

**Reserved**

**AFR**

**Court No. - 80**

**Case :-** APPLICATION U/S 482 No. - 28762 of 2021

**Applicant :-** Umesh Kumar Yadav And Another

**Opposite Party :-** State of U.P. and Another

**Counsel for Applicant :-** Jaysingh Yadav

**Counsel for Opposite Party :-** G.A.,A Kumar

Srivastava,Manish Kumar

**Hon'ble Sanjay Kumar Singh,J.**

Heard Shri Jay Singh Yadav, learned counsel for the applicants, Shri Rabindra Kumar Singh, learned Additional Government Advocate representing the State and Shri Anil Kumar Srivastava, learned counsel appearing on behalf of opposite party No. 2 and perused the record of the case.

By means of this application under Section 482 of the Code of Criminal Procedure (herein after referred to as "Cr.P.C.") the applicants have prayed for quashing of the entire criminal proceeding of complaint case No. 1749 of 2017 (Kamla Shankar Yadav Vs. Umesh Kumar Yadav and others), under Section 406 IPC and Section 6 of Dowry Prohibition Act, police station Handia, district Allahabad, pending in the court of Special Chief Judicial Magistrate, Allahabad on the basis of compromise arrived at between the parties.

The emanation of facts giving rise to the present application are that a complaint was filed on 28.8.2017 by the complainant Kamla Shanker Yadav arraigning therein as many as four accused namely Umesh Kumar Yadav, Mahesh Kumar Yadav, Gulab Devi and Phula Devi inter alia with the

allegations that the marriage of her daughter namely Km. Jyoti Yadav was fixed with applicant No. 1, Umesh Kumar Yadav for 22.5.2017. Pre-marriage ceremonies, like *Goad Bharai* and *Bariksha* were held, in which Rs. 100,000/- was given to Mahesh Yadav, one gold ring and and sum of Rs. 11,000/- were given to Umesh Yadav. In addition thereof, money and clothes were also given to the persons attended the ceremonies. In the feast of *Goad Bharai*, Rs. 75,000/- was spent. It is further mentioned in the complaint that the complainant has made the bookings of all necessary things for which about Rs. 50,000/- was given as advance. On 09.5.2017, when the complainant went to the house of the accused for fixing the date of *Tilak* ceremony, they demanded Rs. 500,000/- (rupees five lac) in cash, a motorcycle and a gold chain. When the complainant along with his family members and relations went to the house of the accused on 10.5.2017, they abused them and done undignified behaviour with them and also refused for marriage, which was fixed for 22.5.2017.

After examining the complainant under Section 200 Cr.P.C. and witnesses Dharmendra Kumar and Manish Kumar under Section 202 Cr.P.C., the learned Magistrate vide order dated 20.9.2018 summoned the applicants to face trial.

Prior to lodging of the instant complaint, the complainant has also lodged a first information report against the accused-applicants at case crime No. 546 of 2017, under Sections 504, 506 IPC and  $\frac{3}{4}$  of Dowry Prohibition Act, police station Handia, district Prayagraj almost on the same set of facts.

Being aggrieved and dissatisfied with the order of the learned Magistrate dated 20.9.2018 summoning the accused-applicants, the applicants have challenged the same by means of filing Application U/S 482 No. 2224 of 2019, which was disposed of by the coordinate Bench of this Court vide order dated 21.1.2019. The order reads as under:

*"This Application under Section 482 Cr.P.C. has been filed with the prayer to quash further proceedings of complaint case no. 1749 of 2017 (Kamla Shankar Yadav Vs. Umesh Kumar Yadav and others), under Section 406 IPC and Section 6 of Dowry Prohibition Act, Police Station Handia, district Allahabad pending in the court of Special Chief Judicial Magistrate, Allahabad. Further prayer has been made to stay the effect and operation of the aforesaid order.*

*Heard learned counsel for the applicants and learned A.G.A.*

*Submission of learned counsel for the applicants is that summoning order was passed in the matter for the same set of facts for which FIR had already been lodged in which investigation is going on. Thus summoning order is illegal.*

*Learned A.G.A. opposed the prayer.*

*Having heard learned counsel for the parties and keeping in view the provisions provided under Section 210 Cr.P.C. the application is*

*disposed of at this stage itself with the direction to the applicants to move proper application before the Court concerned within 15 days from today ventilating all the facts, as has been raised in this application. If such application is moved, the court concerned is directed to decide the same within a period of one month thereafter. During the said period no coercive action shall be taken against the applicants.*

*With the aforesaid observations, the application is disposed of."*

Pursuant to the order of this Court dated 21.1.2019, the applicant has moved the application before the court concerned, which is stated to be pending.

