

Kumari Reshma and ors. Vs. State of Utter Pradesh (U.P.) and anr.

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Court : Allahabad

Decided On : Sep-15-2010

Judge : Raj Mani Chauhan, J.

Acts : Code of Criminal Procedure (CrPC) (CrPc) - Section 482, 202; Indian Penal Code (IPC) - Sections 323, 504, 498-A; Dowry Prohibition Act - Sections 4.

Appeal No. : Criminal Misc Case No. 2998 of 2010.

Appellant : Kumari Reshma and ors.

Respondent : State of Utter Pradesh (U.P.) and anr.

Advocate for Pet/Ap. : Kumari Reshma, Adv.

Judgement :

1. Learned counsel for the petitioners files supplementary affidavit, which is taken on record. Heard learned counsel for the petitioners and learned A.G.A for the State as well as perused the documents available on record. This petition under Section 482 of Code of Criminal Procedure (hereinafter referred to as Code) has been filed by the petitioners for quashing the complaint case No. 4490 of 2010, Nazvi Vs Mohd. Sami Khan and others, Police Station Shahabad, District Hardoi pending in the court of Additional Chief Judicial Magistrate, Hardoi.

2. The submission of learned counsel for the petitioner is that petitioner No.5 Mohd. Sami is the husband of opposite party No.2 Smt Najvi. Opposite party No. 2 during subsistence of her marriage with petitioner No.5 had conducted another

marriage, therefore, petitioner No. 5 moved an application under Section 156 (3) of the Code against the opposite party No.2, her parents and others to direct the S.O. of police station concerned to register and investigate the case.

3. The application was treated as complaint. Learned Magistrate after recording the statement of complainant under Section 200 of the Code and statements of witnesses under Section 202 of the Code had summoned the opposite party No.2 and others for the offence under Sections 494, 342, 504, 506 I.P.C. Learned counsel for the petitioners submits that the application moved by the petitioner No.5 was treated as complaint and the proceedings were going on, in the meantime, opposite party No.2 just by way of counter blast moved an application under Section 156 (3) of the Code with false allegation against the petitioners to direct the S.O. of police station concerned to register and investigate the case which too was treated as complaint.

4. Learned Magistrate after recording the statements of complainant under Section 200 of the Code and her witnesses under Section 202 of the Code in mechanical way summoned the accused-petitioners for the offence under Sections 323, 504, 498-A I.P.C. and Section 4 D.P.Act. Therefore, the proceedings of complaint case as well as summoning order passed by the learned Additional Chief Judicial Magistrate, Hardoi are liable to be quashed. Learned A.G.A. opposed the petition. Considered the submissions of learned counsel for the petitioners and learned A.G.A.

5. From a perusal of the impugned order, it appears that the learned Magistrate after perusal of the statements of complainant recorded under Section 200 Cr.P.C. and witnesses recorded under Section 202 Cr.P.C. found, prima facie, evidence in support of commission of offence under Sections 323, 504, 498-A I.P.C. and Section 4 D.P.Act against the accused petitioners. Consequently, he by the impugned order summoned the accused petitioners which in my opinion does not suffer from any illegality and hence, the same cannot be quashed.

6. The petition is devoid of any merit and is liable to be dismissed. The petition is, therefore, dismissed. However, it is provided that in case accused-petitioners appear before the trial court within three weeks from today and move any

application for bail, the same will be disposed of by both the courts below expeditiously, preferably on the same day keeping in view the Full Bench decision of this Court in the case of Srimati Amrawati and another v. State of U.P. 2004 CBC page 705.

7. It is also provided that if the accused-petitioners, namely, Kumari Reshma, Mehrunnisha, Smt Seema after release on bail move any application to appear through counsel before the trial court, the same will be allowed by the trial court with the condition that they will personally appear before the court whenever their personal appearance will be needed. In the meantime, execution of warrant issued against the petitioners by the trial court will remain stayed.

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