

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

**Criminal Misc. Application No.538 of 2010
(U/s 482 of Cr.P.C.)**

Dwijendra Mallik and three others

.....Applicants

Versus

State of Uttarakhand and another

.....Respondents

Dated: October 29, 2010

HON. DHARAM VEER, J.

Heard Mr. R.C. Tamta, Advocate holding brief of Mr. M.K. Ray, Advocate for the applicants, Mr. M.A. Khan, Brief Holder for the State and Mr. S.K. Mandal, Advocate for respondent no.2.

By means of this petition, moved under Section 482 of The Code of Criminal Procedure, 1973 (for short Cr.P.C.), the applicants have sought quashing of the charge sheet dated 4.3.2010 and the summoning order dated 27.4.2010 passed by Chief Judicial Magistrate, Udham Singh Nagar as well as the proceedings of Criminal Case No.1532 of 2010, State v. Dwijendra Mallik and others, relating to offences punishable under Sections 498A, 323, 504, 506 IPC and one punishable under Section 3/4 of Dowry Prohibition Act, 1961.

Brief facts of the case are that respondent no.2 Smt. Nirupma moved an application u/s 156 (3) Cr.P.C. and got lodged a first information report against the applicants at P.S. Rudrapur with the allegations that she was married to the applicant Dwijendra Mallik on 23.2.2005. In the marriage her father gave sufficient dowry however the applicants were not satisfied with it and they started harassing her physically and mentally for dowry. It is further alleged that after the marriage when the respondent no.2 visited her parental house, none from

the applicants came to bring her and when the brother of respondent no.2 went to send her at her in-laws house, the applicants hurled abuses on him. After that the applicants again continued her physical and mental harassment and ultimately on 12.2.2009 they ousted her from the house for the demand of dowry. It is further alleged that on 12.11.2009 at about 3 PM when the respondent no.2 was alone in her parental house the applicants came and beaten her and her husband and brother-in-law also throttled her neck and while going from house the applicants threatened her for life. With the same averments, the respondent no.2 got lodged the FIR against the applicants. After lodging of the FIR the matter was investigated and on completion the I.O. filed the charge sheet against the applicants in the court. Consequent to filing of the charge sheet, Chief Judicial Magistrate, Udham Singh Nagar, vide his order dated 27.4.2010 summoned the applicants. Feeling aggrieved, the applicants have preferred the present petition u/s 482 Cr.P.C. before this Court.

Counter affidavits have been filed by the State as well as by respondent no.2 and in which the averments made in the C482 application have been denied.

From a perusal of the contents of the first information report; statement of witnesses recorded u/s 161 Cr.P.C. and after going through other papers available in file, I am of the view that *prima facie* a case under the aforesaid sections is made out against the applicants.

Even otherwise, the trial court will decide the case after recording the evidence of the complainant as well as of the accused persons and also on the basis of the appreciation of the evidence as per law. It is well settled that while exercising jurisdiction under section 482 of the Cr.P.C., this Court would not ordinarily embark upon the enquiry as to whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial court. If the allegations made in the first information report and the statement of witnesses recorded u/s 161 Cr.P.C. and other evidence collected by I.O. during the

course of investigation are taken at their face value and accepted in their entirety, I am of the view that the charge sheet is rightly submitted against the applicants and the applicants are accordingly rightly summoned by the trial court. The trial court will decide the case after recording the evidence adduced before it. I am of the view that in the present case there is neither any miscarriage of justice nor any abuse of process of court.

For the reasons recorded above, there is no force in the application. The C482 application is devoid of merit and is hereby dismissed. Interim order dated 15.6.2010 stands vacated.

(Dharam Veer, J.)
29.10.2010

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