
(2014) 05 AHC CK 0093

Allahabad High Court

Case No: Criminal Misc. Application No. 23291 of 2011

Aaisha Bano

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: May 29, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 125, 155(2), 156(1), 482
- Penal Code, 1860 (IPC) - Section 323, 498-A, 504, 506

Citation: (2014) 3 ACR 2482 : (2014) 6 ADJ 774 : (2014) 86 ALLCC 815

Hon'ble Judges: Karuna Nand Bajpayee, J

Bench: Single Bench

Advocate: S.P. Singh Parmar, Advocate for the Appellant

Final Decision: Allowed

Judgement

Karuna Nand Bajpayee, J.

This application seeks the quashing of entire criminal proceedings of Complaint Case No. 1287 of 2007 (Sabir and others v. Safique Ahmad) u/s 323, 504, 506 I.P.C., Police Station-Aurai, District-Sant Kabir Nagar (Bhadohi) pending in the Court of Additional Chief Judicial Magistrate, Bhadohi at Gyanpur, District-Sant Kabir Nagar (Bhadohi).

Heard Shri S.P. Singh Parmar, learned counsel for the applicants and learned A.G.A. Record has been perused.

It seems that in order to explore the possibility of an amicable settlement between the parties, the matter was referred to Mediation Centre by order dated 26.7.2011. The report of Mediation Centre reveals that the aforesaid attempt could not fructify or bring any fruit as no agreement could have been arrived at an amicable

settlement. The Court, therefore, deems it fit to decide the matter on merits.

2. It seems that a complaint was brought on behalf of Shafiq Ahmad in the Court against 6 accused persons namely Sabbir, Jahida @ Kamaroonisha, Hazi Abdul Latif, Aisha Bano, Niyaz Ahmad and Bulbul. It may be relevant to mention that complainant Shafiq Ahmad is the husband of Aisha Bano accused-applicant No. 1 while accused-applicant No. 2 Sabbir is father, Jahid @ Kamroonish accused-applicant No. 3 is mother, Hazi Abdul Latif accused-applicant No. 4 is maternal grand-father (Nana), Niyaz Ahmad accused-applicant No. 5 is real brother and Bulbil accused-applicant No. 6 is cousin of Aisha Bano. The allegations were to the effect that at some stage of complainant's marital life the brother of complainant's wife Aisha Bano and her cousin Bulbul came to his house and took his wife to her parental house. As that month was the month of mourning (Muharram), the complainant resisted the idea of sending his wife at that time but the aforesaid two accused persons did not agree and forcefully took her away. It was further alleged that at the time of leaving matrimonial house, the complainant's wife took away her entire valuables and ornaments with her. Subsequently, his wife refused to come to his house and her family members insisted that she would be sent back to her husband house only on the condition that the complainant should separate himself from other members of his family. As the idea of participation or separation was not accepted by the complainant, his in-laws the accused-persons refused to send his wife back to her matrimonial house. It was further alleged that subsequently on 23.7.2007 at about 9.00 a.m. complainant's mother-in-law Jahida @ Kamaroonisha, Sabbir father-in-law and the other aforesaid accused persons came to his house, abused him and made a criminal assault on him and brutally beat him up, as a result of which he incurred injuries also. On the hue and cry being raised, certain villagers assembled, intercepted and saved him. It was also alleged that his F.I.R. was not registered in the police station which then impelled him to bring the complaint to the Court.

3. Learned counsel for the applicants has castigated the truthfulness of the allegations vehemently and has placed before the Court multifold submissions pleading complete false implication and demonstrating that the whole prosecution is frivolous, malicious and motivated. It has been brought to the notice of the Court that actually much before lodging of the present complaint in question the complainant and other members of his family had inflicted enormous cruelty and torture on applicant No. 1, Aisha Bano while she was living with her husband in his house. As the complainant was a rapacious man, the greed of him and his other family members resulted in the additional demands of dowry which the applicant side was completely unable to fulfill. The non-fulfillment of additional demands of dowry resulted into ill-treatment which was of extreme nature. As a result of the same, the applicant No. 1 was impelled to lodge an F.I.R. against her husband and other in-laws. The aforesaid F.I.R. from the side of applicant No. 1 was registered in Police Station-Sarai Inayat, District-Allahabad u/s 498-A, 323, 504, 506 I.P.C.

Submission of the counsel is that in the aforesaid case, after the investigation, charge-sheet was also submitted against the complainant and other family members. Further submission is that because the applicant No. 1 was leading a deserted life, she had also the need of maintenance and for the same purpose she brought an application u/s 125 Cr.P.C. in the Court. The contention is that frustrated and antagonized because of filing of the aforesaid two proceedings against the complainant, he in order to exert coercive pressure on the applicants not to pursue the case in right earnest against him, filed an entirely false and frivolous prosecution in the form of present complaint just as an arm twisting device. The submission is that as the mala fides and false implication are demonstrably apparent on the face of record, this Court must exercise its inherent jurisdiction to quash the complaint because it is resulting not in prosecution but in persecution which instead of seeking justice is trampling upon the same as the applicants have been made to suffer because of their false implication.

