

A.F.R.

Court No. - 84

Case :- APPLICATION U/S 482 No. - 14988 of 2020

Applicant :- Desh Deepak Dwivedi And 3 Others

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

Counsel for Applicant :- Anand Prakash Yadav, Kavita Yadav, Krishna Nand Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Ram Krishna Gautam, J.

1. The applicants Desh Deepak Dwivedi and three others, by means of this application under Section 482 Cr.P.C., have invoked the inherent jurisdiction of this Court with prayer to quash order dated 28.7.2020 passed by the Sessions Judge, Maharajganj, in Criminal Revision No. 44 of 2020, Kumkum Dwivedi Vs. Desh Deepak Dwivedi and others, arising out of order dated 17.3.2020 passed by C.J.M., Maharajganj, in Criminal Complaint Case No. 379 of 2019, Kumkum Dwivedi Vs. Desh Deepak Dwivedi and others, under Sections 498A, 323, 504, 506 I.P.C. and 3/4 D. P. Act, P.S. Paniyara, district Maharajganj.

2. Heard learned counsel for the applicants and learned AGA. Perused the record.

3. Learned counsel for applicants argued that Criminal Complaint Case No. 379 of 2019, Kumkum Dwivedi Vs. Desh Deepak Dwivedi and others, under Sections 498A, 323, 504, 506 I.P.C. and 3/4 D. P. Act, P.S. Paniyara, district Maharajganj, was filed by O.P. No. 2 against applicants Desh Deepak Dwivedi and three others with contention of demand of dowry, cruelty with regard to it and assault with abuse of criminal intimidation on 31.10.2019. This was by way of an application u/s 156(3) Cr.P.C. The Magistrate took cognizance over it and registered it as a complaint case. An enquiry u/s 200 and 202 Cr.P.C. was made by C.J.M., Maharajganj, and then after complaint was dismissed u/s 203 Cr.P.C. with finding that there was no prima-facie case for summoning. Rather this complaint was with a view to harass the husband and in-laws by complainant. This order was challenged before revisional court of learned Sessions Judge, Maharajganj, wherein the then learned Sessions Judge allowed the revision, thereby quashed the order of Magistrate and remanded the file back for fresh consideration of same. Learned C.J.M., in compliance of order of learned revisional court, decided to have an enquiry by a Gazetted Officer of Police u/s 202(1) Cr.P.C. and it was directed

to Superintendent of Police, Maharajganj, for getting enquiry by a Gazetted Police Officer of the occurrence. Deputy Superintendent of Police, Maharajganj, submitted his report in compliance of order of Court of C.J.M. with finding of undue harassment by complainant to her in-laws and contradictions in the date of alleged assault. On the basis of evidence on record, learned C.J.M. again dismissed the complaint u/s 203 Cr.P.C. Complainant filed subsequent Revision No. 44 of 2020 before learned revisional court of District & Sessions Judge, Maharajganj, wherein again revision was allowed and order of learned C.J.M. was set aside with a direction for re-hearing and decision. Meaning thereby once learned C.J.M. has made compliance of direction of learned revisional court and found no ground for passing a summoning order u/s 204 Cr.P.C., again this revision was allowed with the same direction. This remand order was passed under abuse of process of law and was not to be made by learned revisional court in view of law laid down by Apex Court in Criminal Appellate Jurisdiction in ***Criminal Appeal No.(s) 1874-1875 of 2010, Kooli Saseendran & others Vs. State of Kerala Etc.***, wherein the Apex Court has held that remand in criminal case should not be usual but sparingly exercised in cases where it is utmost necessary. Hence this application with above prayer.

4. Learned AGA has vehemently opposed the application.

5. Having heard learned counsel for both sides and gone through the material placed on record, it is apparent that the learned C.J.M. has not exercised his judicial mind in passing impugned order. Rather the report of Dy. S.P. has been taken as basis and finding is on above report with a categorical mention that in the opinion of the learned Magistrate, no ground is there for passing summoning order, whereas this court as well as Apex Court in several decisions have held that wherever there is judicial discretion or satisfaction of a Court for passing a judicial order, this discretion or satisfaction should be of objective satisfaction i.e. apparent and coming out from the record i.e. it should not be subjective satisfaction of Presiding Judge. Hence opinion of a Magistrate is not a governing statute. Rather the opinion of a court should be based on the evidence before it and analytical analysis under judicial canon is the deciding factor.

