



Suman Mishra & Ors.Appellants

Versus

The State of Uttar Pradesh & Anr.Respondents

SATISH CHANDRA SHARMA, J.

1. Leave Granted.
2. The present appeal is arising out of order dated 31.08.2022 passed by the High Court of Judicature at Allahabad in an application under Section 482 of the Code of Criminal Procedure, 1973 (“**CrPC**”) being Application under Section 482 No. 23358 of 2022, whereby the High Court has dismissed the quashing application preferred by the present Appellants for quashing of the Chargesheet dated 02.02.2022 and the cognizance order dated

28.03.2022 passed by the Court of ACJM, Bareilly in FIR No. 733 of 2021 registered under Sections 498A, 504, 506 of the Indian Penal Code, 1860 (“**IPC**”) read with section 3/4 of the Dowry Prohibition Act, 1961.

3. The facts of the case reveal that marriage between Appellant No. 3 and Respondent No. 2 Priyanka Mishra was solemnized on 05.03.2016 as per *Hindu* rites and customs at Bareilly, Uttar Pradesh. The parties started living separately and Appellant No. 3 – Rishal Kumar preferred a Matrimonial Case No. 627(597) of 2021 for grant of decree of divorce on 17.06.2021 under Section 13 of the Hindu Marriage Act, 1955, before the Principal Judge Family Court No. 3 Bareilly, Uttar Pradesh. After the divorce suit was filed, Respondent No. 2 - Priyanka Mishra lodged a First Information Report (“**FIR**”) under Section 154 of the CrPC at Police Station Baradari, District Bareilly, Uttar Pradesh, for the offence punishable under Sections 498A, 354, 328, 376, 352, 504, 506 IPC and under Sections 3 and 4 of the Dowry Prohibition Act, 1961, against her husband, brother-in-law, mother-in-law and father-in-law. The investigation was conducted by Sub Inspector Reeta Tewatia and thereafter as per the directions issued by the Senior Superintendent of Police, the investigation of the case was transferred from Police Station Baradari to Police Station Kotwali, Bareilly, Uttar Pradesh, and further investigation of the

case was carried out by the Sub-Inspector posted at Police Station Kotwali. After a detailed investigation in the matter, a final report was filed under Section 173 of the CrPC and the charge-sheet was filed for offences punishable under Sections 498A, 506, 504 of the IPC read with Sections 3/4 of the Dowry Prohibition Act, 1961. No charge-sheet was filed in respect of offence punishable under Section 376 IPC against the brother-in-law and it is an undisputed fact that Respondent No. 2 did not file any protest petition in the matter against dropping off of the charges under Section 376 IPC.

4. The Appellants approached the High Court of Judicature at Allahabad being aggrieved by the criminal proceedings initiated against them, and preferred a petition under Section 482 CrPC. Vide order dated 31.08.2022, the High Court of Judicature at Allahabad has dismissed the petition under Section 482 of the CrPC (“**Impugned Order**”).

5. The present appeal is arising out of the Impugned Order, and this Court has granted interim relief in the matter to the effect that proceedings before the trial court shall remain stayed, while issuing notice on 10.07.2024.

6. Learned counsel appearing for the Appellants has vehemently argued before this Court that Appellant No. 3 filed a

matrimonial case on 17.06.2021 and the said FIR was lodged only as a counter blast on 19.08.2021 in order to harass and humiliate the entire family without there being any substance in the allegations in the FIR. It was further brought to this Court's notice that a decree of divorce was passed in Matrimonial Case No. 627(597) of 2021, which is an *ex parte* decree, and thereafter the Appellant No. 3 has even re-married. He has further argued before this Court that the statement of Complainant/Respondent No. 2 was recorded under Section 164 of the Cr.P.C. before the Court of Chief Judicial Magistrate, Bareilly, Uttar Pradesh, in which she has completely deviated from the allegations made in the FIR, and therefore the FIR is false and fabricated. It has been further argued before this Court that the FIR does not inspire any confidence and there are omnibus allegations against all family members in the matter, and in fact it is a sheer abuse of process of law on the part of Respondent No. 2 designed only to humiliate and harass the Appellants merely because a divorce petition was filed in the matter.