Now, the applicants have filed this second application with the prayer that entire criminal proceedings of complaint case No. 1749 of 2017 be quashed on the basis of compromise arrived at between the parties. The applicant No. 1, Umesh Kumar Yadav is the deponent of the instant case.

On 03.03.2022, when this case was taken up for the first time, a preliminary objection was raised by Shri Anil Kumar Srivastava, learned counsel appearing on behalf of the complainant that this is the second application U/s 482 Cr.P.C. on false facts as no compromise has taken place between the parties and averments made in this regard in the instant application are totally false and baseless. The Court passed the following order:

*"On the matter being taken up, Shri Anil Srivastava, learned counsel appearing on behalf*

*of the opposite party No. 2 submits that the instant application has been preferred by the applicants to quash the entire criminal proceedings initiated against them in pursuance of a compromise/settlement made between the parties concerned, whereas, no compromise has arrived at between the parties concerned. The averment in this regard is wholly false and against the evidence on record.*

*The aforesaid fact has not been disputed by the learned counsel for the applicants, who submits that the applicants are willing to settle the dispute.*

*On the request of learned counsel for the applicants, put up this case tomorrow i.e. 04.3.2022 as fresh to seek proper instructions in this regard."*

On 04.3.2022, on the basis of instructions, learned counsel for the applicants apprised the Court that the applicants are ready to return the amount of Rs. 200,000/- (rupees two lac), which the complainant has incurred.

The Court passed the following order on 04.3.2022:

*"Pursuant to order dated 03.3.2022, learned counsel for the applicants, upon instructions from the applicants, apprised the Court that the applicants are ready to return the amount of Rs. 200,000/- (rupees two lac only), which they have taken from opposite party No. 2.*

*Upon the said statement, Shri Anil Kumar Srivastava, learned counsel appearing on behalf of opposite party No. 2 submits that in case the entire amount paid by opposite party No. 2, the first informant is returned by the applicants, he has no objection if the Court quashes the entire proceedings against the applicants.*

*Considering the aforesaid statement of learned counsel for the applicants as well as the undertakings tendered on behalf of the applicants before this Court, the applicants are directed to produce the bank draft of Rs. 2,00,000/- in favour of Kamla Shankar Yadav, opposite party No. 2 on the next date fixed in the matter.*

*Put up this case as fresh for further hearing on 15.3.2022."*

On 15.3.2022, when the case was taken up Shri Jay Singh Yadav, learned counsel for the applicants has prayed for one more opportunity to comply with the order dated 04.3.2022. Learned counsel for the applicants upon instructions from the applicants further submitted that a draft of Rs. 200,000/- (rupees two lac only) as mentioned in the order dated 04.03.2022 shall be produced by the applicants on 28.3.2022 and the case was directed to be listed on 28.3.2022.

After the order of this Court dated 03.3.2022, the applicants kept on playing hide and seek with the court and tried to obtain interim order from this Court by hook or crook

and when the applicants failed to achieve their nefarious design, on 28.3.2022, when the case was taken up Shri Jay Singh Yadav, learned counsel for the applicants submits that the applicants are not responding to his call and the Court may pass orders as it deems fit and proper in the facts and circumstances of the case.

Having heard the submissions of the learned counsel for the parties and examining the matter in its entirety, I am of the considered view that the applicants have approached this Court with unclean hands. By means of this application the applicants have tried to misguide this Court by stating that compromise has been arrived at between the parties, but the fact is that no compromise has been effected as stated by the learned counsel appearing on behalf of the complainant. In spite of the undertakings given by the learned counsel for the applicants, on the basis of the instructions of the applicants, it appears that the applicants have no respect to the orders of this Court.

Since, the applicants have not approached this Court with clean hands and filed false affidavit before this Court that the matter has been compromised, therefore, he does not deserve any indulgence by this Court.

