

Nafees Alias Mohd. Nafees vs State Of U.P. And Another on 28 February, 2025

Author: Manju Rani Chauhan

Bench: Manju Rani Chauhan

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:28633

Court No. - 52

Case :- APPLICATION U/S 482 No. - 34004 of 2024

Applicant :- Nafees Alias Mohd. Nafees

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

Counsel for Applicant :- Saif Ullah

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Manju Rani Chauhan,J.

Heard Mr. Saif Ullah, learned counsel for the applicant as well as Mr. Rizwan Ahmad, learned AGA for the State and perused the record.

This application under Section 482 Cr.P.C. has been filed to quash the Charge Sheet No.255/2022 dated 18.12.2022 along with Cognizance/Summoning order dated 31.08.2024 and the entire proceeding of Case No.1420 of 2024 (State vs. Sikandar and others), arising out of Case Crime No.243 of 2021, under Sections 498-A, 323, 506 I.P.C., Police Station- Utraon, District- Prayagraj, pending before the court of Additional Chief Judicial Magistrate, Room No.8, Allahabad.

Brief facts of the case are that an FIR was lodged on 02.08.2021 at 14.02 hours under Sections 498-A, 323, 354 and 506 I.P.C. against 7 named accused including the applicant who is devar of opposite party no.2. It has been alleged that the opposite party no.2-Rajiya performed marriage with Suleman on 07.01.2007 according to muslim rites and rituals. She has performed all the responsibilities of a wife after her nikaah (marriage) with Suleman. The father-in-law of opposite party no.2 namely-Sikandar had bad eyes upon her. On 26.07.2019, the father-in-law of opposite party no.2 did objectionable act with her and when she opened her eyes & objected to the same sharing the aforesaid conduct of father-in-law with her, all the family members including jeth Haidar, husband-Suleman, devar Roshan Ali, devar Seraj Ahmad, devar Anees and Nafees-applicant (devar) all assaulted her and she was locked her in the room. She was threatened for life by all the accused persons that in case she raises any objection or voice against her father-in-law, she will have to face dire consequences. Her husband also did not support her. Due to fear of being defamed, she did not share the aforesaid incident with any person of her family. After 10 to 12 days when the husband of opposite party no.2 had gone out for some work, devar-Seraj finding the opposite party no.2 alone, grabbed the opportunity and did objectionable act with her. When the opposite party no.2 raised alarm, other family members reached there and Seraj ran away. The aforesaid conduct of devar-Seraj was shared by the opposite party no.2 with her husband Suleman but he locked the opposite party no.2 in a room and assaulted her. The opposite party no.2 became mentally and physically weak because of the aforesaid incidents. After some time, her husband took her along with him to Gujarat and then on 13.01.2020, she was left by her husband at her parents place after which all the incidents/happenings were shared by opposite party no.2 with her family members, therefore, the present FIR. After investigation, charge sheet has been submitted against the applicant on 18.12.2022.

Learned counsel for the applicant submits that the present case has been lodged with false and frivolous allegations. He further submits that the applicant is devar of opposite party no.2 against whom there are no specific allegations of mental and physical harassment. He further contends that the parties have amicably settled the disputed and money has already been given to opposite party no.2. The details of money as given to the opposite party no.2 are annexed as annexure no.7 to this application. He further submits that no offence against the applicant is disclosed and the present prosecution has been instituted with a mala fide intention for the purpose of causing harassment. He, therefore, submits that the charge-sheet, summoning order as well as entire proceedings be quashed by this Court as the same is an abuse process of Court.

Learned A.G.A. for the State on the other hand submits that from the version of the FIR as well as statement of victim recorded under Section 164 Cr.P.C. offence under the relevant sections is made out against the applicant. As regards the contention of learned counsel for the applicant regarding money already been given to opposite party no.2, there is no acknowledgment or any order of any competent court showing that the parties have amicably settled the dispute and have entered into compromise, pursuant to which permanent alimony has been given to the opposite party no.2. He further contends that all the contentions raised by the applicant's counsel relates to disputed questions of fact. On the basis of material on record after conducting of statutory investigation under Chapter XII Cr.P.C. by the investigating officer, a strong prima facie case is made out against the applicant for the commission of the alleged incident. In support of his case, learned AGA has

placed reliance upon the judgments of the Apex Court in the case of Dilbag Rai Vs. State of Haryana & Others reported in AIR 2019 (SC) 693 and Central Bureau of Investigation Vs. Arvind Khanna reported in MANU/SC/1432/2019.

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

This Court finds that the submissions made by the applicant's learned counsel call for adjudication on pure questions of fact which may adequately be 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. The issue whether it is appropriate for this Court being the Highest Court to exercise its jurisdiction under Section 482 Cr.P.C. to quash the charge-sheet and the proceedings at the stage when the Magistrate has merely issued process against the applicant and trial is to yet to come only on the submission made by the learned counsel for the applicant that present criminal case initiated by opposite party no.2 are not only malicious but also abuse of process of law has elaborately been discussed by the Apex Court in the following judgments:-

- (i) R.P. Kapur Versus State of Punjab; AIR 1960 SC 866,
- (ii) State of Haryana & Ors. Versus Ch. Bhajan Lal & Ors.; 1992 Supp.(1) SCC 335,
- (iii) State of Bihar & Anr. Versus P.P. Sharma & Anr.; 1992 Supp (1) SCC 222,
- (iv) Zandu Pharmaceuticals Works Ltd. & Ors. Versus Mohammad Shariful Haque & Anr.; 2005 (1) SCC 122,
- (v) M. N. Ojha Vs. Alok Kumar Srivastava; 2009 (9) SCC 682,
- (vi) Mohd. Allauddin Khan Vs. The State of Bihar & Others; 2019 o Supreme (SC) 454,
- (vii) Nallapareddy Sridhar Reddy Vs. The State of Andhra Pradesh & Ors.; 2020 o Supreme (SC) 45, and lastly
- (viii) Rajeev Kaurav Vs. Balasahab & Others; 2020 o Supreme (SC) 143.

In view of the aforesaid, 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 there appear to be sufficient ground for proceeding against the accused. I do not find any justification to quash the charge sheet or the proceedings

against the applicant arising out of them as the case does not fall in any of the categories recognized by the Apex Court which may justify their quashing.

The prayer for quashing the impugned charge-sheet dated 18.12.2022 and Cognizance/Summoning order dated 31.08.2024 as well as the entire proceedings of the aforesaid case are refused, as I do not see any abuse of the court's process at this pre-trial stage.

The present application has no merit and is, accordingly, rejected.

Order Date :- 28.2.2025 Kalp Nath Singh