Kapil Jaiswal And 2 Others vs State Of U.P. And Another on 3 March, 2025

Author: Manju Rani Chauhan

Bench: Manju Rani Chauhan

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:29121

Court No. - 52

Case :- APPLICATION U/S 528 BNSS No. - 6746 of 2025

Applicant :- Kapil Jaiswal And 2 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Ram Jatan Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Manju Rani Chauhan,J.

1. Heard Mr. Ram Jatan Yadav, learned counsel for the applicants and Mr. Amit Singh Chauhan, learned A.G.A.-I for the State as well as perused the entire record.

2. The present application has been filed challenging the entire proceeding as well as order dated 30.11.2024 vide which the discharge application of the applicants has been rejected.

3. Brief facts of the case are that an FIR has been lodged on 11.05.2024 at 13:34 hours, under Sections 376, 504, 506 I.P.C. against Kapil Jaiswal applicant no.1 along with her parents with the allegation that opposite party no.2 whose parents had expired way back in the year 2020 itself, was

staying along with her maternal-grandmother in a rented house. Kapil Jaiswal applicant no.1 was also staying in the same colony and he became friendly with opposite party no.2 and with a promise to marry, he established physical relationship with opposite party no.2 which continued, on several occasions at different places over a period of about two years. When the opposite party no.2 requested the applicant no.1 to fulfill his promise and perform marriage with her, he gave some excuses, therefore, opposite party no.2 stated that she will proceed in accordance with law. After coming to know about the aforesaid situation, the parents of applicant no.1 were ready to solemnize marriage of applicant no.1 with opposite party no.2. Accordingly, on 27.10.2023 with intent to cheat and gave an impression that applicant no.1 would marry the opposite party no.2, engagement was performed. After the aforesaid engagement ceremony, applicant no.1 continued to have a physical relationship with opposite party no.2, however, he never married. Therefore, an application was given by opposite party no.2 for lodging the present FIR.

4. After investigation, charge sheet has been submitted under Sections 376, 504, 506 I.P.C. & Section 3/4 D.P. Act, against the applicants, on the basis of statements of victim recorded u/s 161 and 164 Cr.P.C. and other charge sheet witnesses. Discharge application was moved by the applicants on 29.10.2024, which has been rejected by order dated 30.11.2024, hence, the present application.

5. Learned counsel for the applicants submits that neither from the version of the FIR nor in any statements of charge sheet witnesses prima facie case is made out in the offences in which charge sheet has been submitted against the applicants. The order dated 30.11.2024 has been passed in a mechanical manner without application of judicial mind. He further submits that there is no allegation against the applicant nos.2 and 3 regarding mental and physical torture of opposite party no.2 raising any dowry demand, therefore, offence u/s 3/4 D.P. Act is not made out against applicant nos.2 and 3 as well as the applicant no.1, who was in a consensual relationship with opposite party no.2. He further contends that charge sheet has been submitted placing reliance upon the Chats of Instagram and WhatsApp Messages, which have not been sent for examination, therefore, it is not the authentic evidence on the basis of which it could be said that offence under the relevant sections, in which charge sheet has been submitted, is made out against the applicants. He further contends that the present case has been lodged in order to exert pressure upon the applicants as applicant no.1 is ready and willing to perform marriage to the opposite party no.2. He further submits that without considering the aforesaid fact that applicant no.1 and opposite party no.2 were friendly for the past two years and opposite party no.2 willingly engaged in a physical relationship with applicant no.1, it cannot be said that applicant no.1 has intention to cheat for not marrying the opposite party no.2. Therefore, the impugned order dated 30.11.2024 may be set aside and proceedings may be quashed.

6. Learned A.G.A. on the other hand submits that from the version of FIR as well as statements of victim recorded under Sections 161 and 164 Cr.P.C., offence under the relevant sections is made out as there are clear allegations that applicant no.1 from the very inception has intention not to marry the opposite party no.2 and has established physical relationship with her. As regards the allegations of dowry demand, from the statements recorded under Sections 161 and 164 Cr.P.C. it is clear that Rs.50,000/- was given to the applicants, which was taken as loan by opposite party no.2. He further

submits that statements of charge sheet witnesses have also not been annexed, from which it can be seen that from the arguments as placed by learned counsel for the applicants prima facie case under the relevant sections is made out or not. In support of his submission, he has relied upon judgement of Supreme Court passed in Kaptan Singh Vs. State of U.P., (2021) 9 SCC 35.

7. Learned A.G.A. further submits that after considering the grounds as taken in the discharge application, the order impugned has been passed after application of judicial mind. There is no illegality or infirmity in the impugned order passed the learned Court below and the other submissions made by learned counsel for the applicant related to disputed questions of fact, which cannot be seen here.

8. I have considered the submissions made by the learned counsel for the parties and have gone through the records of the present application.

9. All the contentions raised by the learned counsel for the applicants relate to disputed questions of fact. The court has also been called upon to adjudge the testimonial worth of prosecution evidence and evaluate the same on the basis of various intricacies of factual details which have been touched upon by the learned counsel. The veracity and credibility of material furnished on behalf of the prosecution has been questioned and false implication has been pleaded.

