

HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 412 of 2001
(Old No. 3995/2000)

1. Bhimsen Bohra son of Sri Dhanpat Rai Bohra
 2. Anil son of sri Bhimsen Bohra
 3. Smt. Sushma wife of Sri Anil
 4. Smt. Aruna wife of Sri Rajeev
- All residents of Srawan Nath Nagar, Daya Niketan
Marg, District Haridwar

.....Applicants

Versus

1. State of U.P.
2. Smt. Bina wife of sri Sunil
Resident of Indra Colony, Uttarkashi
District Uttarkashi

.....Respondents

Dated: 30.11.06

Hon'ble Rajesh Tandon, J.

Heard Sri Vivek Shukla counsel for the applicant and learned A.G.A. for the respondents.

By the present application under section 482 Cr.P.C. the petitioner has prayed for quashing of the proceedings of Criminal Case No. 339 of 2000, Smt. Bina vs. Sunil and others pending in the Court of Chief Judicial Magistrate, Uttarkashi.

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Briefly stated respondent no.2 Smt. Bina has filed a complaint case No. 339 of 2000 against the applicant no. 1 to 4

along with Sunil Kumar in the Court of Chief Judicial Magistrate, Uttarkashi under section 498-A, 323, 147, 504 and 506 I.P.C. After recording the statement of the complainant under section 200 Cr.P.C. and that of the witnesses under section 202 Cr.P.C. the Chief Judicial Magistrate has held that a prima facie case under section 498-A, 147, 323, 504 and 506 I.P.C. is made out against the applicants and accordingly summons were issued against them.

Since the applicants are being prosecuted for the offence punishable under sections 498-A, 147, 323, 504 and 506 I.P.C., 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 alleged offence 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 SC 604***, 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 511, 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 entirety 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 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 observations 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 offences under aforesaid sections, therefore, without expressing any opinion on the merits of the case, since the case arises out of the complaint, I direct the applicants to appear before the concerned Presiding Officer. The Court shall permit them to file appearance bonds to the satisfaction of the Magistrate concerned for their regular appearance in the case.

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

(Rajesh Tandon, J.)

Dated: 30.11.2006

*Dhyani