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* IN THE HIGH COURT OF DELHI AT NEW DELHI

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ CRIMINAL MISCELLANEOUS CASE 4229 OF 2011 & CRL.M.A. 19506/2011

Between:-

SMT. ASHTHA NARANG @ ASHTHA ARORA
W/O SUNNY ARORA,
R/O B-33, KIRTI NAGAR,
NEW DELHI.

.....PETITIONER

(Through: Mr. Ashish Nischal, Mr. Arun Nischal & Mr.
Rinku Shah, Advocates)

AND

GAURAV BHASIN,
S/O SHRI SUDESH KUMAR BHASIN,
R/O J-1260, MAIN SECTOR ROAD,
PALAM VIHAR, GURGOAN
HARYANA.

..... RESPONDENT

(Through: Respondent ex-parte)
(Mr. Amit Ahlawat, APP)

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Pronounced on : 21.09.2022

J U D G M E N T**PURUSHAINDRA KUMAR KAURAV, J.**

1. This petition under Section 482 of Cr.P.C. is directed against the order dated 24.08.2011 passed by the learned Metropolitan Magistrate,



(West), Tis Hazari Courts, Delhi in Criminal Complaint No. 340/2003, whereby, the learned Magistrate has directed for issuance of summons against the petitioner for the offence punishable under Section 211 of IPC in a complaint case filed by the respondent.

2. This petition was taken up for hearing on 16.12.2011, when notice was directed to be issued to the respondent and the operation of the impugned order was stayed. On 04.09.2012, the respondent appeared and prayed for supply of the paper book. The matter was thereafter taken up on various dates and on 25.10.2013, in the presence of both the counsel, the petition was admitted and directed to be listed in the category of '*Regulars*' in due course and the interim order granted earlier was made absolute. On 15.07.2022 when the matter was taken up in '*Regulars*', none had appeared on behalf of the parties and this court had directed for issuance of court notice. The court notice was served on the parties. On 01.08.2022, the petitioner was represented by her counsel, however, no one had appeared on behalf of the respondent. On 31.08.2022, again there was no representation on behalf of the respondent, therefore, this court proceeded ex-parte against him. Shri Amit Ahlawat, learned APP for the State was requested to assist this court on the merits of the case and the matter was directed to be listed for hearing on 06.09.2022.

3. Learned counsel appearing on behalf of the petitioner submits that the petitioner and respondent both have remarried after dissolution of their marriage vide judgment decree dated 29.05.2010. According to him, this might be the reason for the non-appearance of the respondent as with the passage of time, he might have lost his interest. Be that as it may. Since the order of issuance of summons is under challenge, this court would proceed to decide the same on its own merit.



4. The facts of the case show that the marriage of the petitioner was solemnized with respondent on 07.07.2007. On 23.10.2007, the respondent-husband filed a petition under Section 13(1)(i)(a) of the Hindu Marriage Act, 1955. On 17.04.2008, the petitioner-wife made a complaint to CAW Cell (Crime Against Women) stating therein that she has been subjected to cruelty on account of non-fulfilment of demand of dowry and she was also forced to return of *Istridhan* etc. On 19.08.2008, the CAW Cell closed the complaint. On 11.11.2009, the respondent-husband filed a complaint case under Section 200 of Cr.P.C. for commission of alleged offence under Section 211 of IPC before the court of learned CMM. On 29.05.2010, the petition filed by the respondent for dissolution of marriage was accepted and a decree of divorce was granted by the court of learned Additional District Judge.

5. The learned Metropolitan Magistrate vide impugned order dated 24.08.2011 directed for issuance of summons against the petitioner for alleged commission of offence under Section 211 of IPC which was served on the petitioner on 27.11.2011 and, therefore, the petitioner is before this Court.

