agra. There is no such allegation that complainant or his daughter has sustained any injury. The complainant has filed the complaint after about two years of the incident dated 17.07.2011. This long delay in filing the complaint further raises serious doubt about authenticity of the incident dated 17.07.2011. There is no specific allegation at all to attract Section - 504 and 506 I.P.C.. The allegations regarding assault are quite vague and

lack cogency. Thus, no case under Section - 323, 504, 506 I.P.C. is made out.

15. Considering entire facts and cumulative effect of all attending facts and circumstances, it appears that there is no credible evidence to support the allegations of complainant or victim regarding alleged breach of trust or assault on complainant and his daughter and the charge for alleged offence under Section - 406, 323, 504, 506 I.P.C. is groundless and thus, the applicants are entitled for discharge.

16. The impugned order dated is set aside and the applicants are discharged of offence under Section - 406, 323, 504, 506 I.P.C..

17. The application under Section - 482 Cr.P.C. is **allowed** in above terms.

Order Date :- 26.5.2025

S Rawat