

Vipin Kumar And 2 Others 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:28439

Court No. - 52

Case :- APPLICATION U/S 482 No. - 36307 of 2024

Applicant :- Vipin Kumar And 2 Others

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

Counsel for Applicant :- Ram Prasad Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Manju Rani Chauhan,J.

1. Heard Mr. Ram Prasad Dubey, learned counsel for the applicants, Mr. Amit Singh Chauhan, learned A.G.A. for the State and perused the record.

2. This application U/S 482 Cr.P.C. has been filed by the applicants to quash the charge-sheet dated 22.04.2023 in Session Trial No. 1461 of 2023 (State Vs. Vipin Kumar Yadav and others), arising out of Case Crime No. 417 of 2022, under Sections 498A, 304B, 504, 506, 120B I.P.C. and 3/4 D.P. Act, Police Station Khajani, District Gorakhpur, pending in the court of F.T.C.-I, Gorakhpur.

3. Brief facts of the case are that an F.I.R. was lodged against five named accused persons including the applicants under Sections 498A, 304B, 504, 506, 120B I.P.C. and 3/4 Dowry Prohibition Act with the allegations that marriage of daughter of informant was solemnized with Vipin Kumar Yadav son of Rambhagvat Yadav on 10.02.2022 according to Hindu Rites and Rituals. Informant had given dowry as per his capability and capacity in the marriage. Vipin Kumar Yadav (husband), Rambhagvat Yadav (father-in-law), Kailasi Devi (mother-in-law), Shashikala (sister-in-law) and Akhilesh Yadav (brother-in-law) used to abuse his daughter stating that she had not brought enough dowry. They also raised additional demand of dowry of a Swift Car and three lakh rupees. Vipin's father used to say that his son is a constable in P.A.C. and his in-laws have not given enough dowry. The mental and physical harassment as done by the alleged accused persons was shared by the victim with her mother and other family members and the fact that they had threatened her to kill in case demand of the Swift Car and three lakhs rupees is not fulfilled. When the aforesaid fact was repeatedly shared by the victim to her mother, opposite party no.2 along with his son Ramanand went to the house of the accused persons and gave one lakh rupees to them and requested them not to harass his daughter again. On 27.12.2022, Vipin Kumar Yadav came to his home, talked to his parents, sister and brother-in-law and on the instigation of his sister and her husband (brother-in-law), all the accused persons killed the victim.

4. Learned counsel for the applicants submits that charge-sheet in the matter has been submitted on 22.04.2023, wherein it has been mentioned that applicant no.1, namely, Vipin Kumar son of Ram Bhagvat Yadav, resident of Village Chapiya, P.S. Khajni, District Gorakhpur is appointed as Constable in Second Bataliyan P.A.C. Sitapur, therefore, a report was earlier sent to the Sena Nayak, Second Bataliya, P.A.C., District Gorakhpur by the Senior Superintendent of Police, Gorakhpur regarding grant of sanction for sending the charge sheet against him, which is still pending. After the sanction is obtain, a supplementary charge-sheet shall be filed. The remand period of accused Vipin Kumar was completed, therefore, submission of charge-sheet against Vipin Kumar yadav was necessary.

5. He further submits that from the aforesaid, it is clear that no sanction under Section 197 Cr.P.C. was obtained prior to submission of charge-sheet against applicant no.1, namely, Vipin Kumar. He next submits that in this regard an application has been placed before the concerned court on 26.07.2024 but the same has not been decided till date, therefore, continuance of proceedings against the applicant no.1 Vipin Kumar is nothing but an abuse of the process of law. He also submits that so far as the applicant nos. 2 and 3 are concerned, they are innocent and have been falsely implicated in the present case. Allegations levelled against them regarding demand of dowry and harassment are are general and vague with no specificity.

6. Learned counsel for the applicants submits that on the date of incident the applicant no.1 was on duty at his work place at Sitapur. There was no dispute of demand of dowry. The applicants have not harassed or tortured the deceased. In the postmortem report, the cause of death of the deceased has been shown as asphyxia due to ante mortem injury. The deceased has herself committed suicide. The applicants have no concern with the alleged incident and have falsely been implicated in the present case. There is no direct evidence against the applicants. The applicants have not compelled the deceased to commit suicide. He pointed out certain documents and statements in support of his

contention. He, therefore, submits that the charge-sheet as well as entire proceedings be quashed by this Court as the same is an abuse of process of law.

7. On the other hand, learned A.G.A. for the State submits that version of charge-sheet has been misinterpreted by counsel for the applicants as it speaks about supplementary report being placed in case information about sanction as required under law, shall be placed before the court concerned. He further submits that request of sanction under Section 197 Cr.P.C. in respect of public servant who is accused of any offence alleged to have been committed by him in discharge of official duty. In the present case, the matter involves death of wife of applicant no.1 for non fulfillment of demand of additional dowry, thus, it does not involve any act in discharge of his official duty of applicant no.1. In view of this, submission made by learned counsel for the applicants has no legs to stand.

8. Learned A.G.A. also emphasises that charge against the applicants has already been framed on 02.08.2023 by Additional District and Sessions Judge/ F.T.C. (Crime against Women), Gorakhpur. He, therefore, submits that once the charges have already been framed, this Court cannot examine the veracity of the said order while exercising the inherent powers under Section 482 Cr.P.C.

9. A three Judges Bench of Apex Court in Bhawna Bai Vs. Ghanshyam and others, reported in 2020 (2) SCC 217, wherein Court has held as follows in paragraphs:

¶15. Considering the scope of Sections 227 and 228 Crl.P.C., in Amit Kapoor v. Ramesh Chander and another (2012) 9 SCC 460, the Supreme Court held as under:-

"17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.?"

19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on

record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in *State of Bihar v. Ramesh Singh* (1977) 4 SCC 39: (SCC pp. 41-42, para 4) "4. Under Section 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 under Section 227 or Section 228 of the Code. If 'the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing', as enjoined by Section 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 -- ... (b) is exclusively triable by the court, he shall frame in writing a charge against the accused', as provided in Section 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 the stage of deciding the matter under Section 227 or Section 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 evidence, if any, cannot show that the accused committed the offence, then 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 Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

16. After referring to Amit Kapoor, in Dinesh Tiwari v. State of Uttar Pradesh and another (2014) 13 SCC 137, the Supreme Court held that for framing charge under Section 228 CrI.P.C., the judge is not required to record detailed reasons as to why such charge is framed. On perusal of record and hearing of parties, if the judge is of the opinion that there is sufficient ground for presuming that the accused has committed the offence triable by the Court of Session, he shall frame the charge against the accused for such offence.?

10. The aforesaid view has also been held in case of Ravindra Pratap Shahi @ Pappu Shahi vs. State of U.P. and Another, reported in 2021 SCC Online ALL 778.

11. Learned counsel for the applicants could not dispute the aforesaid proposition of law.

12. In view of the aforesaid discussion, this Court does not find any error in the order impugned, accordingly the application u/s 482 is dismissed.

13. The Court below is directed to proceed in accordance with law.

Order Date :- 28.2.2025 Abhishek Singh