

AFR

Neutral Citation No. - 2023:AHC:181300

Court No. - 88

Case :- APPLICATION U/S 482 No. - 23148 of 2022

Applicant :- Smriti Singh Alias Mausami Singh And 3 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Shri Prakash Dwivedi, Saurabh Sachan

Counsel for Opposite Party :- G.A., Ajatshatru Pandey

Hon'ble Sanjay Kumar Singh, J.

1-Heard Mr. Saurabh Sachan, learned counsel for the applicants, Mr. Rabindra Kumar Singh, learned Additional Government Advocate assisted by Ms. Pratiksha Rai, learned Brief Holder for the State of U.P./opposite party No.1 and Mr. Ajatshatru Pandey, learned counsel appearing on behalf of the opposite party no. 2.

2-This application under Section 482 Cr.P.C. has been filed by the applicants with a prayer to quash the summoning order dated 21.04.2022 and proceedings of Complaint Case No. 2513 of 2021 (*Satyam Singh vs. Smriti Singh*), under Sections 494 and 109 I.P.C., Police Station Sigra, District Varanasi, pending in the Court of learned Civil Judge (J.D.) F.T.C. 1st, Varanasi.

3-The facts of the case which are required to be stated are that on 05.06.2017, marriage of the complainant/opposite party no. 2-Satyam Singh was solemnized with the applicant no.1-Smriti Singh alias Mausami Singh as per Hindu Rites and Rituals but their marriage was not successful and on account of acrimonious relation and matrimonial dispute, applicant no. 1 lodged a first information report on 30.06.2017 registered at Case Crime No. 0341 of 2017 for the offence under Sections 498-A, 323, 504, 506, 354 I.P.C. and Sections 3/4 Dowry Prohibition Act, at Police Station-Kotwali Dehat, District-Mirzapur against opposite party no. 2 and his other family members namely Kaushlendra Pratap Singh, Suman Singh and Shivam Singh @ Banti making allegations *inter-alia* of her harassment and torture by the accused persons adopting different *modus-operandi* as well as demand of additional dowry. In the F.I.R., it is also alleged that on account of non-fulfillment of their demand of dowry, she was ousted from her

matrimonial home on 22.06.2017. After culmination of investigation, charge-sheet dated 24.01.2018 has been submitted against all the accused persons named in the F.I.R. dated 30.06.2017. The said charge-sheet was challenged by the accused persons including opposite party no. 2 by filing an Application under Section 482 Cr.P.C. No. 929 of 2019, in which the matter was referred to mediation and conciliation centre vide order dated 10.01.2019 but the mediation between the parties concerned has failed. The applicant no. 1, in addition to F.I.R. dated 30.06.2017, also filed a Criminal Misc. Case No. 64 of 2018, under Section 125 of Cr.P.C. before the Principal Judge, Family Court, Mirzapur which was decided ex-parte by the Family Court vide order dated 11.01.2021 and the opposite party no. 2 (husband of applicant no. 1) was directed to pay a sum of Rs. 4,000/- per month to his wife (applicant no. 1) until she gets remarried. Thereafter, opposite party no. 2 gave an application before the Higher Police Officials making allegation of bigamy against his wife-Smriti Singh @ Mausami/applicant no.1. The said application was thoroughly investigated by the Circle Officer Sadar, District Mirzapur and allegations of bigamy etc. against the applicant no. 1 was found false. Accordingly, inquiry report dated 06.01.2021 was submitted by Circle Officer Sadar, Mirzapur to Superintendent of Police, Mirzapur. After that the complainant/opposite party no. 2 filed a complaint dated 20.09.2021 against the applicants as well as against Mahant Singh @ Raghvendra Singh, Jhallar Singh, Vimla Devi, Ramjit Singh and six-seven other unknown persons for the alleged offence under Sections 494 and 109 I.P.C. making allegations *inter-alia* that the applicant no. 1-Smriti Singh @ Mausami Singh had sanctified her second marriage on 03.09.2017 with Mahant Singh @ Raghvendra Singh s/o Jhallar Singh r/o Village Bhikaripur, Police Station Kachwa, District Mirzapur in the house of Ramjit Singh situated in District Varanasi in accordance with Vidhiwat Hindu Dharm Shastra and she is living with her second husband without taking divorce from him. The learned Magistrate, after recording the statement of the complainant under Section 200 Cr.P.C. and his witnesses namely Kaushlendra Pratap Singh and Suraj Kumar Rai as PW-1 and PW-2 respectively, summoned the applicants as well as other co-accused persons under Sections 494/109 I.P.C. vide order dated 21.04.2022, which is the subject matter of challenge in the present application.

