

# **Ashwani Kumar Yadav And 7 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:28750

Court No. - 52

Case :- APPLICATION U/S 482 No. - 32505 of 2024

Applicant :- Ashwani Kumar Yadav And 7 Others

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

Counsel for Applicant :- Mahesh Pandey, Pradeep Kumar Yadav, Santosh Kumar Pandey

Counsel for Opposite Party :- G.A., R.B. Pal

Hon'ble Mrs. Manju Rani Chauhan, J.

1. The present application is delinked from Application U/s 482 Nos.12495 of 2023 and 25967 of 2021.
2. Heard learned counsel for the applicant, learned A.G.A. for the State as well as perused the entire material available on record.
3. The present 482 Cr.P.C. application has been filed to quash the charge-sheet dated 31.12.2023 and cognizance/summoning order dated 15.06.2024 as well as the entire proceedings of Criminal Case No.38959 of 2024 (State Vs. Ashwani Kumar Yadav and Others), arising out of Case Crime

No.138 of 2023, under Sections 494, 504, 506, 120B I.P.C., Police Station-Nasirpur, District-Firozabad, pending in the Court of Additional Chief Judicial Magistrate, Shikohabad, District-Firozabad.

4. Brief facts of the case are that the present FIR has been lodged on 04.08.2023 at about 16:35 hrs by the opposite party no.2 against the applicants under Sections 494, 504, 506, 120B IPC with the allegations that the marriage of opposite party no.2 was solemnized with Ashwani Kumar Yadav (applicant no.1) on 04.02.2018 according to Hindu Rites and Rituals. In the marriage, the parents of opposite party no.2 had spent nearly Rs.20 lakhs, however, the in-laws family members including husband were not happy with the dowry and they tortured her for raising additional dowry demand i.e. one car. The opposite party no.2 endured all the torture as done by the members of her in-laws family as she wanted to maintain her family needs. In the meantime, she became pregnant. It has further been alleged that on 27.07.2018, the applicants after assaulting her threw her out of the house in that condition when she was pregnant without given anything to her. On 20.10.2018, the applicant no.1 came to parents' house of opposite party no.2 and raised a demand of car. He also stated that he would not take back her alongwith him unless his demand of car is fulfilled. The opposite party no.2 was assaulted by applicant no.1 at her parents' place when she stated that her parents were not in a position to fulfill the additional dowry demand. The opposite party no.2 was left with no option but to lodged an FIR being Case Crime No.34 of 2019, under Sections 498A, 323, 504, 506 IPC and D.P. Act against Ashwani Kumar Yadav (husband) and Kamla Devi (mother-in-law) in which charge sheet has been submitted and matter is pending. Another case for maintenance under Section 125 Cr.P.C. being Case No.965 of 2020 was also filed, which is also pending. In between Application U/s 482 No.12495/2023 was filed by the applicants, wherein by order dated 11.04.2023 the Co-ordinate Bench of this Court referred the matter before the Mediation and Cancellation Centre at Allahabad High Court. The parties were called before the Mediation Centre. On 06.07.2023, the opposite party no.2 appear before the Mediation Centre, however, her husband had performed second marriage on 06.07.2023 without obtaining divorce from her. On 05.06.2023, the marriage was performed at about 12:00 O'clock with Kirti D/o Raman Pati and Meena Devi with the help and assistance of applicants. When the opposite party no.2 received information about the second marriage being performed by her husband (applicant no.1), she alongwith her father and few respectable persons of the village and Krishna Gopal reached the place where she saw her husband performing marriage with Kirti. When the applicants saw the opposite party no.2 and her father, there was hot talk between them and the persons, who were present at the time of marriage being family members of husband (applicant no.1). Husband took out country-made pistol, opposed and threatened for life and ran away alongwith Kitri. An application in this regard was given by the opposite party no.2 on 06.06.2023 before Police Station-Naseerpur requesting for action against the applicants. After investigation, charge sheet has been submitted against the applicants, pursuant to which the applicants have been summoned, hence the present petition has been filed.

5. Learned counsel for the applicants submits that the present FIR has been lodged with false and frivolous allegations as no such marriage has been performed by applicant no.1 with Kirti. Relying upon the statement of charge sheet witnesses; Suresh Chandra (father of opposite party no.2), Deep Kumar (brother of opposite party no.2), Yatendra Singh and Krishna Gopal as well as Suman &

Jyoti, who were interrogated by the Investigating Officer, learned counsel for the applicants submits that no such marriage has been performed by the applicant no.1 with Kirti. Relying upon the judgment of the Co-ordinate Bench of this Court in the case of Smriti Singh Alias Mausami Singh and 3 Others vs. State of U.P. and another (Application U/s 482 No.23148 of 2022, decided on 19.09.2023), he submits that the offence under Section 494 IPC is not made out against the applicant no.1 as the ceremonies of "Saptapadi" had not taken place in the alleged marriage. It is well settled that to constitute an offence under Section 494 IPC, it is necessary that the Saptapadi ceremony ((taking of seven steps by the bridegroom and the bride jointly before the sacred fire)) is one of the essential ingredients of a valid marriage under Hindu law.

