

Reserved on: 31.3.2022

Delivered on: 3.8.2022

**Court No. - 72****Case :-** APPLICATION U/S 482 No. - 15581 of 2019**Applicant :-** Smt. Kiran Kunwar And 2 Others**Opposite Party :-** State of U.P. and Another**Counsel for Applicant :-** Anuj Bajpai, Abhinav Mishra**Counsel for Opposite Party :-** G.A., Avadh Pratap Singh

Shishodia, Avinash Kumar Sharma, Naresh Kumar Singh, Santosh Kumar Singh, Sheikh Moazzam Inam

**Hon'ble Mohd. Aslam, J.**

Heard Sri Shikhar Trivedi, Advocate, holding brief of Sri Abhinav Mishra, learned counsel for applicants, learned A.G.A. for the State, Sri Sheikh Moazzam Inam, learned counsel for opposite party and perused the record.

2. The instant application under Section 482 Cr.P.C. has been moved on behalf of applicants Smt. Kiran Kunwar and Ram Kunwar with a prayer to quash the impugned order dated 20.4.2018, arising out of Case Crime No.076 of 2017, under Sections 498A, 323, 504, 506 I.P.C. and section 3/4 of Dowry Prohibition Act, Police Station Mahila Thana, District J.P. Nagar, pending in the court of learned Additional Civil Judge (SD)/Additional Chief Judicial Magistrate, J.P. Nagar, by which the cognizance for the offences punishable under Sections 498A, 323, 504, 506 I.P.C. & 3/4 of Dowry Prohibition Act was taken against the applicants on the basis of charge-sheet submitted by police. In this application, the husband of opposite party no.2 was impleaded as applicant no.3, but his name was deleted later on.

3. The brief facts necessary for disposal of this application is that the opposite party no.2 Anushka alias Bharti Singh wife of Amitesh Singh lodged a first information report on 2.11.2017 at 11:05 a.m. in Case Crime No.0076 of 2017, under Sections 498A, 323, 376, 511, 504, 506 I.P.C. and 3/4 of Dowry Prohibition Act, Police Station Mahila Thana, District J.P. Nagar by the order of Chief Judicial Magistrate on the application moved under Section 156(3) Cr.P.C., wherein it was alleged that the marriage of opposite party no.2 was taken place with Amitesh

Singh on 6.2.2017 according to Hindu Rights and Ceremonies at Bareilly and she went to her matrimonial home situated in Village and Post Gajsthal, Police Station Naugawan Sadaat, District Amroha. In this marriage, her parents incurred an amount of Rs.20 lacs including household articles and a cheque of Rs.1,51,000/-, but even after this, her husband Amitesh, Ram Kunwar (father-in-law), Kiran Kunwar (mother-in-law), Deepak Kumar (Jeth), Anamika Yadav (Jethani) were not pleased with the dowry given in her marriage. Immediately after the marriage, they started demanding Rs.10 lacs cash in dowry and her husband also demanded that Car (Xcent Hyundai) which was given in her marriage and registered in the name of opposite party no.2 be transferred in the name of her husband. The opposite party no.2 tried to convince them, but they didn't not agree and started harassing the opposite party no.2 financially, mentally and physically and assaulting her due to non-fulfilment of the demand of dowry. The opposite party no.2 also got sustained injuries on account of assault. After that on conspiracy of her in-laws, her husband started living with her in a rented house in Noida from April, 2017 to 17<sup>th</sup> September, 2017, where her husband continuously demanded the dowry and kept it on and on refusal by her, she was badly beaten and on 17<sup>th</sup> September, 2017, her husband leaving leaving her alone in Noida, came to his house at Bareilly. Thereafter, her Jeth Deepak came to her at Noida and tried to drink her alcohol and on protest he started doing obscene act with the opposite party no.2 and assaulted her and forcibly tried to have physical relationship saying that everything goes on in his house and her husband also enjoys with his wife. On alarm raised by opposite party no.2, he fled away. Thereafter, the opposite party no.2 called her father and came with him to her parental village situated in Rajasthan. The anger of her in-laws did not subside and on 24.9.2017, her husband Amitesh, father-in-law Ram Kunwar, mother-in-law Kiran Kunwar, Jeth Deepak Kumar and Jethani Anamika Yadav to came to her parental home in Rajasthan, she treated them well and asked them to sit down, thereafter, they started saying that they did not come here to sit, but to finalise the matter and started repeating their demands for additional dowry. Thereupon, the

