

Rampal Singh and Others Vs. State of U.P.and Another

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Court : Allahabad

Decided On : Mar-18-2011

Judge : S.C. Agarwal, J.

Acts : Code of Criminal Procedure (CrPC) (Cr.P.C) - Section 244, 482; Indian penal code (IPC) - Sections 498-A and 323; Dowry Prohibition Act ; Code of Criminal Procedure (CrPC) - Sections 498A, 323, 504, 506; D.P. Act, - Sections 3 and 4;

Appeal No. : APPLICATION U/S 482 No. - 2739 of 2011

Appellant : Rampal Singh and Others

Respondent : State of U.P.and Another

Advocate for Def. : Govt. Advocate

Advocate for Pet/Ap. : S.K. Agrawal; J.S. Malveeya, Advs

Judgement :

1. Heard Sri S.K. Agarwal, learned counsel for the applicants and learned AGA for the State.
2. No notice is issued to private opposite party no. 2 in view of the order proposed to be passed today, however, liberty is reserved for private opposite party no. 2 to apply for variation or modification of this order if he feels so aggrieved.

3. This application u/s 482 Cr.P.C. has been filed with a prayer to quash the order dated 2.6.2010 passed by the Judicial Magistrate/ Addl. Civil Judge (J.D.)-II, Moradabad in complaint case no. 622 of 2006 (Uma v. Ram Pal & others), under Sections 498A, 323, 504, 506 IPC & D.P. Act, P.S. Civil Lines, District-Moradabad, whereby the application moved on behalf of the applicants accused for re-examination of witnesses examined u/s 244 Cr.P.C. was rejected.

4. The impugned order was challenged earlier by the applicants by means of Criminal Revision No. 3173 of 2010, which was dismissed by another Bench of this Court vide order 11.1.2011 on the ground of maintainability and liberty was granted to the applicants to file an application u/s 482 Cr.P.C. against the impugned order.

5. The applicants are the accused in the case pending before the Magistrate whereas opposite party no. 2 is the complainant. Even before the presence of the accused persons was procured during trial, on 23.2.2006 two witnesses on behalf of the complainant were examined by the Magistrate u/s 244 Cr.P.C. in the absence of the accused. A certified copy of the order-sheet has been filed in the records of the revision, which is before this Court. Earlier the applicants approached this Court by means of Application u/s 482 Cr.P.C. No. 12824 of 2005 for quashing the proceedings, which was disposed of vide order dated 13 th September, 2005 with liberty to move an application for discharge through counsel. Such application was moved and ultimately rejected by the Magistrate. On 1.12.2006 and 2..6.2008, the accused persons surrendered before the court below and were granted bail.

6. On 12.5.2010, an application was moved on behalf of the applicants that statements u/s 244 Cr.P.C. were recorded in the absence of the accused and therefore, those witnesses should be reexamined u/s 244 Cr.P.C. The said application was rejected by the Magistrate.

7. Learned counsel for the applicants submitted that for recording evidence u/s 244 Cr.P.C., the presence of accused is a must. Section 244 Cr.P.C. provides as under :-

"Evidence for prosecution.- (1) When, in any warrant-case instituted otherwise than on a police report the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

8. From the aforesaid provision, it is obvious that for recording evidence u/s 244 Cr.P.C., the presence of accused in court is necessary. The presence of the accused may either be in person or through counsel but order dated 23.2.2006 specifically mentions that none appeared on behalf of the accused persons. It is clear that on 23.2.2006, when statements of P.W.-1 and P.W.-2 were recorded by the Magistrate u/s 244 Cr.P.C., neither the accused persons were present nor their counsel. Therefore, those statements cannot be deemed to be evidence in the case and cannot be said to be proper statements u/s 244 Cr.P.C.

9. It appears that learned Magistrate does not have any clear idea of procedure prescribed for complaint cases. Under Section 244 Cr.P.C. makes it clear that before recording evidence of the complainant, presence of the accused is necessary.

10. In these circumstances, the impugned order cannot be sustained and is liable to be quashed.

11. The application is allowed. The impugned order dated 2.6.2010 is quashed. Learned Magistrate is directed to record the statements of P.W.-1 and P.W.-2 again u/s 244 Cr.P.C. and thereafter shall proceed with the case in accordance with law.

12. Copy of this order be sent to District Judge, Moradabad, so that he may impart proper advice and guidance to the Magistrates.