10. Before proceeding to adjudge the validity of the impugned order it may be useful to cast a fleeting glance to some of the representative cases decided by the Hon'ble Supreme Court which have expatiated upon the legal approach to be adopted at the time of framing of the charge or at the time of deciding whether the accused ought to be discharged. It shall be advantageous to refer to the observations made by the Hon'ble Apex Court in the case of State of Bihar vs. Ramesh Singh 1977 (4) SCC 39 which are as follows :-

> "4. Under S. 226 of the Code while opening the case for the prosecution the prosecutor has got to describe the charge against the accused and State by what evidence he proposes to prove the guilt of the accused. Thereafter, comes at the initial stage, the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either u/s. 227 or u/s. 228 of the Code. If "the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", so enjoined by s. 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which ?.....?
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> (b) in exclusively triable by the court, he shall frame in writing a charge against the accused," as provided in S. 228.

Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the

prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at this stage of deciding the matter under s. 227 and 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence, if any, cannot show that the accused committed the offence, there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under S. 227 or S. 228, then in such a situation ordinarily and generally the order which will have to be made will be one under S. 228 and not under S. 227."

11. Aforesaid case was again referred to in another Apex Court's decision Superintendent and Remembrance of Legal Affairs, West Bengal Versus Anil Kumar Bhunja AIR 1980 (SC) 52 and the Apex Court proceeded to observe as follows:-

> "18. It may be remembered that the case was at the stage of framing charges; the prosecution evidence had not yet commenced. The Magistrate had, therefore, to consider the above question on a general consideration of the materials placed before him by the investigating police officer. At this stage, as was pointed out by this Court in State of Bihar v. Ramesh Singh, AIR 1977 SC 2018, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged; may justify the framing of charge against the accused in respect of the commission of that offence."

12. In yet another case of Palwinder Singh Vs. Balvinder Singh reported in AIR 2009 SC 887, the Apex Court had the occasion to reflect upon the scope of adjudication and its ambit at the time of framing of the charge and also about the scope to consider the material produced by the accused at that stage. Following extract may be profitably quoted to clarify the situation:-

> "12. Having heard learned counsel for the parties, we are of the opinion that the High Court committed a serious error in passing the impugned judgment insofar as it entered into the realm of appreciation of evidence at the stage of the framing of the charges itself. The jurisdiction of the learned Sessions Judge while exercising power under Section 227 of the Code of Criminal Procedure is limited. Charges can be framed also on the basis of strong suspicion. Marshalling and appreciation of evidence is not in the domain of the Court at that point of time. This aspect of the matter has been considered by this Court in state of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568 wherein it was held as under :
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> "23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's Case holding that the trial Court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided."

13. The following observations made by the Hon'ble Supreme Court in the case of Sanghi Brothers (Indore) Pvt. Ltd. v. Sanjay Choudhary reported in AIR (2009) SC 9 also reiterated the same position of law :-

> "10. After analyzing the terminology used in the three pairs of sections it was held that despite the differences there is no scope for doubt that at the stage at which the Court is required to consider the question of framing of charge, the test of a prima facie case to be applied.
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> 11. The present case is not one where the High Court ought to have interfered with the order of framing the charge. As rightly submitted by learned counsel for the appellant, even if there is a strong suspicion about the commission of offence and the involvement of the accused, it is sufficient for the Court to frame a charge. At that stage, there is no necessity of formulating the opinion about the prospect of conviction. That being so, the impugned order of the High Court cannot be sustained and is set aside. The appeal is allowed."

14. In fact, while exercising the inherent jurisdiction under Section 482 Cr.P.C. or while wielding the powers under Section 226 of the Constitution of India the quashing of the complaint or charge sheet can be done only if it does not disclose any offence or if there is any legal bar which prohibits the proceedings on its basis. The Apex Court decisions in R.P. Kapur Vs. State of Punjab AIR 1960 SC 866 and State of Haryana Vs. Bhajan Lal 1992 SCC(Cr.) 426 make the position of law in this regard clear recognizing certain categories by way of illustration which may justify the quashing of a

complaint or charge sheet.

15. The submissions made by the learned counsel for the applicants counsel call for adjudication on pure questions of fact which may be adequately adjudicated upon only by the trial court and while doing so even the submissions made on points of law can also be more appropriately gone into by the trial court in this case. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. A threadbare discussion of various facts and circumstances, as they emerge from the allegations made against the accused, is being purposely avoided by the Court for the reason, lest the same might cause any prejudice to either side during trial. But it shall suffice to observe that the perusal of the F.I.R. and the material collected by the Investigating Officer on the basis of which the charge sheet has been submitted makes out a prima facie case against the accused at this stage and this Court does not find any justifiable ground to set aside the impugned order refusing the discharge of the accused. This court has not been able to persuade itself to hold that no case against the accused has been made out or to hold that the charge is groundless.

16. The prayer for quashing or setting aside the impugned order dated 30.11.2024 is refused as I do not see any illegality, impropriety and incorrectness in the impugned order or the proceedings under challenge. There is absolutely no abuse of court's process perceptible in the same. The present matter also does not fall in any of the categories recognized by the Supreme Court which might justify interference by this Court in order to upset or quash them.

17. With the above observations, this application is rejected.

Order Date :- 3.3.2025 Rahul.