opposite party no.2 refused to fulfil their demand. Upon which, they became aggressive and her husband and Jeth started abusing her in filthy languages and beaten her and he Jeth also did obscene act with her. On seeing it, her mother forbade them and tried to save her, thereupon, her husband and in-laws started assaulting upon her mother and stated that they will kill her. She raised alarm, thereupon, Amarnath Sharma, Ramnath Singh and others gathered there and on it, her in-laws fled away from there. In this assault, the opposite party no.2 sustained several injuries. She complained the matter to police at Police Station Mahila Thana, Amroha, but no action was taken by the police. She also send the complaint by registered post to Mahil Thana, but also no action was taken. Thereafter, she moved an application under Section 156(3) Cr.P.C. before the court of Chief Judicial Magistrate, Amroha and on the order of the court, the first information report was lodged. After lodging of the first information report, the Investigating Officer recorded the statement of the complainant and witnesses. The victim/opposite party no.2 was medically examined on 4.10.2017 at CHC, Amroha and the following injuries were found on her body at the time of medical examination:-

1. *A yellowish coloured contusion 5 cm x 1 cm on right side of neck 4 cm above mid of right clavicle.*
  2. *A yellowish contusion 8 cm x 1.5 cm on right side of upper chest 3 cm below right shoulder tip.*
  3. *A yellowish contusion 7 cm x 1 cm on front of left arm on above left elbow joint.*
  4. *A yellowish contusion 6 cm x 1 cm on outer aspect of left forearm 5 cm below left elbow.*
  5. *A yellowish contusion 6 cm x 1 cm on front of right arm, 5 cm above right elbow joint.*
  6. *A yellowish contusion 5 cm x 1 cm on lateral aspect of left leg, 13 cm below left knee joint.*
  7. *A yellowish contusion 4 cm x 1 cm on lateral aspect of right leg, 15 cm below right knee joint.*
- Opinion** – *All injuries are caused by hard and blunt object. Injuries are simple in nature. Duration is about 9 days old.”*

4. After investigation, the charge-sheet was submitted against accused Amitesh Singh, Ram Kunwar, Kiran Kunwar in Case Crime No.0076 of 2017, under Sections 498-A, 323, 504, 506 I.P.C. and ¼ of Dowry Prohibition Act, Police Station Mahila Thana, District J.P. Nagar.

The cognizance on the charge-sheet was taken by learned Civil Judge (SD)/F.T.C./Additional Chief Judicial Magistrate, Amroha for the offence punishable under Sections 498-A, 323, 504, 506 I.P.C. and 3/4 of Dowry Prohibition Act on the basis of charge-sheet vide order dated 20.4.2018 and summoned the accused for facing trial. Feeling aggrieved by it, the instant application under Section 482 Cr.P.C. has been moved.

5. Counter affidavit and rejoinder affidavit have been exchanged. Supplementary affidavit has been also filed on behalf of applicants. In counter affidavit, father of opposite party no.2 has denied the allegations of the affidavit filed in support of the application and has supported the allegations of the first information report, injury report as well as charge-sheet. It is also alleged that on the basis of first information report, injury report, statements of the witnesses, the *prima-facie* case punishable under Sections 498-A, 323, 504, 506 I.P.C. and 3/4 Dowry Prohibition Act is made out and learned Additional Chief Judicial Magistrate, Amroha has taken cognizance of the aforesaid offence on the basis of charge-sheet in accordance with law, which requires no interference.

6. Rejoinder affidavit has also been filed in which the contents of counter affidavit has been denied and stated that there are general and false allegations levelled against the applicants and they have been falsely dragged just for the reason that they are the father and mother of the husband of opposite party no.2 and the case is covered with the law laid down by Hon'ble Apex Court in "***Geeta Mehrotra Vs. State of UP reported in 2013(1) JIC 1 (SC)***". It is further alleged that the first information report is based on concocted story as the allegations are baseless and are levelled against the applicants just to harass them.

7. It is submitted by learned counsel for the applicants that the impugned order dated 20.4.2018 for taking cognizance of the offence has been passed by learned Additional Chief Judicial Magistrate by filling in the blanks on the computer typed proforma. It is further submitted that the learned Additional Chief Judicial Magistrate has not applied his judicial mind while taking cognizance of the offence on the basis of charge-sheet and on this count the order of taking cognizance of

