HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No.734 of 2022

Ravinder Kaur & another .....Applicants

Versus

State of Uttarakhand & another .....Respondents

Presence:

Mr. S.K. Jain, Sr. Advocate assisted by Mr. Siddhartha Jain, learned counsel for the applicants.

Mr. Vipul Painuly, learned AGA for the State.

Mr. Rachit Manglik and Mr. Ketan Joshi, learned counsel for respondent no.2.

Judgment reserved on 08.05.2025
Judgment delivered on 05.06.2025

Hon'ble Pankaj Purohit, J. (Oral)

By means of the present C-482 application, the applicants have challenged the impugned charge-sheet dated 25.09.2019 as well as impugned summoning order dated 4.02.2020 and 23.03.2022 passed by Second Additional civil Judge/Learned Judicial Magistrate, Kashipur, UdhamSingh Nagar in Criminal Case No.138 of 2021 (earlier Criminal Case No. 229/220 in the court of Learned ACJM, Kashipur), State vs. Gursewak Singh and another, under Sections 323/498-A/506 IPC and Section 3/4 of Dowry Prohibition Act along with entire proceedings of the aforesaid case.

2. The facts in brief are that applicant no.2 got married to respondent no.2 on 06.12.2014 as per Sikh Rites and Ceremonies. Thereafter, an FIR was lodged on 27.01.2018 by respondent no.2 alleging therein that both the applicants since the very inception of marriage used to harass her with regard to demand of dowry. She alleged that the applicants used to demand one flat, car and gold bangles from her.

3. Learned counsel for the applicants submits that the FIR has been lodged by respondent no.2 against

the applicants on wholly untrue and concocted facts. He further stated that respondent no.2 is a cunning lady and it is a part of her *modus operandi* to marry innocent men and thereafter, demand huge alimony in divorce. He stated that the FIR has been lodged at the instance of respondent no.2 to harass and extort money from the applicants. He submitted that the applicant no.2 and respondent no.2 got married through Shaadi.com where respondent no.2 stated herself as never married whereas the truth is that she is a divorcee and has extorted Rs.20 lacs from her ex husband in the name of alimony.

4. The learned counsel for the applicants submitted that after the marriage, applicant no.2 used to live with respondent no.2 in an independent flat. But, respondent no.2 wanted to live in a posh colony and used to quarrel with applicant no.2 for the said purpose. She on the pretext of getting due care from her mother in the course of pregnancy went to Kashipur and returned back only after one year. After some time, she again left the house and started living in Kashipur with their son. On inquiring, respondent no.2 told the applicant no.2 that she will come back and live with him only if he takes any house on rent in posh colony. Thereafter, he succumbed to respondent no.2's demand and rented a house in a posh colony but he had to soon vacate it as the owner wanted to sell it. Respondent no.2 initially agreed to live in the earlier flat on the condition that applicant no.1 will not interfere in her life. But respondent no.2 again on 01.07.2018 along with the minor child left for Kashipur along with all the valuables and cash in the absence of applicant no.2 and again stated that she will only return if he rents a house in a posh colony. Thereafter, applicant no.2 preferred a

restitution of conjugal rights application which was decreed ex parte in his favour. Respondent no.2 was furious because of this and filed an application under Section 12 of the Domestic Violence Act before ACJM, Kashipur. In the above stated application, respondent no.2 in her cross-examination herself admitted that she took Rs.20 lacs from her ex husband in pretext of divorce. She also admitted that she used to live in a separate floor with her husband and applicant no.1 used to live in another floor. She also admitted that she wants applicant no.2 to buy a new house for them in a posh colony and then only she will return to her. She also admitted that she potrayed herself as never married in Shaadi.com. The learned counsel for the applicants submits that her conduct itself shows that she is in habit of committing fraud and extorting money from innocent men. He submitted that there is no medical evidence to prove that she was subjected to cruelty by the applicants. He also stated that the Investigation Officer without taking into consideration the aforesaid facts mechanically submitted the charge-sheet without appreciating any evidence and the learned Judicial Magistrate without applying his judicial mind has issued summons against the applicants on the basis of the charge-sheet.

5. Though not pleaded in the C482 application, the learned counsel for the applicants vehemently argued that proceedings under Section 12 of the Domestic Violence Act instituted by respondent no.2 has been disbelieved and dismissed by the concerned court below and therefore, initiation of the impugned criminal proceeding on similar set of facts is nothing but abuse of process of law. He also raised doubts on the

territorial jurisdiction of the learned Judicial Magistrate, Kashipur as the alleged incident of cruelty and harassment happened in Ludhiyana, Punjab.

6. Per contra, the learned counsel for the State submits that the Investigation Officer after due investigation and on the basis of statements given by the respondent no.2 and other witnesses under Section 161 Cr.P.C. has rightfully submitted the charge-sheet and the learned court below has done no illegality in issuing summons against the applicant.

