
Leela Joshi & Others Vs State Of Uttarakhand And Another

Criminal Miscellaneous Application (C-482) No. 336 Of 2018

Court: Uttarakhand High Court

Date of Decision: April 6, 2021

Acts Referred:

Code Of Criminal Procedure, 1973 & Section 202, 482#Indian Penal Code, 1860 & Section 120B, 423, 494, 498A, 504, 506

Hon'ble Judges: N.S. Dhanik, J

Bench: Single Bench

Advocate: Ganesh Kandpal, S.S. Adhikari, T.P.S. Takuli

Final Decision: Allowed

Judgement

N.S. Dhanik, J

1. By means of this application under Section 482 Cr.P.C., applicants have prayed to quash the order dated 13.11.2017 passed by learned Chief

Judicial Magistrate Bageshwar, District Bageshwar in Case No. 495 of 2017 and further to quash the entire proceedings of Case no. 495 of 2017,

Ã¢â‚¬Å“Smt. Hema Chaturvedi v. Prakash @ Shankar Chaturvedi & othersÃ¢â‚¬ under Sections 498-A, 423, 504, 506, 494 & 120-B of IPC, pending before

the learned Chief Judicial Magistrate, Bageshwar, District Bageshwar.

2. Facts, in brief, are that on 05.10.2017 respondent no. 2 (Smt. Hema Chaturvedi) filed a complaint against the present applicants and three others

stating therein that on 26.11.2008, the marriage of respondent no. 2 was solemnized with Prakash @ Shankar Chaturvedi as per the Hindu rites. After

a few days of marriage, the present applicants along with others assaulted respondent no. 2 for dowry. Thereafter, the husband of respondent no. 2

went Mumbai and stopped talking with respondent no. 2. The husband of respondent no. 2 was also abused her and was also taunted her for dowry

too. In the complaint, it is also stated that the in-laws of respondent no. 2 and the present applicants were also abused her; assaulted her and taunted

her for dowry. On telling about the incident, that on 15.08.2009 the father & mother of the husband departed her from the house. Thereafter, the

husband of respondent no. 2 started talking about the divorce. In the complaint, it is further stated that respondent no. 2 went her parental house and

lodged a complaint before the Gram Panchayat. After that, the husband of respondent no. 2 took her back to his house but the behavior of husband;

in-laws and the present applicants were remain same and she was continuously harassed. Thereafter, respondent no. 2 lodged a complaint in Mahila

Helpline, Bageshwar and the said Helpline called them, then the husband were assured the said Helpline that he will talk to his parents; will take her

back and will take care of her too, but he did nothing. Thereafter, respondent no. 2 lodged a report at Police Station Kotwali Bageshwar but no action

has been taken by the police officials. After that, she came to know that her husband got married with one Poonam.

3. Pursuant to the instant complaint, the learned Magistrate has summoned the present applicants along with others to face trial for the aforementioned

offences. Hence, the present criminal misc. application under Section 482 Cr.P.C.

4. Learned counsel for the applicants submits that the present applicants are married sister-in-laws of respondent no. 2 and they are residing at their

matrimonial house. He further submits that applicant nos. 1 & 3 are residing at a place beyond the jurisdiction of the concerned Magistrate, while

passing the summoning order, the provisions of Section 202 of the Code of Criminal Procedure are ignored and not complied with by the concerned

Magistrate. He also submits that from a bare perusal of the FIR, it is clear that no specific time; date & place are mentioned in the said FIR.

5. Learned counsel for the applicants placed reliance on the judgments of Hon'ble Supreme Court in the case of Geeta Mehrotra & another v.

State of Uttar Pradesh & another; reported in (2012) 10 SCC 741 and in the case of Preeti Gupta & another v. State of Jharkhand & another;

reported in (2010) 7 SCC 667.

6. Further, learned counsel for the applicants placed reliance on the judgment of Hon'ble Madras High Court in the case of Prasanna Kumar v.

Dhanalaxmi & others in Criminal Misc. Petition No. 12389 of 1987 decided on 16.02.1988.

7. Learned counsel for respondent no. 2 submits that the learned concerned Magistrate has rightly taken cognizance and passed a summoning order as

there is sufficient and credible against the accused applicants. He also submits that after the marriage, all the family members including the applicants,

threatened respondent no. 2 and after sometime of marriage, the husband of respondent no. 2 went to Mumbai and was residing in the house of

applicant no. 1 and threatened respondent no. 2 telephonically and the applicant no. 1 supports him and further applicant no. 2 used to threaten

respondent no. 2 and sometime the applicant nos. 2 & 3 also used to threatened respondent no. 2 and also insisted their parents for threatening

respondent no. 2. He further submits that the present applicants are the real sisters of the husband of respondent no. 2 and only due to the instigation

of the applicants; the husband of respondent no. 2 has re-married with one Poonam.

8. Section 498-A of IPC deals with cruelty with women which reads as under:

“498- A. Husband or relative of husband of a woman subjecting her to cruelty- Whoever, being the husband or the relative of the husband of a

woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to

fine.

Explanation - for the purposes of this section, “cruelty” means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or

health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for

any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

9. In order to appreciate the application of Section 498-A IPC, the essential ingredients are:-

(i) The husband or relative of husband of a woman subjecting her to cruelty and the cruelty means any willful conduct which is of such a nature as is

likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health.

(ii) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for

any property or valuable security.

10. In the instant case, it is admitted that applicant no. 1 is a permanent resident of Mumbai and has been living with her husband for more than 15

years. Similarly, applicant no. 3 is a permanent resident of Haldwani and has been living with her husband since 2000. So far as, applicant no. 2 is

concerned, she got married in the year 1997 and since then she has been living in her matrimonial house at Bageshwar. All the present applicants have

never visited the place where the alleged incident had taken place. They had never lived with respondent no. 2 and her husband. Applicants’

implication in the complaint is meant to harass and humiliate the husband’s relatives. This seems to be the only basis to file this complaint against

the applicants.

11. Having heard the contentions of learned counsel for the parties and considering the facts and circumstances and the legal proposition as discussed

above, this is a fit case where interference is required under Section 482 Cr.P.C. as no prima facie case is made out against the applicant, therefore,

the present criminal miscellaneous application under Section 482 of Cr.P.C. is allowed. The order dated 13.11.2017 passed by learned Chief Judicial

Magistrate Bageshwar, District Bageshwar in Case No. 495 of 2017 as well as the entire proceedings of Case No. 495 of 2017, “Smt. Hema

Chaturvedi v. Prakash @ Shankar Chaturvedi & others— under Sections 498-A, 423, 504, 506, 494 & 120-B of IPC, pending before the learned

Chief Judicial Magistrate, Bageshwar, District Bageshwar are hereby quashed qua the applicants only. Inform the Court concerned accordingly.