

Ashok Kumar Nigam And 3 Others vs State Of U.P. And Another on 31 January, 2025

Author: Sanjay Kumar Pachori

Bench: Sanjay Kumar Pachori

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:15170

Court No. - 75

Case :- APPLICATION U/S 482 No. - 25176 of 2022

Applicant :- Ashok Kumar Nigam And 3 Others

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Chandra Shekhar Agnihotri

Counsel for Opposite Party :- Saurabh Srivastava

Hon'ble Sanjay Kumar Pachori,J.

1. The present application under Section 482 of the Code of Criminal Procedure, 1973 has been filed to quash the entire proceedings of Criminal Case No. 1885 of 2021 (State vs. Akash Nigam and others), arising out of Case Crime No. 383 of 2021, under Sections 498A, 323, 504, 506 I.P.C. and section 3/4 Dowry Prohibition Act, P.S. Kareli, District- Prayagraj, as well as cognizance/summoning order dated 10.5.2021, pending in the Court of Chief Judicial Magistrate, court no. 4, Prayagraj.

2. Brief facts of the case on the basis of First Information Report dated 10.5.2021 are that the marriage of opposite party no. 2 was solemnized with applicant no. 4 Akash Nigam as per Hindu

rites and rituals and after sometime due to some personal reasons the relation between the couple became worse from bad and in the lack of marital harmony the relation became distressful. Thereafter due to intervention of some senior and civilized citizen of the society both applicant no. 4 and opposite party no. 2 agreed to dissolve their marriage and decided to live separately. The applicant no. 4 has given Rs. 35,00,000/- (Rs. thirty five lacs only) to opposite party no. 2 as permanent alimony through Bank Draft No. 645267, dated 20.1.2022 issued by State Bank of India, Gomti Nagar Branch. The applicant no. 4 and opposite party no. 2 have resolved to put an end to their dispute and agreed to file a mutual divorce petition under Section 13(B) of the Hindu Marriage Act, 1955.

3. Learned counsel for the parties has submitted that both the parties have settled their matrimonial dispute amicably by way of mutual divorce under Section 13(B) of the Hindu Marriage Act, 1955, in which a decree of mutual divorce has been passed by learned Additional Chief Judicial Magistrate, Family Court, Court no. 2, Allahabad on 24.08.2022. It is further submitted that all the disputes between the parties have been settled and decree of divorce has been filed as Annexure-SA1 to the supplementary affidavit dated 23.09.2022.

4. In view of the fact that the applicants and opposite party no. 2 do not want to pursue the case any further as stated by them. The matter has been mutually settled between the parties, therefore, no useful purpose would be served in proceeding with the matter further.

5. Learned A.G.A. as well as learned counsel for the opposite party no. 2 supported the decision and reasoning adopted by the trial court.

6. Heard Sri Chandra Shekhar Agnihotri, learned counsel for the applicants, Sri Saurabh Srivastava, learned counsel for the private opposite party no. 2 and Smt. Ladli Pandey, learned A.G.A. for the State and perused the material on record.

7. Before considering the rival submissions of the parties, it is apposite to consider the settled position of law.

8. In *Geeta Mehrotra & Another Vs. State of U.P. & Another* 2012 (10) SCC 741, the Supreme Court observed after dealing the misuse of provision of Section 498-A of I.P.C. against the relatives of the husband in paragraph no. 20, which is extracted below:

"20. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of *G.V. Rao vs. L.H.V. Prasad & Ors.* reported (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

"there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down

in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their cases in different courts." The view taken by the judges in this matter was that the courts would not encourage such disputes.

21. In yet another case reported in the matter of B.S. Joshi & Ors. vs. State of Haryana & Anr. AIR 2003 SC 1386, it was observed that there is no doubt that the object of introducing Chapter XXA containing Section 498A in the Indian Penal Code was to prevent the torture to a woman by her husband or by relatives of her husband.

Section 498A was added with a view to punish the husband and his relatives who harass or torture the wife to coerce her relatives to satisfy unlawful demands of dowry. But if the proceedings are initiated by the wife under Section 498A against the husband and his relatives and subsequently she has settled her disputes with her husband and his relatives and the wife and husband agreed for mutual divorce, refusal to exercise inherent powers by the High Court would not be proper as it would prevent woman from settling earlier.

