
(2006) 07 AHC CK 0045

Allahabad High Court

Case No: Criminal M. Application No. 9567 of 2005

Uma Shankar and
Others

APPELLANT

Vs

State of U.P. and
Another

RESPONDENT

Date of Decision: July 26, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 200, 202, 204, 482
- Penal Code, 1860 (IPC) - Section 323, 498A, 504, 506

Citation: (2007) 1 ACR 191

Hon'ble Judges: M.K. Mittal, J

Bench: Single Bench

Advocate: H.N. Singh and B. Narayan Singh, for the Appellant; A.K. Sachan and S.K. Mallik, A.G.A., for the Respondent

Judgement

M.K. Mittal, J.

This is an application filed u/s 482, Cr. P.C. to quash the proceeding in Case No.376 of 2003, Prem Lata v. Uma Shanker and Ors. under Sections 498A, 323, 504 and 506, I.P.C., P.S. Shivli, district Kanpur Dehat, pending in the Court of Judicial Magistrate, 1st Class, Kanpur Dehat.

2. Heard learned Counsel for the applicants, learned Counsel for the opposite party No. 2, learned A.G.A. and perused the record including the counter and rejoinder affidavits.

3. The brief facts of the case are that the opposite party No. 2 Smt. Prem Lata daughter-in-law of applicant No. 1 Uma Shanker, lodged the F.I.R. on 4.3.2002 against her father-in-law, two Dewars namely Anil Kumar alias Ram Singh and Sunil Kumar alias Jhallar and Nanad Smt. Meena and Nandoi Virendra Singh and Smt. Beena, alleging that she was married on 18.2.1999 with Amar Singh, son of Uma Shanker according to Hindu

rites and dowry was given by her family members. When after marriage, she came to her sasural demand of Rs. One lac was made by Uma Shanker and other family members and she was harassed. She informed her brother who gave a road roller (old) and her husband started working. But after some time accused persons again started harassing her for bringing Rs. One lac otherwise she was to be turned out of the house. She again told this fact to her brother who gave fix deposit receipt for Rs. 25,000 in her name and she gave it to her father-in-law. On 25.2.2002 when her husband had gone out in connection with the work, a demand for Rs. 50,000 was made and she was ill-treated and beaten and was turned out of the house. She thereafter lodged this report.

4. After investigation final report dated 17.4.2002 was submitted. Thereafter informant filed a protest petition along with affidavit and the learned Magistrate vide order dated 30.1.2003 rejected the final report and directed to register the case as complaint case. The complainant examined herself u/s 200, Cr. P.C. and her witnesses u/s 202, Cr. P.C. Learned Magistrate finding a prima facie case directed to summon the accused applicant. Feeling aggrieved, this application has been filed.

5. According to the applicants, after one month of the marriage, the opposite party No. 2 and her husband Amar Singh started living separately. The applicant No. 1 purchased two bighas land in the name of applicant Nos. 2 and 3 but in that land no share was given to Amar Singh and this annoyed the opposite party No. 2, who with mala fide intention and under motivation of her husband Amar Singh and in order to harass the applicants, moved an application in the Court u/s 156(3), Cr. P.C. On that application case was registered but after finding the allegation false, final report was submitted. According to applicants the Road Roller was purchased by applicant No. 1 and was given to husband of opposite party No. 2 and no fixed deposit receipt for Rs. 25,000 in the name of opposite party No. 2 was given to the applicant No. 1. Applicant No. 1 purchased the road roller in partnership with one Majeed for Rs. 2.20 lacs from Ruby Road Roller Suppliers, New Delhi, on 3.2.1997, i.e., before the marriage. The applicants denied that they harassed or beat the opposite party No. 2 and turned her out of the house. According to the applicants, the complaint has been made with totally absurd and inherently improbable allegations and is abuse of the process of the Court and if it proceeds, they would be put to irreparable loss.

6. The opposite party No. 2 has contended in her counter-affidavit that she was living jointly with her husband and the applicants, when demand for dowry was made. It is wrong to say that she was annoyed as share was not given in the land. According to her, applicants are very greedy and money minded persons and were demanding dowry from the time of the marriage and her brother purchased the road Roller and also fixed deposit receipt for Rs. 25,000 in her name. No share was given to her by the applicants and she was expelled from the house. She was beaten but she did not get herself medically examined because injuries were not grievous and secondly she had made efforts for compromise with the applicants.