6. Specifying Section 7 of the Hindu Marriage Act, 1955, he submits that ceremonies in the Hindu Marriage is said to be performed when "Saptapadi", i.e. taking of seven steps by the bridegroom and the bride jointly before the sacred fire. In the present case, no witness has spoken about such "Saptapadi" ceremony being performed, therefore, when no marriage is proved, offence under Section 494 is not made out against the applicants including the husband (applicant no.1).

7. Learned counsel for the applicants further submits that the real story is that Kirti is said to have performed marriage with Jitendra Singh as is evident from the Arya Samaj Marriage Certificate placed at Page 92 of the application. The marriage is said to have been performed on 10.11.2023. The Aadhar Card of Kirti has also been annexed at Page 15 of the petition to prove the aforesaid fact. He further submits that no offence against the applicants is disclosed and the present prosecution has been instituted with a malafide intention for the purpose of causing harassment. He pointed out certain documents and statements in support of his contention. 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.

8. Learned A.G.A. for the State as well as counsel for the opposite party no.2 have opposed the submissions made by the learned counsel for the applicants by submitting that from the statements of charge sheet witnesses, it is clear that the marriage was performed in the presence of applicants. The other witnesses, Suman and Jyoti have also spoken about the marriage being performed in a close house in the presence of few people, neither photographs have been clicked nor any videography has been done. Also the charge sheet witnesses have specifically spoken about the marriage between applicant no.1 and Kirti.

9. As regards the contention of learned counsel for the applicants that "Saptapadi" was not performed, they submits that neither such specific question was put by the Investigating Officer nor the marriage has been denied by any of the charge sheet witnesses. Hence it is factual dispute, which cannot be looked at this stage by this Court in jurisdiction under Section 482 of the Code of Criminal Procedure. Hence the judgment as relied by the counsel for the applicants is not applicable in the present facts of the case.

10. So far as the submission made by counsel for the applicants regarding marriage certificate issued from Aarya Samaj is concerned, the same disclosed the name of some Babita, who has performed marriage with Jitendra Singh on 10.11.2023. Such marriage certificate cannot be taken as authentic

proof of marriage between the parties and also the fact that name of Babita is mentioned, there is nothing on record to show that Babita and Kirti are the same person.

11. Learned AGA as well as counsel for the opposite party no.2 also submits that in the Aadhar Card, which has been taken as proof of marriage of Kirti with Jitendra also mentioned about Babita, who again cannot be said to be Kirti. Even if it is presumed that Babita and Kirti are the same person, Aadhar Card shows that Jitendra Singh is taking care of Babita, the aforesaid also cannot be taken as proof of Kirti being married to some other person. He further submits that all the contentions raised by the applicants' counsel relate 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.

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

13. The Apex Court in the case of Dhanlakshmi v. R. Prasanna Kumar and others<sup>4</sup>, wherein offence under Sections 494, 496, 498-A, 112, 120-B IPC was involved, has held that exercise of powers to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous. The Court has further held that in the absence of circumstances to hold prima facie that the complaint is frivolous when the complaint does disclose the commission of an offence there is no justification for the High Court to interfere. Relevant paragraphs of the said judgement reads thus:

"3. Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide frivolous or vexatious, in that event there would be no justification for interference by the High Court.

4. The High Court without proper application of the principles that have been laid down by this Court in Sharda Prasad Sinha v. State of Bihar<sup>5</sup>, S. Trilok Singh v. Satya Deo Tripathi<sup>6</sup> and Municipal Corporation of Delhi v. Purshotam Dass Jhunjunwala<sup>7</sup>

proceeded to analyse the case of the complainant in the light of all the probabilities in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceedings are to be quashed against all the respondents. The High Court was clearly in error in assessing the material before it and concluding that the complaint cannot be proceeded with. We find there are specific allegations in the complaint disclosing the ingredients of the offence taken cognizance of. It is for the complainant to substantiate the allegations by evidence at a later stage. In the absence of circumstances to hold prima facie that the complaint is frivolous when the complaint does disclose the commission of an offence there is no justification for the High Court to interfere."

(emphasis supplied)

14. This Court finds that the submissions made by the applicants' 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 applicants and trial is to yet to come only on the submission made by the learned counsel for the applicants 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.
- (ix) M/s Neeharika Infraction Pvt. Ltd. vs. The State of Maharashtra; (2021) SCC OnLine SC 315

15. 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 applicants 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.

16. The prayer for quashing the impugned charge-sheet dated 31.12.2023 and summoning order dated 15.06.2024 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.

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

Order Date :- 28.2.2025 Jitendra/-