7. Furthermore, the Appellants have also placed reliance upon the judgments delivered by this Court in the cases of ***Iqbal alias Bala and others Vs. State of Uttar Pradesh and others*** (2023) 8 Supreme Court Cases 734; ***Monica Kumar (Dr.) and another Vs. State of Uttar Pradesh and others*** (2008) 8 Supreme Court Cases 781; ***Mala Kar and another Vs. State of***

Uttarakhand and Another 2024 SCC Online SC 1049; *Arun Jain and others Vs. State of NCT of Delhi and Another* 2024 CC OnLine SC 1638; and *P. V. Krishnabhat & Anr. Vs. The State of Karnataka & Ors.* CrI. Appeal No. 205/2025 (arising out of SLP (CrI.) No. 1754 of 2024) decided on 15.01.2025.

8. On the other hand, learned counsel appearing for Respondent No. 2 vehemently argued before this Court that keeping in view of the allegations made in the FIR, the charge-sheet filed in the matter and the evidence on record, at this junction, the question of quashing the charge-sheet does not arise. He has stated that the High Court was justified in dismissing the petition preferred under Section 482 of the Cr.P.C. as disputed questions could not be looked into by the High Court. He has further argued before this Court that scope of interference at the stage of filing of charge-sheet is quite limited, and the FIR and charge-sheet cannot be quashed as prayed for in the matter.

9. Additionally, Respondent No. 2 has also sought to distinguish the precedents placed on record by the Petitioner, and additionally rely upon judgements in *Ramawtar Vs. State of Madhya Pradesh* (2022) 13 SCC 635; *Supreme Court Bar Assn. Vs. Union of India & Anr.* (1998) 4 SCC 409; *High Court Bar Association, Allahabad Vs. State of UP & Ors.* CrI. Appeal No.

3589/2023; and ***Shilpa Sailesh Vs. Varun Sreenivasan*** TP (C.)
No. 1118/2014.

10. Learned counsel for the State has also supported the prosecution's case and has prayed for dismissal of the appeal.

11. This Court has carefully gone through the Impugned Order passed by the High Court of Judicature at Allahabad, and its operative portion reads as under:

“Heard the learned counsel for the applicants and learned Additional Government Advocate and perused the file.

From a perusal of the file of the case after hearing the arguments of the learned counsel for the parties; the Court found that the allegations made in the First Information Report disclose the commission of a cognizable offense and that after due consideration, those allegations have been made. By this Court in exercise of its power under Section 482 Cr. P. C., there is no need to assess the accuracy and credibility of the allegations from the material collected during the investigation. The disputed version of the accused cannot be considered at this stage. Accordingly, prayer for cancellation of the charge sheet and the proceedings resulting from the above case are rejected.”

12. The aforesaid order reveals that the High Court has undertaken only a cursory analysis of the allegations made in the FIR. The High Court has failed to underscore any reasons for recording its finding that the allegations make out the alleged offense. Further, there appears to be no basis for the High Court to state that the disputed version of the Appellants cannot be considered at the stage of quashing.

13. It is a matter of record that the FIR was only registered on 19.08.2021, about two months after the divorce petition was registered by Appellant No. 3. Upon a perusal of the FIR, it is revealed that the primary allegation levelled by Respondent No. 2 is one of rape committed by the brother-in-law of Respondent No. 2. After investigation by two different investigating officers under the supervision of Senior Superintendent of Police, no charge-sheet was filed for the alleged offence under Section 376 IPC. It is noteworthy that no protest petition has been filed by Respondent No. 2/Complainant protesting the non-inclusion of Section 376 IPC in the charge-sheet. Therefore, what remains to be examined by this Court is whether the High Court has erred in finding that there are specific allegations in the FIR and Chargesheet after dropping the charge of Section 376 IPC, in order to maintain the criminal proceedings against the Appellants.

14. The statements of the witnesses examined by the police reveal that there are allegations against the accused persons of general and omnibus nature, and no specific details have been provided. Further, divorcing the allegations under Section 376 IPC from the FIR, it appears to this Court that nothing remains in the FIR that is specifically alleged against the Appellants. In fact, the FIR contains no information in regard to the date or time that the alleged offence took place. The other important aspect of the case is that the proceedings before the Family Court in Matrimonial Case No. 627(597) of 2021 have resulted in a decree of divorce and the re-marriage of Appellant No.3 has also taken place subsequently.

