

Mool Chandra Jain, and Others. Vs. State of Uttar Pradesh (U.P.).

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Court : Allahabad

Decided On : Aug-03-2010

Judge : Rajesh Dayal Khare, J.

Acts : Indian Penal Code (IPC) - Sections 323, 324, 498-A; Dowry Prohibition Act; Hindu Marriage Act - Section 12; Code of Criminal Procedure (CrPC) - Sections 482, 239, 245, 227, 228

Appeal No. : APPLICATION U/S 482 No. - 959 of 1994

Appellant : Mool Chandra Jain, and Others.

Respondent : State of Uttar Pradesh (U.P.).

Advocate for Def. : A.G.A, Adv.

Advocate for Pet/Ap. : V.S. Shukla; D.N. Misra, Adv.

Judgement :

1. List revised. None appears to press the present petition on behalf of the applicants. Learned AGA is present for the State-respondent.
2. The present 482 Petition has been filed for quashing of the proceedings of case crime no. 803 of 1999 under sections 323, 324, 498-A IPC and Dowry Prohibition Act pending before the Chief Judicial Magistrate, Muzaffarnagar.

3. This Court vide order dated 15.03.1994 had issued notices and had stayed further proceedings of aforesaid case. However, till date, no counter affidavit has been filed.

4. It is contended in the petition that applicant no. 3 had married the daughter of Jainendra Kumar Jain in April, 1993, but she was not physically fit for being married for which differences arose between the parties and ultimately the husband initiated proceedings for dissolution of the marriage under section 12 of the Hindu Marriage Act and it is contended that as a counter blast, present criminal prosecution has been drawn against the applicant, which is bad in law. It is last contended that the applicants no. 2 and 4 are ladies, therefore their bail application be considered on the same day by the Court below. From the perusal of the material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicants. All the submission made at the bar relates to the disputed question of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of R.P. Kapur v. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana v. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar v. P.P.Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. v. Mohd. Saraful Haq and another (Para-10)2005 SCC (Cr.) 283. The disputed defence of the accused cannot be considered at this stage. Moreover, the applicants has got right of discharge under Section 239, 245 or 227/228 Cr.P.C. as the case may through a proper application for the said purpose and they are free to take all the submissions in the said discharge application before the Trial Court.

5. The prayer for quashing the proceedings is refused.

6. However, it is provided that if the applicants appear and surrender before the court below within 30 days from today and apply for bail, then the bail prayer of the applicants no. 2 and 4 shall be considered by the Court below on the same day if possible and for remaining applicants their prayer for bail shall be considered in view of the settled law laid down by this Court in the case of Amrawati and another v. State of U.P. reported in 2004 (57) ALR 290. For a period of 30 days from today

or till the disposal of the application for grant of bail whichever is earlier, no coercive action shall be taken against the applicants. However in case the applicants do not appear before the Court below within the aforesaid period, coercive action shall be taken against them. With the aforesaid directions, this application is finally disposed of.

7. Learned AGA undertakes to inform the learned counsel for the applicant about the order passed today within 48 hours. Let a copy of this order be provided to the learned AGA for compliance.

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