the offence dated 20.4.2018 is liable to be set aside. It is further submitted that the first information report has been lodged by opposite party no.2 on the basis of concocted story just to drag the applicants in the litigation to harass them. It is further submitted that the first information report is anti-time and is based on false and concocted story and all allegations are baseless and are levelled against the applicants just harass them. It is further submitted that the applicants are father-in-law and mother-in-law of opposite party no.2 and they are living separately at Bareilly while the opposite party no.2 was living with her husband at Noida and they had no concern with the matrimonial dispute in between opposite party no.2 and her husband. It is further submitted that applicant no.1 is very old lady aged about 65 years and is suffering from terminal diseases and applicant no.2 is also old aged person and both of them were living separately along with their another son. It is further submitted that the applicants never demanded additional dowry of Rs.10 lacs from the opposite party no.2 or her parents. It is further submitted that the applicant nos.1 and 2 are not beneficiary of the aforesaid alleged demand. It is further submitted that the opposite party no.2 belongs to a rich family and she was not interested to discharge her duty in household works and used to compare the in-laws family with her parental family and she is not interested to live with her husband due to her arrogant nature. It is further submitted that opposite party no.2 filed the present complaint against the applicants after she had gone to her parental home and lodged the first information report only to harass the applicants. It is further submitted that the impugned order of taking cognizance has been passed by learned Additional Chief Judicial Magistrate on the printed proforma, which shows that he has not applied his mind and the order of taking cognizance is liable to be quashed on this count alone and he has relied on the judgment of Hon'ble High Court of Allahabad in "***Pankaj Jaiswal Vs. State of U.P. and another 2021 0 Supreme (All) 491***" and the law laid down by Hon'ble Supreme Court in "***Mirza Iqbal @ Golu and another Vs. State of Uttar Pradesh and another 2021 0 Supreme (SC) 795***" and has submitted that no specific allegations have been levelled against mother-in-law and father-

in-law, who are applicant nos.1 & 2 and on that count the order of lower court is liable to be set aside. It is further submitted that this case pertains to the family dispute, therefore, the court ought to have tried to settle the dispute through mediation. It is further submitted that Hon'ble Supreme Court in "***Geeta Mehrotra and another Vs. State of U.P. and another reported in AIR 2013 Supreme Court 181***" has held that in F.I.R. the allegations as to active involvement of the applicants is absent, mere casual reference to their names in F.I.R. is not sufficient to take cognizance. It is further submitted that in F.I.R., charge-sheet and statement of witnesses, there is no specific and distinct allegations made against the applicant no.1 and applicant no.2, the allegations are general and omnibus and can be said to have been made out on account of small skirmishes. In above circumstances, the order of taking cognizance on the charge-sheet, charge-sheet and the proceeding of the lower court is liable to be quashed. He has relied on the law laid down by Hon'ble Supreme Court in "***Kahkashan Kausar @ Sonam and others Vs. State of Bihar and others reported in 2022 0 Supreme (SC) 117***". It is further submitted that the Investigating Officer has submitted the impugned charge-sheet against the applicants in an illegal and arbitrary manner. It is submitted that in above circumstances, the impugned order dated 20.4.2018 for taking cognizance of offence on the basis of charge-sheet and the proceeding of the aforesaid criminal case is liable to be set aside.

8. Learned A.G.A. and learned counsel for informant have opposed the prayer of application and have submitted that from perusal of the first page of the charge-sheet, it is abundantly clear that cognizance was taken on the order sheet on 20.4.2018 and the cognizance order was carried out on the printed proforma of the order sheet, therefore, it cannot be said that the order of cognizance was passed on the printed proforma. It is further submitted that specific allegations have been made against the applicant nos.1 & 2 regarding demand of Rs.10 lacs and assaulting and maltreatment by applicant nos.1 & 2 with husband of the deceased and maltreated on account of non-fulfilment of the dowry, therefore, in above circumstances, it is submitted that the law laid down by Hon'ble Supreme Court in ***Geeta Mehrotra and another Vs. State of***

*U.P. and another (supra), Kahkashan Kausar @ Sonam and others Vs. State of Bihar (supra)* and *Mirza Iqbal @ Golu and another Vs. State of Uttar Pradesh and another (supra)* are not applicable in this case. It is further contended that the cognizance was taken on the charge-sheet and later on it was drawn on the printed proforma of the order sheet, therefore, it cannot be said that the cognizance was taken on printed proforma, therefore, in above circumstances, it is submitted that the law laid down by Hon'ble High Court of Allahabad in ***Pankaj Jaiswal Vs. State of U.P. and another 2021 0 Supreme (All) 491 (supra)*** is not applicable in this case. It is further submitted that this case relates to the family disputes and in such cases it is not required to be referred to Family Welfare Committee of District Legal Service Authority. In view of law laid down by Hon'ble Supreme Court in ***"Social Action Forum for Manav Adhikar and another Vs. Union of India Ministry of Law and Justice and others 2018 0 Supreme (SC) 877"***. It is also submitted that *prima-facie* case against the accused is made out and has submitted that at the stage of proceeding under Section 482 Cr.P.C., the court cannot adjudicate upon. At this stage only *prima facie* case is to be seen in the light of the law laid down by Hon'ble Supreme Court in ***"R.P. Kapur Vs. State of Punjab, A.L.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426*** as well as ***M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others, 2020 SCC Online SC 850"***. In above circumstances, the impugned order of taking cognizance on the basis of charge-sheet and charge-sheet itself and the proceeding of the lower court is not liable to be quashed and the instant application has been moved with *malafide* intention to delay the proceeding of the court.