7. The applicants in the rejoinder-affidavit have alleged that opposite party No. 2 is living in a separate house in her Maika. The road Roller was purchased by applicant No. 1 and not by the brother of opposite party.
8. Learned Counsel for the applicants has contended that the applicants have been falsely implicated in this matter on account of mala fide as the share in the two bighas land was not given to Amar Singh, husband of opposite party No. 2. He has also contended that no demand for dowry was ever made and the road Roller was purchased by the applicants in partnership with Majeed Khan for Rs. 2.20 lacs and the alleged fixed deposit receipt was not given to the applicants and the brother of opposite party No. 2 had himself taken a loan of Rs. 16,000 on that fixed deposit receipt. The applicants have also filed a receipt to show that the payment of Rs. 30,000 was made in connection with the purchase of the road Roller.
9. Learned Counsel for the opposite party No. 2 has contended that the demand for dowry was made and when it was not fulfilled she was ill-treated and harassed and turned out of the house. However, he has not disputed the fact that on the alleged fixed deposit receipt the loan was taken by the brother of opposite party No. 2. The opposite party No. 2 has also not filed any document to show that the road Roller was purchased by her brother. She has not even disclosed as to from whom or when and for what amount it was purchased. Therefore the contention of the learned Counsel for the opposite party No. 2 that the demand for dowry was made is not tenable. Opposite party No. 2 also contended in her complaint that she was beaten and was turned out of the house ; but she has admitted in her counter-affidavit that she did not go for any medical examination as mentioned above.
10. Now it has to be seen whether the criminal proceedings are liable to be quashed u/s 482, Cr. P.C. in exercise of the inherent powers. In the case of *State of Haryana v. Bhajanlal* 1992 SCC 426 , the Hon"ble Apex Court has laid down certain guidelines while adding a note of caution that the power should be exercised sparingly and that too in the rarest of the rare cases. The illustrative categories relevant in the case are (v) Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable and vexatious that on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused (vii) Where a criminal proceeding is manifestly attended with mala fide or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on accused and with a view to spite him due to private and personal grudge. In the case of [M. Krishnan Vs. Vijay Singh and Another](#), the Hon"ble Apex Court has reaffirmed the above guidelines for quashing of the criminal proceedings. In a recent case of [Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others](#), , it has been held by the Hon"ble Apex Court while considering the scope of Section 482, Cr. P.C. that inherent jurisdiction though wide has to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the test specifically laid down u/s 482, Cr. P.C. Power is to be exercised ex-debitio justitiae to prevent the abuse of the process of the Court but should

not be exercised to stifle the legitimate prosecution. It has further been held that in a proceeding instituted on complaint exercise of the inherent powers to quash the proceeding is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive.

11. It shows that if the allegations made in the complaint are inherently improbable, vexatious or false the proceedings can be quashed.

12. The summoning of an accused in a criminal case is a serious matter and in order to ensure that proper enquiry is made, a duty has been cast on the Magistrate under Sections 200 and 202, Cr. P.C. Section 200, Cr. P.C. requires that a Magistrate taking cognizance of an offence on a complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate. Section 202, Cr. P.C. authorises the Magistrate to postpone the issue of process against the accused and to either enquire himself or direct an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. The reading of Sections 200 and 202, Cr. P.C. shows that the Magistrate should himself examine the complainant and his witness and should make the enquiry.

13. This enquiry is not to be a routine enquiry. In the case of [G. Murugesan and Brothers Vs. Commissioner of Income Tax , Madras](#) , the Hon"ble Apex Court has laid down that the object of such examination is to ascertain whether there is prima facie case against the person accused of an offence in the complaint and to prevent the issue of process on the complaint which is either false or vexatious or intended only to harass such a person. In other words, the object of Section 200, Cr. P.C. is to ascertain whether there is prima facie case against the accused and whether process is required to be issued.

14. If a person is summoned in a criminal case and is made to face the trial his important rights are affected, therefore, law requires that scrutiny is made at the initial stage and the person is to be summoned only when a prima facie case is made out. In the case of M/s. Pepsi Food Limited and Anr. v. Special J.M. and Ors. 1998 JIC 11, it has been held by the Hon"ble Apex Court that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. 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 complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and

his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

15. In the instant case, after the final report was submitted and the complainant had filed protest petition, learned Magistrate examined the complainant and her brother u/s 200/202, Cr. P.C. in a very routine manner. He did not try to ascertain prima facie correctness of the allegations made by the complainant particularly in view of the fact that she had given some statement during investigation made by the police, as is apparent from the copy of the statement filed on record. In this case, it is also very material that the complainant is living with her husband, separately from the applicants, and her husband never complained about any demand of dowry made by the applicants. The complainant also does not say that she ever complained to her husband about the act of the accused persons. If any demand of dowry was made by the applicants, the natural conduct for the complainant would have been to inform her husband with whom she has cordial relations and with whom she has been living. The conduct of the complainant points to the inherent improbability and false and vexatious nature of the allegations made in the complaint. She could not prima facie show the demand of dowry or any ill-treatment or harassment. To the contrary her mala fides in collusion with her husband are writ large.

16. In the circumstances of the case, I come to the conclusion that the complainant with a view to take personal vengeance, as the share was not given to her husband by the applicant No. 1, in the land purchased in the names of his other two sons, has initiated this proceeding. Here the wife has the grievance against her in-law and the husband is supporting her by keeping silence. Of late there has been increase in the misuse of the provisions of Section 498A, I.P.C. and the instant case is a glaring example of the same. The Court should not be used as a tool to harass the adversary. The learned trial court has erred in summoning the applicants. Therefore, if the proceeding continues it will amount to misuse of the process of the Court and the applicants would be put to irreparable loss. Therefore in the interest of justice and equity both, it is required that the complaint be quashed in the exercise of the inherent powers u/s 482, Cr. P.C.

17. Application u/s 482, Cr. P.C. is liable to be allowed and is hereby allowed. The proceedings in Case No. 376 of 2003 Prem Lata v. Uma Shanker and others, under Sections 498A, 323, 504 and 506, I.P.C., P.S. Shivli, district, Kanpur Dehat, pending in the Court of Judicial Magistrate, 1st Class, Kanpur Dehat, are hereby quashed.