The courts of law are meant for imparting justice between the parties. One, who comes to the court, must come with clean hands and no material facts should be concealed. I am constrained to hold that more often the process of the court is being abused by unscrupulous litigants to achieve their nefarious design. I have no hesitation in saying that a person, whose case is based on falsehood, has

no right to approach the court. He/she can be summarily thrown out at any stage of the litigation. The judicial process cannot become an instrument of oppression or abuse or a means in the process of the Court to subvert justice, for the reason that the Court exercises its jurisdiction, only in furtherance of justice.

Time and again the issue of abuse of process of law has come up before the Supreme Court as well as High Courts. The Courts have, over the centuries, frowned upon litigants, who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts.

In **Chandra Shashi Vs. Anil Kumar Verma, (1995) 1 SCC 21**, Apex Court held as under:

*“To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in courts when they would find that (truth alone triumphs) is an achievable aim there; or (it is virtue which ends in victory) is not only inscribed in emblem but really happens in the portals of courts”*

In **Buddhi Kota Subbarai (Dr.) Vs. K. Parasaran, (1996) 5 SCC 530**, Apex Court held as under:



*The course adopted by the applicant is impermissible and his application is based on misconception of law and facts. No litigant has a right to unlimited drought on the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived or frivolous petitions. After giving our careful consideration to the submissions made at the bar as well as those contained in the memorandum of the application, we are of the opinion that this application is misconceived, untenable and has no merits whatsoever. It is accordingly dismissed.*

In **Arunima Baruah Vs. Union of India** (2007)6 SCC 120, Supreme Court held that it is trite law that to enable the Court to refuse to exercise its discretionary jurisdiction suppression must of material fact. Material fact would mean material for the purpose of determination of the lis. It was further held that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands.

In **Prestige Lights Limited Vs. State Bank of India** (2007)8 SCC 449, Apex Court held as under:

*"It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the*

*applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the Court, the Court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible."*

In **K.D Sharma Vs. Steel Authority of India Limited and others**, (2008)12 SCC481, Supreme Court held that no litigant can play "hide and seek" with the courts or adopt "pick and choose". To hold a writ of the court one should come with candid facts and clean breast. Suppression or concealment of material facts is forbidden to a litigant or even as a technique of advocacy. In such cases the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of Court for abusing the process of the court.

Supreme Court in **Dalip Singh Vs. State of Uttar Pradesh and others**, (2010)2 SCC 114 came down heavily on unscrupulous litigants by holding that it is now well established that a litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

The Court held as under:

*"For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahinsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."*

In **Amar Singh Vs. Union of India** (2011)7 SCC 69,

Supreme Court held that Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with "unclean hands" and are not entitled to be heard on the merits of their case.

In **Kishore Samrite Vs. State of U.P. and others**, 2012 (10) SCALE 330, The Supreme Court held as under:

*"31. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.*

*32. With the passage of time, it has been realized that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts*

*like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorized or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs."*

Having considered the factual aspect of the case and the dictum of the Supreme Court, I am of the considered view that the applicants have misused the process of law by filing application under Section 482 Cr.P.C. on false facts that the matter has been compromised. Honesty, fairness, purity of mind should be of the highest order to approach the court, failing which the litigant should be shown the exit door at the earliest point of time.

In view of the verbose discussion, the application is dismissed with costs, which is quantified at Rs. 100,000/- (rupees one lac ) to be deposited by the applicants within 45 days with the Registrar General of this Court, failing which the same shall be recovered from the applicants as arrears of land revenue. On depositing the said amount, Rs. 50,000/- (rupees fifty thousand only) shall be released in favour of the

complainant/opposite party No. 2 and remaining Rs. 50,000/- (rupees fifty thousand only) shall be forwarded by the Registrar General of this Court to the account of Rajkiya Bal Greh Shishu, Allahabad being Account No. 3785336735, State Bank of India, Khuldabad Branch, Prayagraj, IFSC Code SBI N0002560, Micro Code 211002015, which shall be used for the welfare of the children.

Office is directed to place a copy of this order before the Registrar General of this Court for compliance.

Dated: 13.4.2022

Ishrat