

(2007) 10 AHC CK 0150**Allahabad High Court****Case No:** Criminal M.A. No. 12782 of 2007

Najir and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: Oct. 1, 2007**Acts Referred:**

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

Citation: (2008) 2 ACR 1532**Hon'ble Judges:** Vinod Prasad, J**Bench:** Single Bench**Advocate:** Zafeer Ahmad, for the Appellant; Sanjay Singh and A.G.A., for the Respondent**Judgement**

Vinod Prasad, J.

List is revised. Learned Counsel for the applicants is not present.

2. The whole family consisting of husband, mother-in-law, father-in-law, three nanads (sister-in-laws) and three dewars (brother-in-laws) have approached this Court with the prayer to quash the summoning order dated 3.5.2007 passed by Additional Civil Judge (J.D.)/Judicial Magistrate, Court No. 4, Moradabad in Complaint Case No. 5444/9/06, Gulawsana v. Najir and Ors. u/s 498A, I.P.C., P. S. Munda Pandey, district Moradabad. As the issue was between the husband and wife and the close relatives, the matter was placed before the Reconciliation Centre by this Court vide order dated 12.6.2007. The report of the Conciliator as well as Bench Secretary, Allahabad High Court Mediation and Conciliation Centre clearly indicate that settlement could not be reached and hence this matter is listed today before this Court.

3. Learned Counsel for the Respondent Sri Sanjay Singh alongwith the learned A.G.A. are present.

4. With the help of the learned Counsels for the Respondents I have perused the complaint (Annexure-2) to the affidavit filed in support of this application as well as the copy of the application u/s 156(3), Cr. P.C. filed by Smt. Gulawsana. I have also perused the statement u/s 200, Cr. P.C. as well as the statement of P.W. 1 Mehrab w/o Aslam and mother of Gulawsana and that of Ikrar Husain P.W. 2 the eye-witness.

5. From the perusal of the application u/s 156, Cr. P.C. which was treated to be a complaint, it appears that Respondent No. 2 Smt. Gulawsana was married with Najir on 10.5.2006 in village Sikampur, P. S. Munda Pandey, District Moradabad. The dowry mentioned in the complaint including some golden and silver ornaments were given. It is further alleged that all the present applicants started demanding Motorcycle and two lacs rupees in nikah itself but some of the relatives interfered into the matter and nikah was contracted. It is further alleged that the complainant stayed in her in-laws house only for two days and then she returned to her parental home. The complainant who again went to the house of her in-laws, she was tortured for the demand of the dowry. It is further alleged that after contracting the marriage the complainant had vacillated between her in-laws house and parental home many time but she did not make complaint regarding dowry demand. On 21.11.2006 at 5 p.m. husband Najir alongwith other accused persons turned out the complainant from their house in cloths worn by her and thereafter the complainant informed whole incident to her parents regarding torture for non-fulfilment of dowry demand. On 29.11.2006, it is alleged that panchayat had taken place between rival sides but the in-laws were adamant on demand and did not budge at all. They refused to bring back complainant Smt. Gulawsana to their house. Since the wife was tortured and the articles given in the marriage were not returned to her that the complaint was lodged by Smt. Gulawsana against the present applicants. Perusal of the application indicates that Najir is the husband of complainant Respondent No. 2. Smt. Jubaida (applicant No. 5) is the mother-in-law, Maddan is father-in-law and Najreen and Mujarmeen applicants No. 7 and 8 are unmarried nanads, whereas Shakir, Nasir and Jabir applicants No. 2 to 4 are the dewars.

6. Since the applicants have been summoned vide order dated 3.5.2007 by the Additional Civil Judge (J.D.)/Judicial Magistrate Court No. 4, Moradabad in the aforesaid Complaint Case No. 5444/9 of 2006, Smt. Gulawsana v. Najir and seven others, for offences u/s 498A, I.P.C. that the applicants have filed this application u/s 482, Cr. P.C. with the prayer to quash the summoning order dated 3.5.2007 as well as the proceeding of the complaint case mentioned above.

7. After hearing the learned Counsel for the Respondent and learned A.G.A. and looking into the material on the record, I find that so far as the case of the mother-in-law Smt. Jubaida and father-in-law Madaan and Najir the husband are concerned, there are specific allegations against them. Other applicants who by their near relationship with Respondent No. 2 cannot be said to be responsible for

torturing the wife Respondent No. 2 Smt. Gulawsana. The complaint and the statements under Sections 200 and 202, Cr. P.C. do not disclose any offence in this respect. In her statement u/s 200, Cr. P.C. the complainant has made specific allegations against three persons husband, father-in-law and mother-in-law only. So far as the allegations of assault on 21.11.2006 at 5 p.m. is concerned, in that also there are specific allegations against the husband, father-in-law and mother-in-law that they had beaten the wife Smt. Gulawsana Respondent No. 2 and had turned her out from their house in the cloths worn by her and had made the demand of Rs. two lacs and a motorcycle. It is further mentioned in the said statement that these three persons continued to press for the fulfilment of demand of dowry. So far as dewars and nanads are concerned, the statement u/s 200, Cr. P.C. is silent regarding any demand of dowry by them and for torturing the wife Smt. Gulawsana Respondent No. 2.

8. Coming to the statement recorded u/s 202, Cr. P.C. also there is no specific allegation against unmarried nanads and dewars. Moreover P.W. 1 and P.W. 2 Mahrub and Ikrar Husain are not the eye-witnesses of the incident. Regarding the assault etc. taken place on 21.11.2006 they have deposed that the said fact was informed to them by the complainant Respondent No. 2 Smt. Gulawsana. Further evidence of P.W. 2 Ikrar Husain does not indicate at all that dewars and nanads who are five in number participated in the panchayat arranged between the rival sides.

9. In view of the aforesaid, I am not satisfied that there was any reason for the Magistrate to summon Shakir, Nasir, Jabir (applicants No. 2 to 4) and Najreen and Mujarmeen (applicants No. 7 and 8) who are all devars and unmarried nanads to stand the trial u/s 498A, I.P.C. Since the victim complainant Smt. Gulawsana in her statement recorded u/s 200, Cr. P.C. does not utter even a sentence against these five persons (nanads and dewars), I consider that their summoning is bad in law and no offence so far as they are concerned, is made out.

10. In view of the discussion made above, this application is allowed in part. This application is dismissed in respect of applicant 1, Najir (husband) applicant No. 5 Jubaida (mother-in-law) and applicant No. 6 Maddan (father-in-law).

11. However, this application is allowed in respect of Shakir, Nasir, Jabir (applicants No. 2 to 4 who are all dewar) and Najreen and Mujarmeen (applicants No. 7 and 8 who are all unmarried nanads). Summoning order dated 3.5.2007 (Annexure-1) as well as the proceeding of Complaint Case No. 5444/9/06, Smt. Gulawsana v. Najir and Ors. u/s 498A, I.P.C., P. S. Munda Pandey, district Moradabad pending in the Court of Additional Civil Judge (J. D.). Judicial Magistrate, Court No. 4 Moradabad is hereby quashed in their respects.

12. Copy of this order be sent to the trial court for its intimation and for expeditious disposal of trial at an early date.