

Shafiya Khan @ Shakuntala Prajapati vs State Of U.P. on 10 February, 2022

Author: Ajay Rastogi

Bench: Abhay S. Oka, Ajay Rastogi

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 200 OF 2022
(Arising out of SLP(Crl.) No(s).8283 OF 2021)

SHAFIYA KHAN @ SHAKUNTALA
PRAJAPATI

... APPELLANT(S)

VERSUS

STATE OF U.P. & ANR.

... RESPONDENT(S)

JUDGMENT

Rastogi, J.

1. Leave granted.

2. This appeal is directed against the order dated 8 th September, 2021 passed by the High Court of Judicature at Allahabad declining to interfere in the criminal proceedings initiated against the appellant at the instance of respondent no.2/complainant (both in law of the appellant).

3. The case of the appellant is that she was born in a Hindu family and was married in May 2009 when she was a minor (17 years) to one Shiv Gobind Prajapati with whom she never stayed and the marriage was never consummated. In the divorce petition which was filed by Shiv Gobind Prajapati, it was admitted that the marriage was never consummated and this marriage was dissolved through Village Panchayat in 2014 between the families of the appellant and Shiv Gobind Prajapati, who thereafter married another woman, Suman Prajapati and this marriage being voidable under Section 5 of the Hindu Marriage Act, 1955 and Section 3 of Prohibition of Child Marriage Act, 2006 was dissolved and annulled by the families of the appellant and Shiv Gobind Prajapati.

4. The appellant treating her marriage to be annulled for all practical purposes, while doing her studies in Lucknow, met Mohd. Shameem Khan and they got married on 11 th December, 2016 under Sharia law in presence of entire family of her late husband, including respondent no.2/complainant, against the wishes of her family. A certificate of marriage was issued by the competent authority and a translated copy of “Nikah Nama” (Marriage Certificate) was issued by the Languages Department, Darul Uloom Nadwatul Ulama, Lucknow dated 11 th December, 2016.

5. From this marriage, the appellant gave birth to a male child on 23rd September, 2017 and was living happily with her late husband. Unfortunately, her husband passed away on 8 th December, 2017. After the appellant obtained succession certificate in her name and no objection was given by her mother in law to the employer of Mohd. Shameem Khan, she got employment in King George Medical University, Lucknow, as Auxiliary Nurse Midwife (A.N.M.) on compassionate grounds by an order dated 19th May, 2018 w.e.f. 28th April, 2018 and being the legally wedded wife of the deceased (late Mohd. Shameed Khan), his terminal dues were paid to her. The fact is that the entire gratuity amount of Rs.4,60,000/- of her late husband was transferred by her to the bank account of her mother in law. However, the destiny was not humble to her and she was thrown out of her matrimonial home by respondent no.2 with an eleven months old child on 19th August, 2018 and thereafter respondent no.2 made all kinds of malafide, false and frivolous allegations against the appellant, including to the employer of the appellant to remove her from employment.

6. After more than a year, at the instance of respondent no.2, a written complaint/FIR came to be registered against the appellant for offences under Sections 494, 495, 416, 420, 504 & 506 IPC at PS Bazar Khala, District Lucknow, U.P. on 9th July, 2019. Anticipatory bail was granted to the appellant and after charge sheet came to be filed on 23 rd March, 2021 under Sections 494, 420, 504, 506, 467, 468 and 471 IPC, the learned trial Judge took cognizance of the same and summoned the appellant.

7. At this stage, the appellant approached the High Court of Judicature at Allahabad under Section 482 Cr.P.C. for quashing of the proceedings, but that came to be dismissed by the High Court under impugned order dated 8th September, 2021, which is the subject matter of challenge in the appeal before us.

8. Counsel for the appellant submits that everything was running smoothly in her life, but because of the untimely sad demise of her husband late Mohd. Shameem Khan, her brother in law left no stone unturned to pressurize her for handing over all the terminal benefits which she received on account of death of her late husband and was interested to seek compassionate appointment in her place. This was the primary reason for which all uncalled for allegations were levelled against her, including the forgery committed in preparing Nikah Nama.

9. It was alleged in the complaint that before annulment of first marriage, the appellant had entered into marriage with late Mohd. Shameem Khan on 11th December, 2016, and thereafter she started to harass his late brother mentally and physically and that was the reason for which his brother suddenly died during his service on 8th December, 2017. It was further alleged that immediately after his death, there was a sudden change in the behaviour of the appellant and she tried to oust her

mother-in-law, sister-in-law and respondent no.2/complainant from the house. Every day, she used to threaten and abuse the family members and by committing a forgery, she obtained the job on compassionate grounds and took all the terminal benefits and the genuine dependents of late Mohd. Shameem Khan (brother of the complainant) were deprived of his terminal benefits and this Nikah (marriage) was solemnized by her without any divorce from her previous husband, on the basis of which the FIR was registered and charges were framed against her.