7. Respondent no.2 in her counter affidavit submitted that the impugned criminal proceedings is based on true facts and not concocted facts and circumstances. She further states that it is not the case that she wants to grab money from the applicants but applicants instead want her to bring money in name of dowry. She further submitted that the applicants were well aware of the fact that she was a divorcee and had evil eye on the Rs.20 lacs which she got from her ex husband as alimony. She also stated that she was not living independently with her husband and there was constant interference by her in-laws. She submitted that applicant no.1 used to constantly harass and humiliate her as applicant no.1 thought that she was ugly and used to constantly demand dowry. She further stated that it was the constant torture and harassment meted out towards her from the hands of the applicants which forced her to live in Kashipur.

8. The applicants in their rejoinder affidavit stated that right from the very inception of marriage, respondent no.2 had malafide intention which is evident from the fact that she potrayed herself as a never

married person in Shaadi.com. They further submitted that the proceedings based on the same set of facts as alleged in the FIR, instituted under Section 12 Domestic Violence Act has been disbelieved and dismissed vide order dated 22.07.2024 by ACJM, Kashipur and also proceedings instituted on the same set of facts under Section 125 Cr.P.C. in the court of Family Judge, Kashipur, District Udham Singh Nagar, have been disbelieved and dismissed as far as respondent no.2 is concerned.

9. I have heard learned counsel for the parties at length and perused the FIR, charge-sheet and entire material available on record. As far as the contention of learned counsel for applicants regarding territorial jurisdiction of Ld. JM Kashipur is concerned it is manifest from the facts that the respondent no. 2 used to live there as it was her parental home and it is a settled principle of law that the offence under Section 498A is a continuing offence and if the act of cruelty continues even while, the woman is living at her parents house, the offence is triable by both the Courts in whose territorial jurisdiction the act of continuing offence of cruelty has been committed i.e. at matrimonial home or the parents house. In the instant case in hand it is prima facie evident that mental cruelty was still persisting in respondent no 2's mind while she was staying at her parental home as the demand for valuables was still being persistently being made by the applicants This prima facie at this stage shows that the applicants continued to cause harassment to respondent no. 2 with a view to coerce her to satisfy their unlawful demand. Therefore, prima facie it appears that she has been subjected to cruelty at Kashipur within the definition of "cruelty" given in the explanation of Section 498A I.P.C. On taking into consideration the F.I.R. and the papers under

investigation i.e. the statements of witnesses, it appears that act of maltreatment and humiliation by the petitioners continued even while respondent no. 2 was residing with her parents. Therefore, I am of the view that Clause (c) of Section 178, Criminal Procedure Code is clearly attracted and the learned Judicial Magistrate, Kashipur has also territorial jurisdiction to try the case against the petitioners under Section 498A, I.P.C. which is a continuing offence. Moreover, the contention of the applicants counsel regarding the impugned proceedings being mere abuse of process of law just because proceedings filed by respondent no.2 u/s 12 Domestic Violence Act, 2005 falls flat on its face by bare perusal of subsection 2 of Section 12 of Domestic Violence Act, 2005 which clearly provides that relief provided under section 12 is without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence the scope of both the Acts and provisions of IPC are different . The reliefs provided therein are also different.

10. Since, the offences lodged against the applicants are very serious in nature and *prima-facie* a case is made out against the applicants, it is essential for the ends of justice that the applicants should be subjected to a proper trial. In a catena of judgments, Hon'ble Supreme Court has also held that High Court should be slow in interfering with the criminal proceedings, if *prima-facie* the case is made out against the applicant.

11. Recently, in the case of ***Neeharika, Infrastructure Private Limited Vs. State of Maharashtra and others*** reported in ***(2021) 19 SCC 401***, it has been held by the Hon'ble Apex Court that criminal case shall not be scuttled at the initial stage. Relevant sub-paras of Para 33 of the said judgment are quoted hereunder:-

> ***"33.4) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the "rarest of rare cases" (not to be confused with the formation in the context of death penalty).***
> ***33.5) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;***
> ***33.6) Criminal proceedings ought not to be scuttled at the initial stage;***
> ***33.15) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;***

12. After keeping the above principle in mind, this Court is of the opinion that as prima-facie case is made out against the applicants and the charge-sheet has been submitted and the applicants were summoned after cognizance, this Court cannot enter into merits of the case at this stage. Veracity of the version of prosecution can only be proved during trial, after both the parties would adduce their respective evidences. Further the case doesn't fall in the category of rarest of rare cases so as to compel this court to exercise its inherent jurisdiction vested under section 482 Cr.P.C.

13. Accordingly, the C482 application is dismissed.

(**Pankaj Purohit, J**.)
05.06.2025

PN