Thus for the purpose of securing the ends of justice quashing of FIR becomes necessary, Section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. It would however be a different matter depending upon the facts and circumstances of each case whether to exercise or not to exercise such a power."

9. In *Kahkashan Kausar @ Sonam Vs. State of Bihar* 2022 o Supreme (SC) 117, the Supreme Court observed after referring the catena of the judgement in paragraph no. 13, which is extracted below:

"13. This Court in its judgment in *Rajesh Sharma and Others vs. State of U.P. and Another*, (2018) 10 SCC 472, has observed:-

"14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the statement of Objects and Reasons of the Act 46 of 1983. The expression 'cruelty' in section 498-A covers conduct which may drive the woman to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of serious concern that large number of cases continue to be filed under already referred to some of the statistics from the

Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona-fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement."

14. Previously, in the landmark judgment of this court in Arnesh Kumar vs. State of Bihar and Another, (2014) 8 SCC 273 it was also observed:-

"4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grandfathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested."

15. Further in Preeti Gupta & Anr. Vs. State of Jharkhand & Another, (2010) 7 SCC 667 it has also been observed:-

"32. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona-fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and

his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful."

17. Recently, in *K. Subba Rao vs. State of Telangana*, (2018) 14 SCC 452, it was also observed that:-

"6. The Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out."

10. As per prosecution case there are allegations;

(i) Firstly; the demand of additional dowry was arose in the year of 2023, when the applicant no. 1 got appointed as a teacher (after about 10 years of the marriage). No specific date has been mentioned in the F.I.R. with regard to incident of demand of additional dowry.

(ii) Secondly; as per allegations of the F.I.R., on 18.12.2021 at about 05:00 P.M., the applicants committed marpeet with the first informant with lathi and danda and tried to pour the kerosene oil upon the first informant but there is no medical report of any injured person. The F.I.R. has been lodged after about 5 months of the incident. There is general allegation of committing marpeet.

(iii) Thirdly; on 22.12.2021 at 02:00 P.M. her husband forcibly make sign of the first informant on a stamp paper, this allegation is related to applicant no. 1.

(iv) Fourthly; on 22.02.2022 at about 07:00 a.m. the applicants attacked her with intent to kill and assaulted him and drove her out of their house. There is no pre-summoning evidence in any of the

medical reports to substantiate the allegations.

(v) Fifthly; the applicant no. 1 solemnized second marriage with applicant no. 4 without any decree of divorce. There is no pre-summoning evidence with regard to solemnization of the marriage by the applicant no. 4, which is also against applicant no. 1.

11. The applicant nos. 2 and 3 are father-in-law and mother-in-law of the opposite party no. 2 and the applicant no. 4 is daughter of one Ram Karan. There is no pre-summoning evidence with regard to offence punishable under Sections 498-A, 323, 504, 506, 406, 494, 120-B, 420 of I.P.C. and no case is made out against the applicant nos. 2 to 4 in the aforesaid offences. The first information report has been lodged after about 5 months of the incident which took place on 18.12.2021 and there is no medical report and no specific role or involvement has been attributed to the applicant nos. 2 to 4. General allegations of committing marpeet has been assigned to the applicants no. 2 to 4 and other allegations are related to applicant no. 1.

12. In view of the above facts and circumstances, keeping in mind the settled position of law in Geeta Mehrotra (supra) and Kahkashan Kausar @ Sonam (supra), I am of the considered opinion that all the ingredients of Sections 498-A, 323, 504, 506, 406, 494, 120-B, 420 of I.P.C. and 3/4 of D.P. Act, are made out.

13. Thus, in view of the well settled principles of law as laid down by the Hon'ble Apex Court reported in Geeta Mehrotra (supra) and Kahkashan Kausar @ Sonam (supra), the proceedings of the Criminal Case along-with cognizance order dated 10.05.2021 in Case No. 1885 of 2021 (State vs. Akash Nigam and others), arising out of Case Crime No. 383 of 2021, under Sections 498A, 323, 504, 506 I.P.C. and section 3/4 Dowry Prohibition Act, P.S. Kareli, District- Prayagraj are hereby set aside.

14. The present application is, accordingly, allowed.

Order Date :- 31.1.2025 Faridul