IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL MISC. APPLICATION NO.861 of 2008
(U/s 482 of Cr.P.C.)

Nand Kishore and five others

.....Applicants

Versus

State of Uttarakhand and another

.....Respondents

Dated: July 30, 2010

Mr. Lalit Sharma, Advocate for the applicants
Mr. Amit Bhatt, Addl. GA for the State
Mr. Rajesh Joshi, Advocate for respondent no.2

HON. DHARAM VEER, J.

By means of this petition, moved under Section 482 of The Code of Criminal Procedure, 1973 (for short, Cr.P.C.), the petitioners/applicants have sought quashing of the summoning order dated 30.9.2008 passed by learned Judicial Magistrate, Kashipur, District Udham Singh Nagar in criminal case no.342 of 2008, Mamta Pant v. Nand Kishore, relating to offence punishable under Sections 498A, 323, 504, 506 of The Indian Penal Code, 1860 (for short, the IPC) and one u/s 3/4 of Dowry Prohibition Act, 1961 (for short, the Act) as well as prayed for quashing of entire proceedings of the aforesaid case.

Heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit.

Brief facts of the case are that respondent no.2 Smt. Mamta Pant moved an application under Section 156(3) of Cr.P.C. and got registered a F.I.R. No.3007/2006 with P.S. Bajpur, District Udham Singh Nagar, relating to offences punishable under Sections 498-A, 323, 504 and 506 of IPC and one u/s 3/4 of the Act against the applicants. After lodging of the FIR, the matter was investigated and on

completion of investigation, police submitted final report dated 27.9.2006 in the matter. Thereafter, the complainant filed objections against the aforesaid final report on which the trial court vide order-dated 21.5.2008 rejected the final report and directed to register the case as complaint case. Thereafter, in support of her complaint, respondent no.2 got herself examined u/s 200 Cr.P.C. and u/s 202 Cr.P.C. Ambadutt Joshi and Bhupenda Singh were got examined. After hearing learned counsel for the complainant and perusing the material available, learned Judicial Magistrate, Kahsipur, vide order dated 30.9.2008 summoned the applicants under Sections 498A, 323, 504, 506 of IPC and 3/4 of the Act. Being aggrieved by the said summoning order dated 30.9.2008, the applicants have preferred the present C482 application before this Court.

Learned counsel for the applicants argued that the summoning order dated 30.9.2008 passed by learned Judicial Magistrate, Kashipur is not correct and is not sustainable in the eye of law. I do find force in the argument advanced by learned counsel for the applicants. It is settled law that when a report is placed before the Magistrate, he has the option of adopting one of the three courses i.e. (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under Section 156(3). In a judgment rendered by Hon'ble Apex Court in the case of **"*Minu Kumari & another v. State of Bihar & others*" reported in (2006) 2 SCC (Cri.) 310**, it has been held in para 11 of the said judgment that:-

> *"11. When a report forwarded by the police to the Magistrate under Section 173(2)(i) is placed before him several situations arise: the report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1)*

accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation under Section 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he again has option of adopting one of the three courses open i.e. (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under Section 156(3). The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. (See India Carat (P) Ltd. v. State of Karnataka)"

In view of the above quoted judgment, it is clear that the three courses are open before the Magistrate (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under section 156(3). In the present case, the learned Judicial Magistrate by adopting second course, proceeded to summon the applicants u/s 498A, 323, 504, 506 of IPC and 3/4 of the Act. Hence, in view of judgment of Hon'ble Apex Court in case of Minu Kumar (Supra), the order passed by the

learned Judicial Magistrate appears to be perfectly justified and as per law.

Even otherwise, the trial court will decide the case after recording the evidence of the complainant as well as of the accused 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 complaint and the statement recorded u/Ss 200 and 202 Cr.P.C. are taken at their face value and accepted in their entirety as well as on the basis of the documentary evidence, I am of the view that the applicants have rightly been 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, being devoid of merit, is dismissed accordingly. Interim order dated 20.1.2009 stands vacated.

(Dharam Veer, J.)
30.07.2010

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