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Court No. - 68

Case :- APPLICATION U/S 482 No. - 33349 of 2022

Applicant :- Kalika Pratap Singh

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

Counsel for Applicant :- Shri Krishna Mishra, Ajay Mishra, Sheshadri Trivedi

Counsel for Opposite Party :- G.A., Ashish Pandey, Pragya Pandey

Hon'ble Shekhar Kumar Yadav, J.

Heard Mr Satish Trivedi, learned senior counsel assisted by Mr Sheshadri Trivedi, learned counsel for the applicant, Mr Radhey Shyam Shukla, learned counsel for the private respondent no. 2, learned AGA for the State and perused the record.

By means of this application, applicant has prayed for quashing of the entire proceedings of Criminal Case No. 13802 of 2022 (State Vs Kalika Pratap Singh) arising out of Case Crime No. 401 of 2019, Under Sections 420, 376, 306, 406, 120-B IPC and Section 67 of IT Act and Section 3/4 of D.P. Act, P.S. Jhunsi, District Prayagraj including the charge sheet dated 12.05.2022 and the summoning order dated 18.06.2022.

Brief facts of the case are that on the basis of the application filed by opposite party no. 2 an FIR was registered on 2.5.2019 bearing case Crime No. 401 of 2019, under Section 420 IPC and Section 3/4 of D. P. Act at P.S. Jhunsi, District Prayagraj alleging therein that applicant and daughter of opposite party no. 2 came in contact through facebook and they had visited Bhopal twice and were in talking terms with each other and, thereafter, father-in-law of informant and two of his uncles including the informant went to the house of the applicant at Allahabad and talk took place on 05/07/2017 and thereafter informant and his uncles went to the house of the applicant's brother at Mathura on 20/08/2017 and after that applicant's brother came to my house at Bhopal to see the girl and returned thereafter. It is further alleged that exactly after one year i.e. on 18/08/2018, informant is said to have gone to Mathura where applicant's uncle, namely, Jai Prakash Singh, brother, namely, Arvind Singh and another brother, namely, Vishwanath Pratap Singh were present and there the informant is said to have paid Rs. 24,80,000/- and again informant is said to have gone to the house of applicant at Allahabad on 16/11/2018, where the date of marriage was finalized and Tilak's date has been fixed on 07/05/2019 and Marriage's date have been fixed for 15/05/2019. It is further alleged that the D'zire Car, which was

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promised to be given on Tilak ceremony has been purchased by the informant on 30/04/2019 and when the date of marriage and Tilak came closer and the invitation cards have been distributed and the dates reached nearer, then the applicant, without any reason, is said to have denied for marriage because family members of the applicant are said to have refused for marriage. Thereafter, informant and other family members including the victim are said to have reached the applicant's house at Allahabad and there they were threatened to ran away from his house. On this, daughter of the informant is said to have consumed some poisonous substance as a result of which her condition worsened and at that time applicant is said to have taken the victim to Swarooprani Hospital and got admitted her there and when her condition could not be approved, she was lateron transferred and admitted to Shakuntala Hospital.

During investigation a suicide note of victim was recovered by the Investigating Officer, thereafter, the Investigating Officer added the new section as Sections 376, 306, 406, 120-B IPC and Section 67 of I. T. Act and after investigation, Investigating Officer found no case against the applicant and therefore submitted final report against the applicant on 18.09.2021. Which was objected by the mother of the deceased by moving application before the police authority for further investigation into the matter upon which an enquiry was ordered and the enquiry officer recommended for further investigation into the matter under Section 173(8) Cr.P.C. thereafter vide order dated 18.2.2022 SSP, Prayagraj ordered further investigation into the matter and pursuant to the order dated 18.02.2022 the Investigating Officer conducted investigation and thereafter submitted charge sheet against the applicant on 7.5.2022 in Case Crime No. 401 of 2019, under Sections 420, 376,306,406,120-B IPC and Section 67 of IT Act and Section 3/4 of D.P.Act upon which the court below took cognizance vide order dated 12.05.2022 and summoned the applicant to face the trial. Further, NBW has also been issued against the applicant vide order dated 26.08.2022.

It is submitted that the victim and applicant used to chat on facebook and with the passage of time, they developed love and intimacy and with the consent of the family members their marriage was settled but on coming to know that daughter of the informant is involved in several criminal cases including on registered as Case Crime No. 0005 of 2018, under Sections 384, 388, 120-B IPC at P.S. Crime Branch, Bhopal Madhya Pradesh, lodged by one Member of Legislative Assembly, Madhya Pradesh

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for allegedly blackmailing him, and after coming of the said fact into knowledge of the family members of the applicant, the applicant denied to perform said marriage.