6. The Magistrate was expected to make analysis of evidence collected by him u/s 200 and 202 Cr.P.C. in which enquiry report made by police or any other authority u/s 202(1) of Cr.P.C. is included and on the whole evidence, the appreciation is to be made as to whether a prima-facie case is made out or not.

7. Learned Sessions Judge, by way of writing many citations in its decision, has decided criminal revision no. 92 of 2019 with specific proposition of law that there is no need of analytical analysis of evidence at the time of passing order u/s 204 Cr.P.C. Rather a prima-facie case is to be seen as to whether a case is to be proceeded with or not. At that juncture meticulous analysis with a view that evidence is sufficient for basing conviction or not, is not to be made. But this legal proposition and observation of learned Sessions Judge was not taken into consideration by learned C.J.M., Maharajganj, in the impugned order, which was challenged in subsequent Criminal Revision No. 44 of 2020 and learned Sessions Judge has set aside the order of the learned C.J.M.

8. From the very perusal of factual matrix, it is undisputed that complainant Smt. Kumkum Dwivedi is legally married wife of Desh Deepak Dwivedi. There are strained relations in between. Desh Deepak Dwivedi has filed a suit for dissolution of marriage before Family Court and the same is pending. Allegations are there. A previous complaint to District Magistrate, Gorakhpur, was made by Kumkum Dwivedi regarding ill-treatment and demand of dowry coupled with cruelty by her husband and in-laws prior to filing of this complaint and the District Magistrate has taken cognizance over it, wherein District Probation Officer was deputed to look into the matter and an attempt for family settlement was made at that stage. But it could not be successful. Then after this complaint was filed. Meaning thereby the complainant being legally wedded wife of Desh Deepak Dwivedi is an undisputed fact. Subhash Chandra Dwivedi, Shashi Kala Dwivedi and Neha Dwivedi are the closed blood relatives of Desh Deepak Dwivedi is also not disputed. Demand of dowry coupled with cruelty is very well there against these in-laws. A complaint was earlier made and an attempt for family settlement was there, but it could not be successful. Divorce petition has been filed by Desh Deepak Dwivedi with allegations and this complaint has been filed with above contention of demand of dowry, cruelty with regard to it, ill-treatment as well as assault, abuse and intimidation. This contention of complainant was very well reiterated in the statement u/s 200 Cr.P.C. and this was further corroborated by two witnesses in their statements recorded u/s 202 Cr.P.C. Moreso, an enquiry u/s 202(1) Cr.P.C. by a Gazetted Police Officer was got conducted by Magistrate and report of Gazetted Police Officer i.e. Dy. S.P. is also of fact that there had been a complaint regarding demand of dowry, cruelty with regard to it and ill-treatment of Kumkum Dwivedi by her husband and in-laws was filed before District Magistrate, Gorakhpur, it was taken under consideration and an attempt for

its disposal by way of mediation by District Probation Officer was made, but was unsuccessful. There was complaint of above demand of dowry and cruelty with regard to it. What else was required by the Magistrate for making a prima-facie case for passing summoning order u/s 204 Cr.P.C. Hence the order passed by the Magistrate was against the proposition of law on the point of summoning u/s 204 Cr.P.C., as written by the learned Sessions Judge, Maharajganj, while deciding the Criminal Revision. Hence the impugned order of the learned Sessions Judge, Maharajganj, is well in accordance with law and has rightly set aside the order of C.J.M., Maharajganj.

9. Accordingly, this application merits its dismissal. Dismissed as such.

10. However, from all those facts and circumstances, it is apparent that the Officer, presiding as C. J. M., Maharajganj, who has passed the order dated 17.3.2020 in Complaint Case No. 379 of 2019, Kumkum Vs. Desh Deepak, u/s 498A, 323, 504, 506 I.P.C. and 3/4 D. P. Act, P. S. Paniyara, District Maharajganj, is either not in a position to appreciate law or visualize the observations made by learned Sessions Judge, Maharajganj, or is with some extraneous influence. Hence the learned Sessions Judge, Maharajganj, is being expected to make file to some other Court of Magistrate for disposal.

Order Date :- 8.10.2020

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