

Saran Singh and Another Vs. State of Uttarakhand and Another

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Court : Uttaranchal

Decided On : Feb-13-2014

Judge : U.C. Dhyani

Appeal No. : Criminal Misc. Application No. 71 of 2011

Appellant : Saran Singh and Another

Respondent : State of Uttarakhand and Another

Judgement :

U.C. Dhyani, J. (Oral)

1. The applicants, by means of present application under Section 482 Cr.P.C., seek to quash the summoning order dated 30.10.2010 as well as the entire proceedings of Criminal Case No. 2660 of 2010, captioned as State vs. Saran Singh and others, under Sections 498-A, 323, 504, 506 IPC and Section of the Dowry Prohibition Act, pending before learned Judicial Magistrate, Vikas Nagar, District Dehradun.

2. Respondent no. 2 lodged a first information report against three named accused persons including the applicants at PS Vikas Nagar, which was registered as Case Crime No. 123 of 2010, under Sections 498-A, 323, 504, 506 IPC and Section of the Dowry Prohibition Act. After the investigation, a charge-sheet was submitted against the accused persons. Cognizance was taken on the charge-sheet and accused persons were summoned to face the trial. Aggrieved against the same,

present application under Section 482 Cr.P.C. was filed by the applicants.

3. According to the first information report, respondent no. 2 Smt. Sarita Rana was married to Prem Singh Rana (non-applicant) on 23.11.2005 in accordance with Hindu rites and rituals. The parents of respondent no.2 gave sufficient articles according to their capacity. A lot of money was spent in the marriage. After the marriage, the husband, mother-in-law, sister-in-law and brother-in-law of the respondent no. 2 ridiculed her for want of giving sufficient dowry. They also castigated her that the articles thus given, were not standard items. A pauper also does not give such (worthless) articles in the marriage of his daughter. The husband of respondent no. 2 was posted as Clerk in Defense Estate Central Command at Lucknow. Her husband dropped her at her parental home in April, 2006 and returned to Lucknow. She requested her husband to take her along with him, but he refused. He demanded money from her. The brothers of respondent no. 2 requested her husband not to harass her (victim) for bringing money. He hurled abuses at her and also assaulted her. She came to know that her husband had illicit relations with applicant no. 2 and respondent no. 2 was the wife worth namesake. Allegations were levelled by respondent no.2 that her husband was having extra- marital relations with her sister-in-law i.e. applicant no. 2. On 17.05.2009, her husband again demanded Rs. one lac and also assaulted her. On 13.01.2010, her brother-in-law i.e. applicant no.1 along with the applicant no. 2 came to her parental house and inquired whether a sum of Rs. one lac has been arranged or not When she denied the same, the applicants no. 1 and 2 themselves abused her and also assaulted her. Respondent no. 2 got her medically examined. She gave an application to SSP, Dehradun. She was also called in counseling centre. A request was therefore, made to take a suitable legal action against her husband, brother-in-law and sister-in-law.

4. On perusal of the first information report and other documents, it reveals that foundation of criminal offences is laid against the present applicants. It cannot be said at this stage that no offence punishable under Section 498-A, 323, 504, 506 of IPC and Section of the Dowry Prohibition Act was made out against the applicants. There appears to be no illegality in the impugned order, whereby the accused persons were summoned to face the trial. There was no infirmity in the

impugned order. Learned Judicial Magistrate, Vikas Nagar, therefore, appears to have committed no mistake in summoning the accused persons for the offences complained of against them.

5. Honble Supreme Court in **Amit Kapoor vs. Ramesh Chander and another, (2013) 1 Supreme Court Cases (Cri) 986**, has laid down certain principles in respect of exercise of jurisdiction under Section 482 Cr.P.C. Some of those principles, which are relevant in the context of present case, can be summarized as below:

i. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

ii. 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.

iii. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

iv. 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.

v. 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 loathe to

interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

6. There appears to be no illegality in the cognizance and summoning order (order under challenge). No interference is called for in the same at this stage, as would be evident from the law laid down by Honble Supreme Court in *Rajiv Thapar and others vs. Madan Lal Kapoor* (2013) 3 SCC 330. Para 28 of the said ruling is reproduced herein below for convenience:

œThe High Court, in exercise of its jurisdiction under Section 482 of the Cr.P.C., must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defence raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.?

7. The foundation of Criminal Offence is laid against the applicants in the instant case. Criminal proceeding pending against them therefore, should not be quashed. The jurisdiction under Section 482 Cr.P.C. should not be exercised to stifle or scuttle the legitimate prosecution.

8. It is also the settled law that the factual controversy need not be gone into by this Court in exercise of its inherent jurisdiction. Inherent jurisdiction under Section

482 of Cr. P.C. has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid in the Section itself. The applicants, in the instant case, are unable to pass those tests.

9. Application under Section 482 Cr.P.C. filed on behalf of the applicants is liable to be dismissed and is, accordingly, dismissed.

10. Honble Apex Court has also provided note of caution to High Courts in **Preeti Gupta and another vs. State of Jharkhand and another, (2010) 7 SCC 667**, in the following words:

œTo find out the truth is a Herculean task in a majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. Honble Apex Court cautioned that the allegations of such complaints are required to be scrutinized with great care and circumspection.?

11. It is, therefore, provided that if the applicants, who are respectively brother-in-law and sister-in-law of respondent no. 2, surrender before learned Judicial Magistrate, Vikas Nagar, Dehradun and seek bail, their bail application (s) be decided by the learned Magistrate on the same day.

12. Liberty is also granted to the applicants to take all the factual pleas before the Court below for obtaining his discharge/acquittal at an appropriate time.

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