

Kapil Kumar Goyal and ors. Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Mar-13-2007

Reported in : II(2007)DMC641

Judge : Barkat Ali Zaidi, J.

Appellant : Kapil Kumar Goyal and ors.

Respondent : State of U.P. and anr.

Judgement :

Barkat Ali Zaidi, J.

1. Smt. Iti Goyal @ Renu Singhal opposite party No. 2 complainant, filed an application under Section 156(3), Cr P.C. against her husband Kapil, applicant No. 1 her husband's parents Smt. Sushila and Suresh Kumar, applicant Nos. 5 and 6, her husband's elder and younger brothers Manoj Kumar and Jyoti, applicant Nos. 2 and 3 and the married sister Smt. Babli, applicant No. 4 under Section 498A and Sections 3/4, Dowry Prohibition Act before the Judicial Magistrate, J.P. Nagar for issuance of instructions to the police for registration of a case, and to investigate the same. The Magistrate, treating it as a complaint (Complaint No. 3630 of 2006) after examining the complainant and her witnesses under Sections 200 and 202 ordered issuance of summons under Section 498A and Sections 3/4, Dowry Prohibition Act against them.

2. That is what brings the applicants to this Court under Section 482, Cr.P.C.

Heard Mr. K.K. Singh, Advocate Counsel for the applicants and Addl. Government Advocate for the State.

3. The applicants say that the complainant was married seven-eight years back and has two children aged about 4 years and 3 years. Applicant Jyoti is now 18 years and the demand of dowry in the complaint is alleged to be raised for last eight years.

4. The current practice now-a-days is to implicate a large number of the relatives of the husband with a view to exert pressure. This tendency has also been noted by the Supreme Court in the case of *Sushil Kumar Shartna v. Union of India and Ors.* 111 (2005) CCR 43 (SC) : II (2005) DMC 325 (SC) : 2005 SCC (Cri) 1473 : 2005 (5) ALL MR (SC) 982 and the Supreme Court has itself suggested proper scrutiny about the involvement of the family members of the husband.

5. Courts must, therefore, exercise proper care and must be 'circumspect' in dealing with the cases where a number of persons besides the husband have been arraigned as accused unless there is specific prima facie evidence with regard to the involvement of particular accused, he should not be allowed to face trial and his name should be deleted, at the very outset.

6. In this case, it has to be noticed that more than seven years have ~ elapsed when the marriage took place. The Court must also examine whether this is a fall out of the normal wear and tear of marriage or whether there is actually a demand of dowry involved. The long period of seven years and the presence of two children is itself a circumstance which is really suggestive and the Court must take that into account while dealing with the controversy.

7. One of the accused who is the husband's younger brother applicant No. 2, Jyoti is now 18 years of age and it will be noticed that even a young boy of that age has not been spared. That is indicative of the whole sale inclusion of all the family members irrespective of their actual involvement.

8. In the circumstances, the continuance of all the other members of the family except the husband, would be a clear abuse of the process of law and their names should, therefore, be deleted from the array of the accused and only the husband's name (applicant No. 1 Kapil) will survive.

Ordered accordingly. Petition partly allowed.

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