

HIGH COURT OF UTTARANCHAL AT NAINITAL

Review Application No. 920 of 2006

In
Criminal Misc. Application No. 366 of 2002

Shyam Singh Rana & others Applicants

Versus

1. State of Uttaranchal & another Respondents

Dated: 22.12.2006

Hon'ble Rajesh Tandon, J.

Heard Sri S.K. Mandal for the applicant and Sri G.S. Negi for the respondent no.2.

Application by petitioners for recalling of the order dated 13.12.2006 on the ground that parties have come to terms and settled the dispute and filed application No. 1924 of 2006 under section 320 Cr.P.C. for compounding the alleged offence.

The order dated 13.12.2006 is modified to the extent that the trial court is directed not to take coercive steps against the applicants during the course of the proceedings as directed vide order dated 13.12.2006.

Accordingly, review application is disposed of.

Dated: 22.12.2006

*Dhyani

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 366 of 2002

1. Shyam Singh Rana s/o Sri Bala Ram Singh
2. Smt. Rakesh Devi w/o Sri Shyam Singh Rana
Both residents of Sant Nagar Defence Colony, Arya
Samaj Mandir, Near Izzet Nagar, Bareilly
3. Bal Ram Singh s/o Sri Ghyan Singh
4. Tej Singh s/o Barm Singh Rana
Village Salmatta, P.S. Nanakmatta, District
Udham Singh Nagar Applicants

Versus

1. State of Uttaranchal
2. Smt. Kavita Rana w/o Sri Tej Singh
R/o village Sahjana, P.S. Khatima, District
U.S. Nagar Respondents
Dated:13.12.2006

Hon'ble Rajesh Tandon, J.

Present application under section 482 Cr.P.C. has been filed for quashing of the entire proceedings in Criminal Case No. 1779 of 2002, State vs. Tej Singh and others under section 498A, 504 I.P.C. and sec. 3/4 of Dowry Prohibition Act, pending in the court of Judicial Magistrate, Khatima,

Briefly stated Sri Teja Singh was married to respondent no. 2 Smt. Kavita Rana on 7th March 2002. On 23.7.2002, Smt. Kavita lodged F.I.R. against the applicants under section 498A, 504 I.P.C. and 3/4 Dowry Prohibition Act in P.S. Nanakmatta. The police after investigating the case submitted charge sheet against the applicants. The learned Magistrate has taken cognizance on the charge sheet and issued summons to the applicants.

Since the applicants are being prosecuted for the offence punishable under sections 498-A, I.P.C. and 3/4 of the Dowry Prohibition Act, it will be open for the petitioners to defend their case before the Court concerned. Since the disputed question of fact with regard to the offence punishable under sections 498A I.P.C. and 3/4 of the Dowry Prohibition Act, are involved, therefore, prima facie no case is made out for interference under Section 482 Cr.P.C.

After relying upon the judgment in ***State of Haryana and others v. Ch. Bhajan Lal and others*** in AIR 1992 SC604, in ***Union of India Vs. Prakash P. Hinduja and another*** 2003 SCC (Cri) 1314, the Apex Court has held as under:

““9. ...The grounds on which the prosecution initiated against an accused can also be quashed by the High Court in exercise of power conferred by Section 482 CrPC has been settled by a catena of decisions of this Court rendered in *R.P. Kapur v. State of Punjab* AIR 1960 SC 866, *Madhu Limaye v. State of Maharashtra* (1977) 4 SCC 551, *Municipal Corpn. Of Delhi v. Ram Kishan Rohtagi* (1983) 1 SCC 1 and *Raj Kapoor v. State* (1980) 1 SCC 43. The matter was examined in considerable detail in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 and after review of practically all the earlier decisions, the Court in para 108 of the Report laid down the grounds on which power under Section 482 CrPC can be exercised to quash the criminal proceedings and basically they are: (1) where the allegations made in the FIR or complainant, even if they are taken at their face value and accepted in

their entirely do not prima facie constitute any offence or make out a case against the accused, (2) 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, (3) where there is an express legal bar engrafted in any of the provisions of the Code of Criminal Procedure or the Act concerned to the institution and continuance of the proceedings. But this power has to be exercised in a rare case and with great circumspection.

10. The principal question which, therefore, requires consideration is whether the court can go into the validity or otherwise of the investigation done by the authorities charged with the duty of investigation under the relevant statutes and whether any error or illegality committed during the course of investigation would so vitiate the charge-sheet so as to render the cognizance taken thereon bad and invalid.”

So far as the instant petition under section 482 Cr.P.C. is concerned no interference can be made under section 482 Cr.P.C. as both the parties will be at liberty to lead the evidence in view of the observation made by the Apex Court in the case *Medchl Chemicals and Pharma (P) Ltd. vs. Biological E. Ltd. and others* (2003) 3 SCC 269.

Since the trial has to take place for the offence under aforesaid sections, therefore, without expressing any opinion on the merits of the case, I direct the applicants to appear before the Magistrate concerned. The Court shall permit applicant no.

2 smt. Rakesh Devi, who is a lady to file appearance bonds to the satisfaction of the Magistrate concerned for her regular appearance in the case. The bail application of the other applicants shall be considered on the same day.

Subject to the observations made above, application under section 482 Cr.P.C. is dismissed.

(Rajesh Tandon, J.)

Dated: 13.12.2006

*Dhyani