It is contended by learned counsel for the applicant that the police has not taken permission of Magistrate for conducting further investigation into the matter and supplementary charge sheet has been submitted in gross violation of the judgement of Apex Court in the case of **Vinay Tyagi Vs Irshad Ali @ Deepak and others, 2012 (2) Supreme (SC) 903.**

It is further contended by learned counsel for the applicant that the order dated 12.05.2022 has been passed without applying his judicial mind as the same has been passed without considering the nature of allegations and the evidence both oral and documentary. In support of this argument, he relied upon the case of **M/s Pepsi Food Ltd and another Vs Special Judicial Magistrate and others, 1998 UP Cr.R. paged 118.** It is further contended by learned counsel for the applicant that it is not rape if consensual physical relationship was based on a genuine promise of marriage, which could not be fulfilled. In support of this argument, he relied upon the case of **Mandar Deepak Pawar Vs The State of Maharashtra and another, (Criminal Appeal No.442 of 2022).** It is further contended that making refusal to marry by the applicant to the deceased cannot be said to be an instigation on the part of the applicant. It is further submitted that abetment involves a mental process of instigating a person or intentionally aiding a person in doing a thing. Without a positivist act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. It is further contended that in order to convict a person under Section 306 IPC there has to be a clear mens-rea to commit offence. It also requires an active act or direct act which leads deceased to commit suicide. In support of his argument, he relied upon the case of **Gangula Mohan Reddy Vs State of Andhra Pradesh (2010)1 SCC 750.**

The contention of the learned counsel for the applicant is that no offence against the applicant is disclosed and the present prosecution has been instituted with malafide intentions for the purposes of harassment.

Mr R. P. Mishra, learned AGA opposed the application and submitted that a suicide note in the handwriting of deceased is found and the same been sent before the handwriting expert and there is a report to the effect that same was written by the victim herself. The Investigating Officer, investigated the matter and

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submitted charge sheet against the applicant. It is not a case of grave injustice or abuse of process of law. It is further contended that further investigation under section 173(8) Cr.P.C. is statutory right of Police which does not requires permission from any Magistrate. In this connection, he has drawn attention of this Court to the provisions enshrined under section 173(8) Cr.P.C. which does not contemplate any prior permission of the Magistrate. Learned AGA as well as learned counsel for respondent no. 2 has further claimed that judgment of Apex Court in **Vinay Tyagi's case** (Supra) is not applicable in the instant case as the same is against the express provisions of Section 173(8) Cr.P.C. He has further argued that even if it is assumed that prior permission of Magistrate is necessary, then absence of prior permission is an irregularity which has been cured subsequently by the Magistrate by taking cognizance on the supplementary charge sheet.

Further learned AGA relied upon the decision of the Hon'ble Apex Court in the case of **Daxaben Vs. The State of Gujrat & Ors, SLP Criminal No. 1132-1155 of 2022 decided on 29.07.2022** to contend that in this case a opinion was exhibited that even indirect act of incitement to the commission of suicide would constitute the offence of abetment of suicide. In the said case, it has also been said that in exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegation in the complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence.

From the perusal of 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 applicant. All the submissions 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 **M/s Neeharika Infrastructure PVT Ltd. Vs State of Maharashtra, AIR 2021 SC 1918, R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192, lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283, State of M.P. Vs Awadh Kishore Gupta and others [(2004) 1 SCC 691, and Dr. Monica Kumar and Another Vs State of UP and Others, (2008) 8 SCC 781**. The disputed defence of the accused cannot be considered at this stage. Moreover, the applicant has got a right of discharge

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under Section 239 or 227/228 Cr.P.C. or 245 Cr.P.C. as the case may be, before the court below and he is free to take all the submissions in the said discharge application before the trial court.

Whether accused instigated deceased to take poison or not cannot be considered at this stage. The other facts which are relevant that accused developed friendship with deceased and he had relation with her for quite some time and all of a sudden, he withdrew from relationship, which might cause serious depression to victim or breaking of relationship with her might have caused such embarrassment to her so that she may not have thought of any other recourse but to consume poison. It is not a case where accused has been charged of offence only under Section 306 on mere refusal to marry but here the applicant had developed relationship with victim from before. He continued with relationship for quite some time and later on he refused to continue with relationship and to marry the victim. Whether it is a case of entering into relationship with deceased with or without consent or whether he played any active direct or indirect role which leads deceased to commit suicide cannot be looked into at this stage. At the stage of charge sheet, Court concerned has to examine only upon the documents collected during investigation by Police, who submitted charge sheet and all other evidence as alleged by the applicant will be examined during trial when defence is adduced by both the parties. While considering prayer for quashing of charge sheet, this Court cannot examine any defence of accused which has yet to be placed before Court below. Stage of placing the defence version does not arise at the stage of charge sheet and, therefore, this Court will not examine alleged defence at this stage.

In the circumstances, the prayer for quashing the proceedings of case as well as charge sheet is refused. The application has no force and is accordingly **dismissed**.

Order Date :- 28.2.2023

RavindraKSingh