

(2010) 09 AHC CK 0469**Allahabad High Court****Case No:** U/S 482/378/407 No. 3645 of 2010

Ram Sakal Dubey

APPELLANT

Vs

The State of U.P and Another

RESPONDENT

Date of Decision: Sept. 15, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Dowry Prohibition Act, 1961 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 498A

Hon'ble Judges: Raj Mani Chauhan, J**Bench:** Single Bench**Judgement**

Raj Mani Chauhan, J.

Heard learned Counsel for the petitioner and learned Additional Government Advocate for the State as well as perused the documents available on record.

2. This petition u/s 482 of the Code of Criminal Procedure (hereinafter referred to as the "Code") has been filed by the petitioner with the following prayers:

It is most respectfully prayed that this Hon'ble Court may kindly be pleased to quash the impugned charge-sheet No. 3 of 2010 arising out Case Crime No. 1 of 2010 under Sections 498-A IPC and 3/4 Dowry Prohibition Act, Police Station Mahila Thana, District Sultanpur and summoning order dated 11.8.2010 passed by the Additional Chief Judicial Magistrate-I, Court No. 17, Sultanpur in Criminal Case No. 6714 of 2010 State v. Ram Sakal Dubey.

3. The submission of learned Counsel for the petitioner is that the Opposite Party No. 2-Kshama Dwivedi (complainant) is the real sister of the wife of the accused-petitioner. The wife of the accused-petitioner had already died. The complainant was already married with Om Prakash Tiwari later on there had been a divorce between them. Thereafter she re-married with Sabhapati Shukla on

19.7.2002. This marriage is still subsisting. There is no divorce. The complainant herself has alleged that she had entered into marriage with the accused-petitioner in a temple, she was insisting the accused-petitioner to enter into court marriage but he was avoiding. In fact, she had never married to the accused-petitioner, therefore, no offence under Sections 498-A IPC and 3/4 Dowry Prohibition Act is made out against the accused-petitioner. The Investigating Officer in a mechanical way has submitted the charge-sheet against the accused without collecting sufficient in support of offence under Sections 498-A IPC and 3/4 Dowry Prohibition Act and the learned Magistrate has taken cognizance of the offence on the basis of the said charge-sheet the learned Magistrate has summoned the accused. Therefore, impugned charge-sheet as well as the impugned summoning order of the accused are liable to be quashed.

4. Issue notice to the Opposite Party No. 2 to file counter affidavit within four weeks.
5. Learned Counsel for the petitioner may file rejoinder affidavit, if any, within two weeks thereafter.
6. List thereafter.
7. Till then the proceeding of Criminal Case No. 6714 of 2010 (State v. Ram Sakal Dubey) arising out of the charge sheet filed by the Investigating Officer in Case Crime No. 1 of 2010, under Sections 498-A IPC and 3/4 Dowry Prohibition Act, P.S. Mahila Thana, District Sultanpur will remain stayed.