15. At this juncture, this Court deems it fit to rely on several judicial pronouncements **delineating the duty of a High Court in deciding a quashing petition**. In the case of *Iqbal alias Bala and others* (supra), though this Court has declined to quash the FIR, however, in paragraphs 6 to 11 this Court has held as under:

“6. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether we should quash the FIR?

7. It is relevant to note that the victim has not furnished any information in regard to the date and time of the commission of the alleged offence. At the

same time, we also take notice of the fact that the investigation has been completed and charge-sheet is ready to be filed. Although the allegations levelled in the FIR do not inspire any confidence more particularly in the absence of any specific date, time, etc. of the alleged offences, yet we are of the view that the appellants should prefer discharge application before the trial court under Section 227 of the Code of Criminal Procedure (CrPC). We say so because even according to the State, the investigation is over and charge-sheet is ready to be filed before the competent court. In such circumstances, the trial court should be allowed to look into the materials which the investigating officer might have collected forming part of the charge-sheet. If any such discharge application is filed, the trial court shall look into the materials and take a call whether any case for discharge is made out or not.

8. At this stage, we express no final opinion as regards the truthfulness of the allegations levelled in the FIR.

9. At this stage, we would like to observe something important. Whenever an accused comes before the court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly

frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the court owes a duty to look into the FIR with care and a little more closely.

10. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc. then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.

11. In frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs

have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

16. Further, this Court in the case of **Monica Kumar (Dr.) and another** (supra), and specifically in paragraph 33, has held as under:

“33. The parties have exchanged their counter-affidavits and rejoinders. Indisputably, there is no quarrel with the well-settled principles of law that while exercising powers under Section 482 CrPC, the High Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which courts exist. When the complaint is sought to be quashed it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

17. This Court in the case of **Arun Jain** (supra) has also taken a similar view, and in exercise of powers under Article 142 of the Constitution of India, set aside the criminal complaint, FIR and

all other criminal proceedings. The operative paragraph of the orders passed by this Court in the said case reads as under:

“The Constitution Bench decision in the case of Supreme Court Bar Assn. v. Union of India & Anr., (1998) 4 SCC 409 has eloquently clarified this point as follows:

“48. The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is necessary for doing complete justice “between the parties in any cause or matter pending before it”. The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by “ironing out the creases” in a cause or matter before it. Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute-settling. It is a “problem solver in the nebulous areas” (see K. Veeraswami v. Union of India) but the

substantive statutory provisions 4 dealing with the subject matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject.”

18. In the case of ***Mala Kar and Another vs. State of Uttarakhand*** (supra), a decree of divorce was passed between the parties therein on 18.10.2014. It was thereafter that on 06.04.2015, an FIR was registered in respect of the criminal complaint filed on 09.08.2014. More significantly, the parties in the said case had since remarried and were leading their independent lives. Therefore, both parties had accepted the decree of divorce. In the above circumstances, this Court exercised its powers under Article 142 of the Constitution to quash the criminal complaint as well as the FIR, and all other criminal proceedings commenced thereto by setting aside the impugned order passed by the High Court.

19. Considering the ratio laid down by this Court in the aforesaid judgments, and especially in the light of the fact that initially the FIR was lodged alleging rape and no charge-sheet was filed for prosecuting the accused for the offence of rape, and keeping in view of the fact that no protest petition was filed thereafter, this Court is of the considered opinion that the FIR is vexatious and seems to be instituted with an ulterior motive only because the husband preferred a divorce petition on 17.06.2021 i.e. much prior to the filing of the FIR against all the family members. Therefore, this Court is of the opinion that in the peculiar facts and circumstances of the case, the FIR No. 733/2021 and the charge-sheet dated 02.02.2022 in the matter deserve to be quashed and are accordingly quashed. The appeal is allowed.

.....J.
[B. V. NAGARATHNA]

.....J.
[SATISH CHANDRA SHARMA]

NEW DELHI
February 12, 2025