

Muradnavi and ors. Vs. State of U.P. Through Judicial Magistrate and Sabbir Ali S/O Abdul Wahid

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Court : Allahabad

Decided On : Apr-11-2005

Reported in : II(2005)DMC191

Judge : K.N. Ojha, J.

Acts : Indian Penal Code (IPC) - Sections 498A, 504 and 506; Dowry Prohibition Act - Sections 3 and 4; Code of Criminal Procedure (CrPC) - Sections 173(2), 173(8) and 482

Appeal No. : Criminal Misc. Application No. 3617 of 2000

Appellant : Muradnavi and ors.

Respondent : State of U.P. Through Judicial Magistrate and Sabbir Ali S/O Abdul Wahid

Advocate for Def. : R.P.S. Chauhan and ;K.D. Tiwari, Advs. and ;A.G.A.

Advocate for Pet/Ap. : Abhay Saxena, Adv.

Disposition : Application allowed

Judgement :

K.N. Ojha, J.

1. Instant application has been moved to set aside the order dated 17.12.1999 passed by Judicial Magistrate, Chaundausi, district Morabad, whereby final report was submitted in Crime No. 151 of 1999 under Section 498A, 504, 506 I.P.C. and 3/4 Dowry Prohibition Act was not accepted. Protest petition of O.P. No. 2 Sabbir Ali was allowed, final report No. 54 dated 24.7.1999 was set aside and direction was for re-investigation of the case.

2. Heard Sri Abhay Saxena, learned counsel for the applicant and learned AGA and have gone through the record.

3. List was revised. None appeared for the O. P. No. 2, Sabbir Ali.

4. The fact of the case is that the O. P. No. 2 Sabbir Ali moved application at kotwali, Chandausi, district Moradabad, that he married his daughter Afroz Bano with the applicant No. 1 Maradnavi on 21.12.1994, but demand for dowry being not satisfied as a result of which the applicants exercised cruelty on his daughter and compelled Afroz Bano to leave their residence and now she is living at her father's residence. On the application of Sabbir Ali investigation was made and final report was submitted on which Shabbir ali filed protest petition in which order for re-investigating was made. In protest petition moved by Shabbir Ali it was submitted that statement of the witnesses was not recorded by the Investigating Officer and wrongly the final report was submitted and this was the reason that direction was made for re-investigation in the case. But direction for re-investigation cannot be made. Reliance has been placed on 1998(38) ACC 136, K. Chandra Shekhar v. State of Kerala in which it has been laid down by Hon'ble the Apex Court that under Section 173(2) and (8) Cr. P. C. C. further investigation can be made by the police even after submission of the final report by the police but neither fresh investigation nor re-investigation can be done.

5. It was also laid down that further investigation means additional, more, supplementary investigation and such additional, more or supplementary investigation is in continuation of the earlier investigation and not a fresh investigation or re-investigation to be started ab-initio wiping out the earlier

investigation altogether. On completion of further investigation the Investigating agency has to forward to the Magistrate a further report or reports and not fresh report or reports- regarding the further evidence obtained during such investigation. Therefore, the impugned order dated 17.12.1999 for re-investigation is contrary to the principles laid down by Hon'ble the Apex Court in K. Chandra Shekhar's case. What was required by the Magistrate was to make direction for further investigation and not for re-investigation. The impugned order dated 17.12.1999 deserves to be modified to that extent.

6. The application moved by Muradnavi and others under Section 482 Cr.P.C. is allowed to the extent only that the order dated 17.12.1999 is modified and protest petition filed by the complainant Shabbir Ali is also allowed to the extent that Investigation Officer will make further investigation in the case and will submit additional report.

7. The application Under Section 482 Cr.P.C. moved is allowed accordingly.

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