10. Counsel for the appellant further submitted that it is not a case of the complainant that his brother (deceased) had ever made any complaint of any nature during his lifetime against the appellant in reference to the matrimonial relationship between the appellant and her late husband (Mohd. Shameem Khan) and after his untimely demise, all sort of allegations were levelled by her brother-in-law on the basis of which the FIR was registered.

11. Counsel further submits that there is no iota of evidence to support what is alleged in the complaint by respondent no.2 on the basis of which FIR has been registered and even if what is being stated in the FIR is taken on its face value, prima facie, none of the offences which have been levelled against the appellant in the charge-sheet are made out. In the given circumstances, if the criminal proceedings at this stage are allowed to continue against her, it will be nothing but a clear abuse of the process of law and a mental harassment to the appellant, more so, when she has not only to sustain her employment, but being the only bread winner of her family, she has to take care of her minor son also and further submits that the High Court has not even looked into the prima facie allegations levelled in the FIR on the basis of which charge-sheet came to be filed and just after quoting certain passages from the judgments of this Court, dismissed the petition preferred at her instance under Section 482 Cr.PC.

12. Counsel submits that the principles have been well laid down by this Court in State of Haryana and Others v. Bhajan Lal and Others¹, and which have been consistently followed in the later years and taking the test as laid down by this Court, what being alleged in the complaint on the basis of which FIR has been registered, even if prima facie taken into consideration, no offence is made out of the kind levelled against her. In the given circumstances, the present proceedings initiated against the 1 1992 Supp. (1) SCC 335 appellant deserve to be quashed and set aside being an abuse of the process of law.

13. Counsel for the State and the counsel for the complainant jointly submit that after the FIR was registered, investigation was made and only thereafter the charge-sheet was filed. It can at least be presumed that a prima facie case against her is made out. The High Court has appreciated the material available on record and found no reason to interfere in its inherent jurisdiction under Section 482 Cr.PC and the impugned judgment needs no further interference of this Court.

14. We have heard learned counsel for the parties and perused the material available on record.

15. The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 Cr.PC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an

exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in *State of Haryana and Others v. Bhajan Lal and Others* (supra) as under :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking

vengeance on the accused and with a view to spite him due to private and personal grudge.”

16. The principles laid down by this Court have consistently been followed, as well as in the recent judgment of three Judge judgment of this Court in Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others².

17. It is no doubt true that the power of quashing of criminal proceedings should be exercised very sparingly and with circumspection and that too in rarest of the rare cases and it was not justified for the Court in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in 2 AIR 2021 SC 1918 the FIR or the complaint and that the inherent powers do not confer any arbitrary jurisdiction on the Court to act according to its whims and fancies.

18. Adverting to the facts of the instant case, there was no material placed on record by the complainant to justify the bald allegations which were made in the complaint on the basis of which FIR was registered. There are undisputed facts on record that the appellant’s marriage was solemnized with late Mohd. Shameem Khan on 11th December, 2016 and from this wedlock, a male child was born on 23 rd September, 2017 and her husband untimely passed away on 8th December, 2017 and until their period of matrimonial relationship, no complaint of any kind was ever made by her late husband (Mohd. Shameem Khan) and after she was paid his terminal benefits and got a compassionate appointment in his place as an A.N.M. by an order dated 19 th May, 2018 w.e.f. 28th April, 2018, all sort of issues were raised by the complainant (brother of her deceased husband) of making such false allegations with reference to her marriage and also for the terminal benefits which she received and there was not even prima facie foundation to support the nature of allegations which were made.

19. Although it is true that it was not open for the Court to embark upon any enquiry as to the reliability or genuineness of the allegations made in the FIR, but at least there has to be some factual supporting material for what has been alleged in the FIR which is completely missing in the present case and documentary evidence on record clearly supports that her Nikah Nama was duly registered and issued by competent authority and even the charge sheet filed against her does not prima facie discloses how the marriage certificate was forged.

20. In the given circumstances and going through the complaint on the basis of which FIR was registered and other material placed on record, we are of the considered view that no offence of any kind as has been alleged in the FIR, has been made out against the appellant and if we allow the criminal proceedings to continue, it will be nothing but a clear abuse of the process of law and will be a mental trauma to the appellant which has been completely overlooked by the High Court while dismissing the petition filed at her instance under Section 482 Cr.PC.

21. Consequently, the appeal is allowed. The criminal proceedings initiated against the appellant in reference to FIR No.0227 of 2019 dated 9 th July, 2019 under Sections 494, 495, 416, 420, 504 & 506 IPC lodged at PS Bazar Khala, District Lucknow, U.P. are hereby quashed and set aside.

22. Pending application(s), if any, stand disposed of.

.....J. (AJAY RASTOGI)J. (ABHAY S. OKA) NEW DELHI
FEBRUARY 10, 2022.