

Court No. - 89

Case :- APPLICATION U/S 482 No. - 1540 of 2022

Applicant :- Ashish And 2 Others

Opposite Party :- State Of U.P.And Another

Counsel for Applicant :- Arvind Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Anil Kumar Ojha,J.

Heard learned counsel for the applicants, learned A.G.A. for the State by means of Video-Conferencing and perused the record.

This Application under Section 482 Cr.P.C. has been filed with a prayer to quash the entire criminal proceeding including charge-sheet dated 04.09.2020 as well as cognizance and summoning order dated 11.10.2021 of Case No. 15977 of 2021 arising out of Case Crime No. 309 of 2020 (State Vs. Ashish & Others) under Sections 494, 498A, 323, 506 I.P.C. and Section 3/4 of D.P. Act against the applicant no. 1 and under Sections 498A, 323, 506 I.P.C. and Section 3/4 of D.P. Act against Applicant Nos. 2 and 3, P.S., Sipri, District, Jhansi pending in the Court of Chief Judicial Magistrate, Jhansi.

Submission of learned counsel for the applicants is that from the matter available on record, offences under Sections 494, 498A, 323, 506 I.P.C. and Section ¾ of D.P. Act are not made out against the applicants. Further submitted that applicant no. 1 Ashish is the husband of the victim, Seema whereas applicant nos. 2 and 3 are father-in-law and mother-in-law. Next submitted that there is six days' delay in lodgement of the F.I.R. Case has been lodged with ulterior motive and mala-fide intention to harass the applicants. There are only general allegations against the applicants, hence this Petition.

Per-contra, learned A.G.A. opposed the aforesaid prayer and submitted that there are specific allegations of demand of dowry and beating the victim by the applicants. Factual controversy cannot be settled in this proceeding under Section 482 Cr.P.C.

Learned counsel for the applicants relied upon the judgement of **Hon'ble Apex Court reported in 1992 AIR (1) page 694 (State of Haryana Vs. Chaudhary Bhajan Lal)**, para 26 of **Geeta Mehlotra Vs. State of U.P.** passed in Criminal Appeal No. 1674 of 2012 arising out of SLP (Crl.) No. 10547 of 2010

& para 6 of Hon'ble Jammu & Kashmir and Ladakh High Court at Srinagar in CRM (M) No. 83 of 2020 vide judgement dated 25.08.2021.

The authorities relied upon by the learned counsel for the applicant do not apply to the facts of the present case because victim, Seema in her statement recorded under Section 161 Cr.P.C., which is at page no. 33 of the paper-book, has specifically stated that on 5.08.2020, she again went to her nuptial home with her husband, Ashish. Father-in-law, Gauri Shankar, mother-in-law, Prem Kumari and two sisters-in-law beaten her and threatened to pour kerosene oil. She anyhow escaped from there and came to her father's home. She has further stated that she came to know that her husband, Ashish has solemnized another marriage with Deeksha, daughter of Pahalwan, Resident of Talaur, P.S. Shahjahanpur, District Jhansi during lockdown.

Learned counsel for the applicant specifically mentioned the judgement of High Court of Hon'ble Jammu & Kashmir and Ladakh at Srinagar in CRM (M) No. 83 of 2020 wherein on the basis of non conducting of preliminary enquiry, F.I.R. relating to matrimonial dispute was quashed.

Conducting or not conducting preliminary enquiry is the domain of Investigating Officer on which basis, F.I.R. cannot be quashed.

In ***M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharastra and Others, 2020 SCC Online SC 850***, the Hon'ble Apex Court has held:

"iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the rarest of rare case (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule."

Following other authorities can be cited on the aforesaid point: ***R. P. Kapur vs. The State Of Punjab, AIR 1960 SC 866, State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604.***

Perusal of the record reveals that an F.I.R. was lodged against

the applicants in Case Crime No. 309 of 2020 under Sections 498A, 323, 506 I.P.C. and Section 3/4 of POCSO Act. I.O. after collection of evidence and conclusion of investigation, submitted charge-sheet in the matter, thereafter Chief Judicial Magistrate, Jhansi took cognizance on 11.10.2021 and summoned the applicants to face trial.

Whether victim was beaten and harassed by the applicants; whether there was demand of dowry or not; whether husband, Ashish solemnized another marriage with another lady named Deeksha are questions of fact which cannot be adjudicated upon in this proceeding. Appraisal of evidence is also not permissible in proceedings under Section 482 Cr.P.C.

In view of the above, I am of the considered opinion that this Application lacks merit and is liable to be dismissed.

Accordingly, this application under Section 482 Cr.P.C. is dismissed.

Order Date :- 4.2.2022

A. Mandhani