4-Assailing the impugned summoning order dated 21.04.2022, main substratum of argument of learned counsel for the applicants are as under:-

i-The applicants have been falsely implicated in this case. The complaint dated 20.09.2021 of opposite party no. 2 is nothing but a counter-blast case against applicants on account of F.I.R. dated 30.06.2017 lodged by applicant no. 1 against opposite party no. 2 and his family members, order dated 11.01.2021 passed by Family Court on an application under Section 125 Cr.P.C. of applicant no. 1 and to nullify the enquiry report dated 06.01.2021 of Circle Officer Sadar, District Mirzapur.

ii-Much emphasis has been given by contending that the allegations levelled against the applicants are wholly false and based on concocted facts. The alleged second marriage of the applicant no. 1-Smriti Singh @ Mausami with Mahant Singh @ Raghvendra Singh has been vehemently denied.

iii-There is no act or evidence to prove the second marriage of applicant no. 1. Referring to the contents of the complaint dated 20.09.2021 and statements under Section 200 and 202 Cr.P.C., it is also argued that even there is no whisper about the facts that as to what rites, ceremonials, rituals, formalities, protocols, customary acts and procedure were performed in the alleged second marriage of applicant no. 1.

iv-In the complaint and statements of the complainant as well as witnesses, there is lack of '*solemnization*' of marriage and ceremony of '*Saptapadi*' as per Section 7(2) of Hindu Marriage Act. There is no mention of the name of priest in the complaint who recited the rites of alleged second marriage, hence, no offence under Section 494 and 109 I.P.C. is made out against the applicants.

v-The bald allegation of second marriage has been levelled against applicant no.1 without any cogent material admissible in evidence.

vi-In the complaint, the complainant has mentioned that he has appended the photograph of the alleged second marriage of applicant no. 1 with Mahant Singh @ Raghvendra Singh, but in the said photograph bride's face is not visible as bride's face is completely covered with a veil, hence, it cannot be

presumed that the said photograph relates to the second marriage of applicant no.1. It is also pointed out that neither negative nor certificate under Section 65B(4) of the Indian Evidence Act has been filed by the complainant and source of photograph has also not been mentioned by the complainant in the complaint.

vii-On the strength of aforesaid arguments, lastly it is submitted that criminal proceeding of this case against the applicants is nothing but a malicious prosecution, which is abuse of process of the Court and is liable to be quashed. Learned counsel for the applicants in support of his arguments placed reliance upon the following judgments of the Apex Court:-

(a) Bhaurao Shankar Lokhande & Anr. vs. State of Maharashtra and Anr., AIR 1965 SC 1564.

(b) Priya Bala Ghosh vs. Suresh Chandra Ghosh, (1971) 1 SCC 864.

(c) Gopal Lal vs. State of Rajasthan, (1979) 2 SCC 170

5-Learned A.G.A. appearing on behalf of the State of U.P. submits that the F.I.R. dated 30.06.2017 lodged by applicant no. 1 was properly investigated and the allegations against the opposite party no. 2 and his family members were found correct, therefore, charge-sheet dated 24.01.2018 was submitted against them. He also submits that so far as the allegation of bigamy against applicant no. 1 is concerned, the same was also properly investigated by the Circle Officer Sadar, District Mirzapur on the application of the complainant and the said allegation of second marriage of applicant no. 1 with Mahant Singh @ Raghvendra Singh was found false and accordingly, the inquiry report dated 06.01.2023 was submitted to Superintendent of Police, Mirzapur.

6-Learned counsel appearing on behalf of the complainant opposed the submissions of learned counsel for the applicants by contending that the witnesses Suraj Kumar Rai and Kaushlendra Pratap Singh have seen the second marriage of applicant no. 1 with Mahant Singh @ Raghvendra Singh and photograph of applicant no. 1 with Mahant Singh @ Raghvendra Singh was also filed along with the complaint but

he did not dispute the other factual aspect of the matter argued on behalf of the applicants as noted above.

7-Before entering into the matter, it would be relevant to quote Section 494 of I.P.C. :-

"Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception – This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge."

8-The expression 'whoever.....marries' mentioned in Section 494 of I.P.C. must mean 'whoever.....marries validly' or 'whoever.....marries and whose marriage is a valid one if the marriage is not a valid one, according to law applicable to the parties, no question of its being void by reason of its taking place during life of the husband or wife of the person marrying arises. If the marriage is not a valid marriage, it is no marriage in the eye of law.

9-In order to make out an offence of bigamy under Section 494 I.P.C., following ingredients should be established by the prosecution.

(i) That the accused was already married to some person; proof of actual marriage is always necessary;

(ii) That the husband or wife to whom the person was married as the case may be, was alive on the date of the second marriage and proof thereto satisfactory to the Court

must be adduced;

(iii) That the accused married another person proof of celebration of second marriage must be in the same manner as that of the first; and

(iv) That the second marriage was void by reason of its taking place during the lifetime of the first spouse.