4. In the light of the submissions made at the bar and also the submissions made by learned A.G.A., this Court has the occasion to peruse the record.

The most crucial relevant aspect of the case is that the date of F.I.R. lodged from the side of the applicant is 18.6.2005 and the date of application moved on behalf of the applicant u/s 125 Cr.P.C. is 23.1.2006. It goes without saying that both the aforesaid dates are much prior to the date of complaint brought against the applicants which is 6.8.2007. The perusal of the prior F.I.R. lodged from applicants' side against the complainant reveals a woeful story narrated by the applicant No. 1 Aisha Bano as to how and in what manner she was subjected to extreme cruelty and how the greedy in-laws in order to make her parents yield to their illicit dowry demand subjected her to extreme torture. Apart from the same, when this Court perused the present complaint in question what transpires is that it bristles with high improbabilities and the entire alleged version is against the natural course of events which take place in day to day life and is so absurd or so highly improbable that no prudent man can ever come to a just conclusion that the same may be true. The allegation is that the accused-applicants had barged into the house of the complainant who lived at a far away place in a different district and that the group of the accused-applicants who had the audacity to make the criminal assault after barging into the house of the complaint included his wife also. This by itself is an absurd allegation. It is quite unbelievable and an unpalatable idea to go down the throat that the accused persons who live in Allahabad would travel all the way to Bhadohi, a different district far away from Allahabad and would enter into the house of the complainant and would successfully not only beat him but would also inflict injuries and would come back safely, unresisted and unharmed. In fact the allegation that they inflicted the injuries to complainant side is also not corroborated by any medical examination.

5. It is true that at the stage of the summoning of the accused the Court is not to sit upon the Judgment about the final acceptability, reliability or the testimonial worth of the witnesses which is required to be done at the time of deciding the guilt or innocence of the accused while delivering the final verdict of acquittal or conviction. It is also true that only a prima facie satisfaction on the basis of the allegations made by the complainant is required to be considered by the Court at the time of summoning but nevertheless it is equally true that if the allegations are so patently absurd that no prudent man can ever come to a just conclusion on their basis that they may be true or that the accused may be guilty and if the facts and circumstances in a particular case are such which make it demonstrably manifest to the Court that the whole prosecution is inspired by mala fide motives and is apparently a frivolous one, then the Court must come forward to exercise its inherent jurisdiction and stop the Court's process which is perpetuating the false prosecution and is being used by the complainant as an engine of oppression against his enemies. In this regard it may be relevant to quote the decision given in the case of [Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others](#), wherein the Hon"ble Apex Court had held as follows:

"..... Thus it may be safely held that in the following cases an order of the magistrate issuing process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the 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;

(3) Where the discretion exercised by the magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

6. The Apex Court decisions given in the case of [R.P. Kapur Vs. The State of Punjab](#), and in the case of [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), have also recognized certain categories by way of illustration which may justify the quashing of a complaint or charge-sheet, Some of them are akin to the illustrative examples given in the above referred case of [Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others](#), It was observed by the Hon"ble Apex Court in

Bhajan Lal's case as follows:

"The following categories can be stated by way of illustration wherein the extra-ordinary power under Article 226 or the inherent powers u/s 482 of the Code of Criminal Procedure can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Illumined by the aforesaid judgments given by the Hon"ble Apex Court when this Court weighed and analysed the facts and circumstances of the case, it has no hesitation to conclude and observe that the complaint contains allegations which are demonstrably false and absurd and there are enough proven circumstances available on record which persuade the Court to hold that the whole prosecution is a

frivolous and mala fide one.

In the judicial estimate of this Court the present case very well comes under the twin categories indicated by the Apex Court by way of illustration No. (5) and (7) in its decision which has been quoted herein above. Ordinarily the question of mala fides of the prosecution may also be gone into after holding a proper trial, but this Court cannot be dissuaded to make interference at the penultimate stage of trial in the cases where the facts and circumstances are so overwhelming, telling and conclusive that they do not admit of any other inference than the one which has been drawn by this Court that the prosecution is frivolous and has been initiated out of rancor and spite by a vengeful complaint as an arm twisting device.

In view of the aforesaid circumstances and discussions this Court deems it fit to exercise its inherent jurisdiction and quash the entire proceeding in order to avert the abuse of Court's process and also in order to meet the ends of justice.

The present application is allowed.

The impugned proceedings in the aforesaid case are hereby quashed.