

(2012) 05 AHC CK 0070

Allahabad High Court

Case No: Criminal R. No. 5184 of 2010

Yashodharam Mathur
and others

APPELLANT

Vs

State of U.P. and
another

RESPONDENT

Date of Decision: May 21, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 200, 202, 482
- Penal Code, 1860 (IPC) - Section 498A
- Protection of Women From Domestic Violence Act, 2005 - Section 12, 17, 18, 19, 20

Citation: (2012) 3 ACR 2449

Hon'ble Judges: Surendra Kumar, J

Bench: Single Bench

Advocate: Brijesh Sahai, for the Appellant; S.K. Pandey and A.G.A., for the Respondent

Judgement

Surendra Kumar, J.

Heard Sri. Brijesh Sahai, learned counsel for the revisionists, Sri. S.K. Pandey, learned counsel for the opposite party No. 2 and learned A.G.A. The instant revision has been filed by the revisionists against the order dated 9.10.2010 passed by the Additional Chief Judicial Magistrate IIIrd, Saharanpur in Criminal Case No. 6617 of 2010, C.S. Mathur v. Yashodharam Mathur and others, by which the revisionists have been summoned under Sections 498A I.P.C. and 3/4 Dowry Prohibition Act, on finding a prima facie case against them.

2. The relevant facts are that Smt. Deepti Mathur was married to revisionist No. 1 Yashodharam Mathur on 27.12.2008 according to Hindu Rites and Customs and the said marriage was performed at Saharanpur. Smt. Deepti Mathur was resident of district Saharanpur where her parents are living. The revisionist No. 1 Yashodharam Mathur is husband of the victim lady. The revisionist No. 2 Navin Chandra Mathur is father-in-law of

the victim Smt. Deepti Mathur. The revisionist No. 3 Smt. Somya Mathur is married Nanad of the victim lady. The revisionist No. 4 Sri. Rohit Mathur is Nandoi of the victim lady and the revisionist No. 5 Smt. Nivedita Chitnis is married Nanad of the victim lady. They have been implicated as accused persons in the impugned complaint filed in the trial court on 16.9.2010, alleging therein that in the said marriage, the parents of the girl spent Rs. 10 lacs. Her father could not give Car in the said marriage and he assured to give Car later on after making arrangement of money. When the said demand of Car was not fulfilled, the revisionists are alleged to have used satirical language to her. Smt. Deepti Mathur stayed in her sasural only for about 8-9 days after the said marriage and thereafter she alongwith her husband went to Pune where her husband was in employment. It is further alleged that during stay of Smt. Deepti Mathur in her sasural at Allahabad, she was ill treated by the revisionists including her married Nanad and Nandoi. She stayed with her husband at Pune for about two months from 6.1.2009 to 6.3.2009 where also she was subjected to cruelty and tortured by her husband. It is also alleged in the complaint that her husband did not take proper care at Pune and her in-laws have not returned her stridhan and other items given in the marriage.

3. It reflects from the complaint itself that the revisionists were also summoned for the offence under the provisions of Protection of Women from Domestic Violence Act, 2005, which was filed by Smt. Deepti Mathur and that summoning order was challenged before this Court by way of filing Criminal Misc. Application No. 31339 of 2009, which was dismissed vide order dated 1.9.2010 on the ground that the husband had not endeavoured to settle the dispute in spite of meetings from both sides having taken place by order of this Court. Thus, the summoning order in Criminal Case No. 159 of 2009, under Sections 12, 17, 18, 19, 20, 21, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005, Police Station Kutubsher, district Saharanpur was not quashed by this Court.

4. The impugned complaint moved on behalf of the girl by her father Sri. C.S. Mathur, who is opposite party No. 2 herein, discloses that it was decided between the parties that Smt. Deepti Mathur and her husband would live separately after taking divorce and all the dowry items given in the marriage would be returned to the wife, and due to non-co-operative attitude of the husband, other dispute could not be resolved.

5. After recording the statement of the complainant Sri. C.S. Mathur, opposite party No. 2 u/s 200, Cr.P.C. and statements of Smt. Deepti Mathur P.W. 1 and Shravesh Krishna Mathur P.W. 2 u/s 202, Cr.P.C. the trial court after going through material on record, passed the aforesaid summoning order, which is under challenge in this revision.

6. It is contended by learned counsel for the revisionists that Smt. Deepti Mathur after marriage stayed in her sasural at Allahabad only for about 8-9 days and thereafter she alongwith her husband had gone to Pune where her husband was in service. She stayed with her husband at Pune for about two months where the said cruelty is alleged to have taken place.

7. It is further contended by learned counsel for the revisionists that the revisionist No. 3 Smt. Somya Mathur is married Nanad of the victim lady, who is married to revisionist No. 4 Sri. Rohit Mathur and residing with her husband at Ghaziabad. The revisionist No. 5 Smt. Nivedita Chitnis who is also married Nanad of the victim lady and is residing at Pune, has also been made the accused in this case of cruelty and demand of dowry. It is also contended by learned counsel for the revisionists that the revisionists had already challenged the summoning order under the provisions of Protection of Women from Domestic Violence Act, 2005 before this Court by way of filing an application u/s 482, Cr.P.C. where the efforts were made by both sides to settle their dispute but in spite of efforts made by both sides, the said dispute could not be resolved. The aforesaid application u/s 482, Cr.P.C. as stated above, was dismissed by this Court vide order dated 1.9.2010 and thereafter the impugned complaint was filed only after 15 days namely, on 16.9.2010 with the aforesaid omnibus allegations.

8. In the case of [Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others](#), the Hon"ble Supreme Court held that where allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused.

9. In [Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others](#), the Hon"ble Supreme Court held that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set in to motion as a matter of course.....The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complainant to succeed in bringing charge home to the accused.

10. In [Punjab National Bank and others Vs. Surendra Prasad Sinha](#), the Hon"ble Supreme Court held that the judicial process should not be an instrument of oppression or needless harassment. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At that stage the Court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prime objects of criminal justice but it would not be the means to wreak personal vengeance.

11. In the case of [G. Sagar Suri and Another Vs. State of U.P. and Others](#), it was held by the Hon"ble Supreme Court that the criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused, it is a serious matter.

12. The allegations made in the complaint disclose prima facie case only against the husband Yashodharam Mathur who is revisionist No. 1 herein. No prima facie case appears to be made out against the revisionist Nos. 2 to 4 and their implication appears to have been made with some ulterior motive only to put pressure for resolving the dispute. Paragraph 6 of the impugned complaint shows that after marriage, the husband did not take proper care of his wife and used to say that he did not like her as her physical appearance is not looking good. She is of black complexion. The allegation made in the complaint clearly shows that there was physical incompatibility between the husband and wife. In view of the facts and circumstances of the case, the impugned summoning order dated 19.10.2010 passed by the Additional Chief Judicial Magistrate IIIrd, Saharanpur so far as it regards to the revisionist Nos. 2, 3, 4 and 5, is hereby quashed. The impugned summoning order is maintained only against the revisionist No. 1 Yashodharam Mathur who is husband of the victim lady. The criminal revision is partly allowed.