10-As per Section 7 of Hindu Marriage Act, 1955, ceremonies in a hindu marriage is explained as under:-

(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

11-Having heard the submissions of learned counsel for the parties and perusing the record, I find that at the initial stage when this case was filed, this Court vide order dated 05.09.2022 had granted three weeks' time to the complainant/opposite party no.2 to file counter affidavit, but no counter affidavit has been filed by the complainant. I also find that the complainant-Satyam Singh and witness namely Kaushlendra Pratap Singh are son and father and they are also accused in the F.I.R. dated 30.06.2017, lodged by applicant no. 1. The witness Suraj Kumar Rai is also relative of the complainant. The application of the complainant with same allegation of second marriage against the applicant no. 1 was also investigated by the police officials and the allegation was found false. So far as the second marriage of applicant no. 1 is concerned, it is well settled that the word 'solemnize' means, in connection with a marriage, 'to celebrate the marriage with proper ceremonies and in due form'. Unless the marriage is celebrated or performed with proper ceremonies and due form, it cannot be said to be 'solemnized'. If the marriage is not a valid marriage, according to the law applicable to the parties, it is not a marriage in the eyes of law. It is also well settled that to constitute an offence under Section 494 I.P.C., it is necessary that the second marriage should have been celebrated with proper ceremonies and in due form. The '*Saptapadi*' ceremony under the Hindu Law is one of the

essential ingredients to constitute a valid marriage but the said evidence is lacking in the present case. Even there is no averment with regard to '*Saptapadi*' in the complaint as well as in the statements under Section 200 and 202 Cr.P.C., hence, this Court is of the view that no *prima-facie* offence is made out against the applicants as the allegation of second marriage is a bald allegation without corroborative materials. So far as the alleged photograph is concerned, this Court is of the view that photograph is not sufficient to prove the factum of marriage, especially when the same are not proved on record in accordance with the Evidence Act. Where marriage is disputed, it is not enough to find that marriage took place leaving it to be presumed that rites and ceremonies necessary to constitute a legal marriage were performed. In absence of cogent evidence in this regard, it is difficult to hold that the '*Saptapadi ceremony*' of the marriage as contended by the complainant was performed so as to constitute a valid marriage between the parties concerned. As such on taking into consideration the contents of the complaint on its face value, the basic ingredients to constitute an offence under Section 494 read with section 109 of I.P.C. are lacking, hence, no offence is made out against the applicants.

12-Here it would be apposite to quote some relevant judgments of the Apex Court, which are as under:-

12.1-The Apex Court in **Madhavrao Jiwajirao Scindia and others vs. Sambhajirao chandrojirao Angre and others**, (1988) 1 SCC 692 observed in para 7 as under :-

"The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

12.2-The Apex Court in **State of Harayana and others vs Chaudhary Bhajan Lal and others**, 1992 SCC (Cri) 426, considering a series of decisions has laid down seven criteria for quashing the entire proceedings in exercise of powers under Section 482 Cr.P.C. by this Court, which reads as under:-

"(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on

the accused and with a view to spite him due to private and personal grudge."

12.3-The Apex Court in the case of **Pepsi Foods Ltd. vs. Special Judicial Magistrate**, (1998) 5 SCC 749, has observed that:-

"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

12.4-The Apex Court in case of **Dilawar Balu Kurane Vs. State of Maharashtra**, (2002) 2 SCC 135, has observed that:-

"In exercising jurisdiction under Section 227 Cr.P.C, the Judge cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

12.5- The Apex Court in the case of **Som Mittal vs. Government of Karnataka**,(2008) 3 SCC 753, has held that :-

"When grave miscarriage of justice would be committed if the trial is allowed to proceed; or where the accused would be harassed unnecessarily if the trial is allowed; or when prima facie it appears to Court that the trial would likely to

be ended in acquittal. Then the inherent power of the Court under section 482 of the Code of Criminal Procedure can be invoked by the High Court either to prevent abuse of process of any Court, or otherwise To secure the ends of justice."

12.6-The Apex Court in case of **Ravinder Singh Vs. Sukhbir Singh & Ors**, (2013) 9 SCC 245, has held as under:-

"It may be so necessary to curb the menace of criminal prosecution as an instrument of operation of needless harassment. A person cannot be permitted to unleash vendetta to harass any person needlessly. Ex debito justitiae is inbuilt in the inherent power of the court and the whole idea is to do real, complete and substantial justice for which the courts exist. Thus, it becomes the paramount duty of the court to protect an apparently innocent person, not to be subjected to prosecution on the basis of wholly untenable complaint."

13-On the aforesaid discussion, this Court is of the view that the criminal proceedings against the applicants initiated by opposite party No. 2 is nothing but a malicious prosecution with an ulterior motive, which is clear abuse of process of the Court. Impugned summoning order dated 21.04.2022 of this case is not sustainable. This Court under the facts and circumstances of this case, feels that it is the solemn duty of the Court to protect apparently an innocent person, not to be subjected to such frivolous prosecution on the basis of wholly untenable allegations and complaint, if criminal proceeding is allowed to go on, the same will tantamount to causing grave miscarriage of justice, therefore in order to secure the ends of justice, the impugned criminal proceeding against the applicants is liable to be quashed.

14-As a fallout and consequence of aforesaid discussion, impugned summoning order dated 21.04.2022 and further proceedings of Complaint Case No. 2513 of 2021 (*Satyam Singh vs. Smriti Singh*) against the applicants are hereby quashed.

15-Accordingly, the present application under Section 482 Cr.P.C. stands **allowed**.

Order Date :- 19.9.2023

Saurabh