

Court No. - 75

Case :- APPLICATION U/S 482 No. - 20631 of 2017

Applicant :- Rachit Jain And 2 Others

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Aklank Kumar Jain, H.N. Singh

Counsel for Opposite Party :- G.A., Lallu Singh, Vishwa Jyoti Sahai

Hon'ble Rajiv Gupta, J.

Supplementary affidavit, filed by counsel for the applicants today in Court, is taken on record.

Heard learned counsel for the applicants, learned AGA for the State/Opposite Party Nos.1 and 2 as well as learned counsel for the Opposite Party No.3 and perused the record.

This application under Section 482 CrPC has been filed by the applicants with the prayer to quash the impugned summoning order dated 31.05.2017 and entire proceedings of Complaint Case No. 279 of 2017 (Smt. Hitasha Jain Vs. Rochit Jain and others), under Section 406 IPC, Police Station Link Road, District Ghaziabad.

This Court vide its order dated 04.05.2018 has referred the matter to the Mediation Centre in order to enable the parties to reach an amicable settlement, however, Mediation Centre vide its report dated 27.11.2018 has reported that the parties could not reach to any settlement and the mediation has failed.

As per the allegations made in the complaint, it is alleged that the Opposite Party No.3 was married to applicant no.1 on 05.02.2015, however, after the said marriage, applicants started demanding additional dowry and for non-fulfillment of demand of additional dowry, they used to torture, maltreat, assault her and she was also turned out of her matrimonial home and streedhan belonging to the wife, has not been returned back to her and has been illegally retained by the applicants.

Learned counsel for the applicants has submitted that from the perusal of the allegations made in the complaint and the material collected during the course of enquiry, no offence is disclosed against the applicants and the present prosecution has been instituted with a malafide

intention for the purposes of harassment. He has pointed out certain documents and statements in support of his contention.

Per contra, learned AGA has submitted that from the perusal of the allegations made in the complaint and the material collected during the course of enquiry, prima facie offence is clearly made out against the applicants and as such, impugned summoning order as well as entire proceedings cannot be quashed.

Moreover, all the submissions made at the bar relates to the disputed question of fact, which cannot be adjudicated upon by this Court under Section 482 CrPC. At this stage, only prima facie case is to be seen in the light of the law laid down by the Hon'ble Apex Court in the cases of **R.P. Kapur Vs. State of Punjab, AIR 1960 SC 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cri.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cri.) 192** and lastly **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283**. The disputed defence of the accused cannot be considered at this stage.

The prayer for quashing the impugned summoning order as well as entire proceedings is therefore refused.

However, it is directed that if the applicants appear/surrender before the court below within 45 days from today and apply for bail, their prayer for bail shall be considered and decided in view of settled law laid down by this Court in the case of **Amrawati and another Vs. State of U.P. reported in 2004 (57) ALR 290** as well as judgment passed by Hon'ble Apex Court in the case of **Lal Kamendra Pratap Singh Vs. State of U.P. reported in 2009 (3) ADJ 322 (SC)**.

For a period of 45 days from today or till the applicants surrender and apply for bail, whichever is earlier, no coercive action shall be taken against them. However, in case, the applicants do not appear before the court below within the aforesaid period, coercive action shall be taken against them.

With the aforesaid observations, this application under Section 482 CrPC is finally **disposed of**.

Order Date :- 27.11.2019
Nadim