

Court No. - 76

Case :- APPLICATION U/S 482 No. - 27734 of 2024

Applicant :- Adarsh Yadav

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

Counsel for Applicant :- Durgesh Kumar Singh, Jyoti
Prakash, Rishabh Narain Singh

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material brought on record.

2. This application under Section 482 Cr.P.C. has been preferred against order dated order dated 30.04.2024, passed by the learned Additional District and Sessions Judge, Court No. 21, Prayagraj, in Sessions Trial No. 1286 of 2022, arising out of Case Crime No. 122 of 2022, under Sections - 498-A, 304-B I.P.C. and Section - 3/4 Dowry Prohibition Act, 1961, Police Station - Kotwali, District - Prayagraj, whereby the application filed by applicant under Section - 227 Cr.P.C. for discharge has been rejected.

3. It is submitted by learned counsel for applicant that impugned order is against facts and law and thus, liable to be set aside. As per prosecution version, the marriage of deceased has taken place with one Rohit Yadav and that there is no credible evidence that she has obtained divorce from said Rohit Yadav. In fact the deceased has started living with applicant in live-in relationship and no marriage has taken place between deceased and applicant. It was also pointed out that even a period of one year has not been passed since the marriage of deceased with said Rohit Yadav. In view of these facts, it cannot be said that deceased was legally

wedded wife of the applicant and thus, no prima facie case under Section - 304-B I.P.C. is made out. . It was stated that trial court has not considered the facts in correct perspective and committed error by rejecting application of the applicant.

4. Learned A.G.A. has opposed the application and submitted that in the first information report, it has been clearly mentioned that after marriage of deceased with said Rohit Yadav, she was divorced by him and thereafter marriage of deceased with applicant has taken place through court and there are allegations that deceased was harassed by the applicant on account of dowry. Deceased has committed suicide at the premises of applicant. It was submitted that whether the marriage between deceased and applicant was lawful or not, is a question of fact and that can only be examined during trial.

5. I have considered the rival submissions and perused the record.

6. It is well settled that while considering discharge application, the Court is to exercise its judicial mind to determine whether a case for trial has been made out or not. At this stage, a mini trial cannot be held and the Court can shift and weigh the evidence for limited purpose of finding out whether or not a prima facie case against the accused is made out or not. Where material placed on record discloses grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in rejecting application for discharge. The Court is not to hold mini trial by marshalling the evidence.

7. In the instant case, the main contention of the learned counsel for applicant is that earlier the deceased was married with one Rohit Yadav and later on she has started living with applicant in live-in relationship without obtaining divorce from said Rohit

Yadav and thus, the deceased is not legally wedded wife of applicant and therefore the provisions of Section - 304-B I.P.C. are not attracted against applicant. Perusal of record shows that in the first information report, it was alleged that after sometime of marriage of deceased with Rohit Yadav, applicant has molested her and the deceased was divorced by her husband Rohit Yadav and after that the parents of applicant have told that they would accept her as wife of applicant and marriage of deceased with applicant has taken place through court but later on she was harassed by the applicant and he demanded money from her and caused her death. Thus, there is clear averment in the first information report that marriage has taken place between deceased and applicant. It is not disputed that at the time of incident, she was residing with the applicant. Even, otherwise the question whether deceased was legally wedded wife of applicant or not cannot be decided in these proceedings under Section - 482 Cr.P.C. Here, it would be relevant to observe that in case of **Reema Aggarwal vs. Anupam and Others**, 2004 AIR SCW 344, the Hon'ble Apex Court has held as under :-

"The concept of "dowry" is intermittently linked with a marriage and the provisions of the Dowry Act apply in relation to marriages. If the legality of the marriage itself is an issue further legalistic problems do arise. If the validity of the marriage itself is under legal scrutiny, the demand of dowry in respect of an invalid marriage would be legally not recognizable. Even then the purpose for which Sections 498A and 304B and Section 113B of the Evidence Act were introduced can not be lost sight of. Legislations enacted with some policy to curb and alleviate some public evil rampant in society and effectuate a definite public purpose or benefit positively requires to be interpreted with certain element of realism too and not merely pedantically or hyper technically. The obvious objective was to prevent harassment to a woman who enters into a marital relationship with a person and later on becomes a victim of the greed for money. Can a person who enters into a marital arrangement be allowed to take a shelter behind a smokescreen to contend that since there was no valid marriage the question of dowry does not arise ? Such legalistic niceties would destroy the purpose of the provisions. Such hairsplitting legalistic approach would encourage harassment to a woman over demand of money. The nomenclature "dowry" does not have any magic charm written over it. It is just a label given to demand of money in relation to marital relationship. The legislative intent is clear from the fact that it is not only the husband but also his relations who are covered by Section 498A. It would be appropriate to construe the expression "husband" to cover a person who enters into marital relationship and under the colour of such proclaimed or feigned status of husband subjects the woman concerned to cruelty or coerce her in any manner or for any of the purposes enumerated in the relevant provisions -- Section 304B/498A, whatever be the legitimacy of the marriage itself for the limited purpose of Sections 498A and 304B, IPC. Such an interpretation, known and

recognized as purposive construction has to come into play in a case of this nature. The absence of a definition of "husband" to specifically include such persons who contract marriages ostensibly and cohabit with such woman, in the purported exercise of his role and status as "husband" is no ground to exclude them from the purview of Section 304B or 498A, IPC."

8. Following the aforesaid judgment, the Hon'ble Chhattisgarh High Court in case of **Mohitram vs. State of Chhattisgarh** 2004(3)MPHT22(CG) has held that the intention of legislature behind inserting the provisions of Section - 304-B I.P.C. was that husband and his relatives, who are responsible for the dowry death of a woman should be brought into mischief of dowry death whether the marriage in question was valid or not. It was observed that in order to attract provisions of Section - 304-B and 498-A of I.P.C., it is sufficient to show that victim woman and accused husband were residing as husband and wife at the relevant point of time. In the instant case, for the sake of arguments even if it is assumed that the deceased does not fall within the ambit of legally wedded wife, there is ample evidence on record that applicant and deceased were residing together as husband and wife at the relevant point of time.

9. In view of aforesaid facts, the contention raised on behalf of applicant that provisions of Section - 304-B I.P.C. is not attracted has no force. The perusal of the impugned order shows that the trial court has considered all relevant facts of the matter and application filed by applicant for discharge was rejected by a reasoned order. No such material illegality or perversity could be shown in the impugned order, so as to require any interference by this Court by invoking extraordinary jurisdiction under Section - 482 Cr.P.C. The present application under Section 482 Cr.P.C. lacks merit and thus liable to be dismissed.

10. The application under Section 482 Cr.P.C. is hereby **dismissed**.

Order Date :- 20.9.2024/S Rawat