

Mohan Lal and Another Vs. State of Uttarakhand and Another

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Court : Uttaranchal

Decided On : Feb-12-2014

Judge : U.C. Dhyani

Appeal No. : Criminal Misc. Application (C-482) No. 1093 of 2010

Appellant : Mohan Lal and Another

Respondent : State of Uttarakhand and Another

Judgement :

U.C. Dhyani, J. (Oral)

1) The applicants, by means of present application / petition under Section 482 of Cr.P.C., seek to quash the summoning order dated 18.11.2009, as also the proceedings of criminal case no. 1066 of 2009, State vs Pramod Bhatt and others, under Sections 420, 413, 498A, 323, 504, 506 of IPC and Section of the Dowry Prohibition Act, relating to police station, Raipur, pending in the court of Judicial Magistrate CBI, Dehradun.

2) Complainant (respondent no. 2 herein) lodged an FIR against five accused persons, including the applicants, on 04.08.2009, at police station, Raipur for the offences punishable under Sections 420, 413, 498A, 323, 504, 506 of IPC. After investigation, a charge-sheet was submitted against the accused persons, including the applicants, under Sections 420, 313, 498A, 323, 504, 506 of IPC and Section of the Dowry Prohibition Act. Cognizance was taken on the said charge-

sheet and accused persons were summoned to face the trial. Aggrieved against the same, i.e., order dated 18.11.2009, present application under Section 482 of Cr.P.C. was filed by the applicants, who are, respectively, father-in-law and mother-in-law of respondent no. 2.

3) As per FIR, respondent no. 2 was married to Pramod Bhatt alias Mithlesh Bhatt (non-applicant) on 16.02.2009, according to Hindu rites and rituals. After the marriage it was revealed that husband of respondent no. 2 was younger to her and was only a Matriculate. He did not earn the salary, as was projected at the time of their marriage. The husband and his family members were greedy persons. The husband starting assaulting respondent no. 2 after the marriage. He had illicit relations with other women. Husband of respondent no. 2 and the applicants ridiculed her for want of bringing sufficient dowry. On 02.03.2009, respondent no. 2 was again assaulted by her husband and in-laws. On 28.03.2009, respondent no. 2 came to know that she was pregnant. A positive report for pregnancy was given by the Medical Officer. Husband of respondent no. 2 tortured and assaulted her. He also asked respondent no. 2 to terminate her pregnancy. Respondent no. 2 was also insisted upon to bring Rs. 2,00,000/- or otherwise her pregnancy would be terminated. The pills for terminating pregnancy were given to her. Respondent no. 2 was medically treated while living at her parental home. FIR lodged by respondent no. 2 was elaborate in its contents to show that she was treated with cruelty, assaulted, abused and threatened with dire consequences for want of bringing sufficient dowry. A demand of Rs. 2,00,000/- was also made from respondent no. 2, which she could not fulfill.

4) On a bare reading of the FIR, foundation of criminal offences is laid against the applicants. It cannot be said, at this stage, that no prima facie case was made out against the applicants. Learned Magistrate, therefore, appears to have committed no illegality in issuing the summons to the applicants.

5) The narrow inspection hole through which a Court exercising jurisdiction under Section 482 of Cr.P.C. is expected to look into the things is “whether foundation of any criminal offence is laid against the applicants or not? If no such foundation is laid, the Court should intervene in exercise of its inherent jurisdiction. If prima facie

case is made out against the applicants, then the Court, in normal circumstances, should not intervene in the proceedings of the court below.

6) Honble Apex Court in *Amit Kapoor vs Ramesh Chander and another*, (2013) 1 SCC (Cri) 986, has laid down certain principles in respect of exercise of jurisdiction under Section 482 of Cr.P.C. One of the principle is that 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. 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. 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. 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. 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. If the records disclose commission of a criminal offence and the ingredients of the offence are satisfied, then such criminal proceedings cannot be quashed merely because a civil wrong has also been committed. The power cannot be invoked to stifle or scuttle a legitimate prosecution. The factual foundation and ingredients of an offence being satisfied, the court will not either dismiss a complaint or quash such proceeding in exercise of its original jurisdiction.

7) There is no occasion to quash the criminal proceedings pending against the accused-applicants in exercise of jurisdiction vested under Section 482 of Cr.P.C. at this stage, as would be evidenced from the law laid down by the Honble Supreme Court, in **Rajiv Thapar and others vs. Madan Lal Kapoor (2013) 3 SCC 330**. Paragraph no. 28 of the said ruling is reproduced here-in-below for convenience:

28. The 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 defences 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.?

8) It is settled law that the factual controversy need not be gone into by this Court in exercise of its inherent jurisdiction under Section 482 of Cr.P.C. Since foundation of criminal offences is laid against the accused-applicants for the offences complained of against them, therefore, this Court is of the opinion that it is not a fit case for interference in the proceedings of the court below.

9) 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 down in the section itself. At present the accused-applicants are unable to pass those tests.

10) The application under Section 482 of Cr.P.C. is therefore dismissed, but with the direction upon learned Magistrate that since the applicants are, respectively, father-in-law and mother-in-law of respondent no. 2, therefore, in case of their surrender, their bail applications be decided as expeditiously as possible and without unreasonable delay.

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