6. Learned counsel appearing on behalf of the petitioner submits that the impugned order for issuance of summons is absolutely perverse. The same is in violation of the settled legal position, inasmuchas, filing of a complaint before CAW Cell would not constitute any offence of initiation of criminal proceedings and hence, no offence at all under Section 211 of IPC is attracted. According to him, even if the entire allegation made in the complaint is accepted, the fact that would remain to be considered is that there was no FIR at all registered against the respondent. He placed reliance on a decision of this court in the case of



M.K. Razdan v. State and Ors.¹ and the decision of the Hon'ble Supreme Court in the matter of ***Raj Talreja v. Kavita Talreja***².

7. Shri Amit Ahlawat, learned APP opposes the prayer made in the petition. He submits that the mandate of law does not require for registration of an FIR or for institution of a case in the court of law. According to him as per law before taking up the matter to the concerned police station, it is incumbent upon the victim to first approach the Crime Against Women Cell. While referring to various paragraphs of the complaint, he submits that the offence under Section 211 of IPC is *prima-facie* made out.

8. I have heard learned counsel for the petitioner and Shri Amit Ahlawat, learned APP, who has been requested to assist this court.

9. Before dealing with the matter, it would be appropriate to reproduce Section 211 of the IPC, which is reproduced as under:-

211. False charge of offence made with intent to injure.—Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

and if such criminal proceeding be instituted on a false charge of an offence punishable with death, [imprisonment for life], or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

¹ MANU/DE/0385/2008

² (2017) 14 SCC 194



10. The Hon'ble Supreme Court in the case of *Santokh Singh v. Izhar Hussain and Anr*³ had an occasion to consider the scope and ambit of Section 211 of the IPC. It has been held therein that the essential ingredients of an offence under Section 211 of IPC is to institute, or cause to be instituted any criminal proceedings against a person with intent to cause him injury or with similar intent to falsely charge any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge. Instituting or causing to institute false criminal proceedings assume false charge but false charge may be preferred even when no criminal proceedings result. It has also been held that false charge must refer to the original or initial accusation putting or seeking to put in motion the machinery of criminal investigation and not when seeking to prove the false charge by making deposition in support of the charge framed in the trial. It is thus seen that there may be a charge which does not amount to the institution of a criminal proceedings and there may be criminal proceedings which do not necessarily involve a charge of any offence. That itself may not attract the provision of Section 211 of IPC but what would attract the provision of Section 211 of IPC is that there has to be a charge having known that there is no just lawful ground for making a charge against the person concerned. The complaint must have been given with an intention to cause injury to a person. In other words, it must be embodied either in a complaint or in a report of cognizable offence to the police officer or an officer having the authority over the person against whom the allegations are made. The statement in order to constitute the charges should be made with the intention and object of setting criminal law in

³ (1973) 2 SCC 406



motion. The view taken by the Hon'ble Supreme Court in the case of **Santokh Singh (supra)** has further been considered and affirmed by the Hon'ble Supreme Court in its recent pronouncement in the case of **Himanshu Kumar and Ors. v. State of Chattisgarh & Ors.**⁴. Para 94 of the same is being reproduced as under:

“94. Thus, as explained by this Court in Santokh Singh v. Izhar Hussain (supra), the essential ingredient of an offence under Section 211 IPC is to institute or cause, to be instituted any criminal proceeding against a person with intent to cause him injury or with similar intent to falsely charge any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge. Instituting or causing to institute false criminal proceedings assume false charge but false charge may be preferred even when no criminal proceedings result. Now, the expression “falsely charges” in this section, in our opinion, cannot mean giving false evidence as a prosecution witness against an accused person during the course of a criminal trial. “To falsely charge” must refer to the original or initial accusation putting or seeking to put in motion the machinery of criminal investigation and not when seeking to prove the false charge by making deposition in support of the charge framed in that trial. The words “falsely charges” have to be, read along with the expression “institution of criminal proceeding”. Both these expressions, being susceptible of analogous meaning should be understood to have been used in their cognate sense. They get as it were their colour and content from each other. They seem to have been used in a technical sense as commonly understood in our criminal law. The false charge must, therefore, be made initially to a person in authority or to someone who is in a position to get the offender punished by appropriate proceedings. In other words, it must be embodied either in a complaint or in a report of a cognizable offence to the police officer or to an officer having authority over the person against whom the allegations are made. The statement

⁴ (2022) SCC OnLine SC 884



in order to constitute the “charges” should be made with the intention and object of setting criminal law in motion.

