

(2003) 04 AHC CK 0262**Allahabad High Court****Case No:** Criminal Miscellaneous Writ Petition No. 1900 of 2003

Anand Kumar Singh and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: April 18, 2003**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 323, 498A, 506

Citation: (2003) 2 DMC 70**Hon'ble Judges:** M.C. Jain, J; M. Chaudhary, J**Bench:** Division Bench**Advocate:** Jagdish Singh Sengar, for the Appellant; K.K. Dwivedi, R.P. Dwivedi and Viresh Mishra, A.G.A., for the Respondent**Final Decision:** Dismissed

Judgement

M.C. Jain, J.

Short counter-affidavit filed from the side of respondent No. 2 is taken on record.

2. We have heard Mr. J.S. Sengar, learned Counsel for the petitioners, learned A.G.A, and Mr. Viresh Mishra, learned Senior Advocate on behalf of respondent No. 2. The petitioners have prayed for quashing of the F.I.R. dated 23.3.2003 (Annexure 6 to the writ petition), lodged against them by respondent No. 2 Under Sections 498A/323/506,1.P.C., P.S. Cantt, District Varanasi and/or to stay their arrest in the said case.

3. Petitioner No. 1 is the husband of the complainant-respondent No. 2 and their marriage took place on 9.3.2002. The allegations in the F.I.R. are that respondent No. 2 had been married with petitioner No. 1 in consequence of a matrimonial advertisement given by petitioner No. 4 (who is the husband of the sister of petitioner No. 1 and who played a potent and leading role) in a newspaper "Dainik Jagran" dated 9.12.2001 and her father had spent a sum of Rs. 14 lacs in the marriage, out of which Rs. 8 lacs by means of two Bank drafts were deposited in the

joint name of petitioner No. 1 and respondent No. 2. On Vidai in marriage she was first taken to the house of petitioner No. 4 at Ghazipur whereafter she came to reside with petitioner No. 1 at Ghaziabad. Petitioner No. 1 withdrew substantial amount from the Bank and he and his family members were not satisfied of the dowry. Respondent No. 2 was being allegedly treated with cruelty over the demand of dowry. On 26.6.2002 she reached her parents' house at Varanasi. On 26.1.2003 petitioner No. 1 reached at her parental house and further demanded Rs. 20 lacs. She was assaulted also. She was medically examined. Her report was not taken down at the police station. Ultimately, on the order of the higher police authorities, a case was registered on 23.3.2003.

4. Petitioner No. 2 is the father-in-law and petitioner No. 3 is mother-in-law of respondent No. 2. Petitioner No. 5 is the wife of petitioner No. 4.

5. The submission of the learned Counsel for the petitioners is that the F.I.R. is highly belated and further that on 12.11.2002 petitioner No. 2 had filed a petition against his wife (respondent No. 2) for restitution of conjugal rights in which she put in appearance also on 11.3.2002. The present F.I.R., according to him, has been lodged with false allegations as counter-blast.

6. Per contra, the submission from the side of respondent No. 2 is that the marriage having been performed by her father after spending huge amount, squeezing his resources to the optimum, lodging of the F.I.R. could not be expected as the first step after the incident of 26.1.2003. The parental side of respondent No. 2 thought that good sense would prevail on the petitioner No. 1 and things would normalize. He has referred to Annexure Nos. 4 and 5 to the short counter affidavit which are the letters written by respondent No. 2 to her parents, indicative of harassment and cruelty heaped on her by the petitioners over the demand of dowry.

7. On consideration, we find that the F.I.R., *prima facie*, discloses the commission of cognizable offence u/s 498A, I.P.C. by the petitioners. The question of delay in the lodging of the F.I.R. would be germane at the trial in case the investigation results in submission of charge-sheet. The simple fact of the petition of restitution of conjugal rights having been instituted by petitioner No. 1 against respondent No. 2 on 12.11.2002 would not be of much consequence at this stage because the background of the offence is continuing even from before. The investigation has to go the whole hog. The quashing of the F.I.R. cannot be sought only on the premise that the allegations made are incorrect or are wrong according to the petitioners. They cannot invoke the jurisdiction of this Court to enter into their defence. It goes without saying that the High Court does not ordinarily enter into the factual controversy in writ jurisdiction. When F.I.R. discloses commission of cognizable offence and there is no ground for interference by this Court to prevent the abuse of the process of any Court or otherwise to secure the ends of justice, the ordinary system of law must take its own course. Nothing more is required to be stated at this stage to save the expression of opinion on merits.

8. In view of the above discussion, we see no ground either to quash the First Information report or to stay the arrest of the petitioners, The writ petition is dismissed. It is, however, provided that in case the petitioners appear before the Court concerned and apply for bail, their bail plea shall be considered according to law expeditiously.