9. I have given thoughtful consideration to the rival contentions raised by learned counsel for the parties and have gone through the record. From perusal of the first information report, injury report and the statement of the informant and witnesses, *prima-facie* case punishable under Sections 498A, 323, 504, 506 I.P.C. and Section 3/4 of Dowry Prohibition Act is made out against the applicants. The genuineness of the prosecution case cannot be determined in the proceedings under

Section 482 Cr.P.C. and to determine the genuineness of the prosecution case can be only seen by trial court after recording the evidence. This Court cannot adjudicate upon in the proceeding under Section 482 Cr.P.C. in view of law laid down by Hon'ble Supreme Court in "**R.P. Kapur Vs. State of Punjab, A.L.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426**" where the first information report and the material available on CD and the charge-sheet discloses the commission of non-cognizable offence. From perusal of the first information report and the material available on record and the charge-sheet, *prima-facie* case punishable under Sections 498A, 323, 504, 506 I.P.C. and Section 34 of Dowry Prohibition Act is made out against the applicants and it requires no interference in the impugned order of learned court below.

10. So far as the argument of learned counsel for applicant regarding order on printed proforma is concerned, from perusal of order-sheet, it is abundantly clear that the order of taking cognizance was passed on the first page of the charge-sheet in the hand writing not by filling up the proforma and the summoning order carried on the order-sheet on printed proforma by itself cannot be said that the cognizance order was passed on printed proforma, therefore, in above circumstances, the law laid down by Hon'ble High Court of Allahabad in **Pankaj Jaiswal Vs. State of U.P. and another 2021 0 Supreme (All) 491 (supra)** is not applicable in this case. So far as argument of learned counsel for applicant regarding general allegations made in the first information report against applicant nos.1 & 2, from perusal of ruling of Hon'ble Supreme Court in 'Geeta Mehrotra and another Vs. State of U.P. and another' is concerned, in that case Hon'ble Supreme Court has held that name of the unmarried sister Kumari Geeta Mehrotra and elder brother Ram Ji were made casual and Hon'ble Supreme Court has quashed the proceeding against unmarried sister Geeta Mehrotra and younger brother of husband of victim Ram Ji Mehrotra as the F.I.R. does not disclose any material, which could be held to be constituted for offence against these two applicants and they proceeded against Geeta Mehrotra and Ram Ji Mehrotra, in above circumstances, was quashed. In this case, the first



information report and the evidence collected during investigation disclosed active involvement of the applicant no.1 mother-in-law and applicant no.2 father-in-law. It is necessary to mention the fact that originally Amitesh Singh the husband of the victim was made as party and later on his name was deleted. This conduct also shows that the applicants have not come with clean hands before this Court. There is a specific and general allegations against the applicant nos.1 & 2 and her husband, whose name was later on deleted from the array of applicants, therefore, in above circumstances, it cannot be said that no specific and distinct allegations were levelled against the applicants, therefore, the law laid down by Hon'ble Supreme Court in ***Kahkashan Kausar @ Sonam and others Vs. State of Bihar (supra)*** is not applicable in this case. This Court can exercise the power under Section 482 Cr.P.C. sparingly. In this case as the cognizance order was passed on the charge-sheet and later on carried out on the order sheet, therefore, it cannot be said that the cognizance order was carried out on the printed proforma, therefore, it cannot be said that the order for taking cognizance was passed on printed proforma. Specific allegations were levelled against the applicants and her husband. The genuineness of the prosecution case cannot be adjudicated in the proceeding under Section 482 Cr.P.C. From perusal of the first information report and statement under Section 161 Cr.P.C., *prima-facie* offence under Sections 498A, 323, 504, 506 I.P.C. and section 34 of Dowry Prohibition Act is made out against the applicants, therefore, in above circumstances, the prayer for quashing the entire criminal proceedings of the aforesaid case based on charge-sheet and its cognizance order is hereby refused.

11. Accordingly, the instant application under Section 482 Cr.P.C. lacks merit and is ***dismissed***.

**Order Date :- 3.8.2022**

Anil K. Sharma