11. If the facts of the case in hand are perused the same would demonstrate that the marriage of the petitioner was solemnized with the respondent on 07.07.2007 and as per record, just after two days of the marriage, the petitioner eloped with her friend *Sunny* on 10.07.2007. The father of the petitioner lodged a missing report on 10.07.2007 at Police Station Kirti Nagar, Delhi, whereas, the father of the respondent also lodged a missing report on 11.07.2007 at Police Station Palam Vihar, Gurgaon. It is seen from the record that on 16.07.2007 an officer from Police Station Kirti Nagar informed the respondent that the petitioner had returned to her parental house and accordingly the respondent attended the police station on 17.07.2007. On 17.07.2007, the petitioner was present at the Police Station and she refused to join the respondent and in the presence of members of both the families she signed settlement agreeing therein that all dowry articles were to be taken back by her, which was done on 17.07.2007 itself and she would continue to live with *Sunny* and shall marry him. She, thereafter filed a maintenance petition. However, the same was dismissed on 16.04.2009. It is seen that despite the fact that she entered into a settlement, she filed a complaint before CAW cell on 17.04.2008 alleging therein that the respondent and in-laws are harassing the petitioner on account of non-fulfilment of demand of dowry. However, the said complaint after inquiry was closed by CAW cell on 19.08.2008. It is also to be noted that a decree of divorce was granted at the instance of respondent vide judgment and decree dated 29.05.2010 where the court had given a categorical finding that the petitioner was having an affair with *Sunny*



and she did not live with the respondent-husband and the marriage was not consummated.

12. The Magistrate by impugned order, after due application of mind, has noted the entire circumstances and found that the petitioner had made complaint with an intention and object to set criminal law in motion knowing well that the allegations made in the complaint are false. Such an act was done with an intent to injure the respondent and, therefore, the learned MM recorded that *prima-facie* case for issuance of summons for commission of offence under Section 211 of IPC is made out.

13. It is a settled law that the Magistrate is not expected to weigh the evidence meticulously as if he was to conduct trial. Only preliminary inquiry is necessary to ascertain whether there exist sufficient ground for proceeding against the accused.

14. The law with respect to exercise of power under Section 482 of Cr.P.C. is also well settled. The court should not, except in extra ordinary circumstances, exercise its jurisdiction under Section 482 of Cr.P.C., so as to quash the proceedings after they have been initiated. The power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The court will not be justified in embarking upon an inquiry as to the reliability and genuineness or reliability of the allegations made in the complaint.

15. So far as the judgment relied upon by learned counsel for the petitioner in the case of *M.K. Razdan (supra)* is concerned, in that case this court has held that false charge of offence with intention to cause injuries to any person would not mean as if an FIR is lodged against any



person. It has been held that a person cannot be held to be liable under Section 211 of IPC, only on the basis of filing of an FIR. What is required under the law is to prove that the FIR is false. Under the facts of that case it was found that no FIR was registered on the complaint made therein and, therefore, no offence under Section 211 of IPC was found. As stated above, this court, at this stage, is not examining as to whether the offence under Section 211 of IPC is fully established or not. The court has to examine whether the learned Magistrate has committed any error while issuing summons to the petitioner and whether there exists any *prima facie* case to proceed against the petitioner or not. Under the facts of the present case, there appears to be sufficient material to proceed against the petitioner and accordingly no fault is found in the order of issuing summons to the petitioner

16. Taking into consideration the overall facts and circumstances of the case, this court does not find it appropriate to exercise its power under Section 482 of Cr.P.C., and accordingly the petition stands dismissed.

17. This court has not expressed any opinion on the merits of the case.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

SEPTEMBER 21, 2022

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