

A.F.R.

Reserved on: 22.9.2021
Delivered on: 2.3.2022

Court No. - 88 WWW.LIVELAW.IN

Case :- APPLICATION U/S 378 No. - 54 of 2017

Applicant :- Smt. Habiba

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Zafar Abbas

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Aslam,J.

1. Heard Sri Zafar Abbas, learned counsel for the applicant and Sri Sanjay Sharma, learned A.G.A. for the State and perused the record.

2. The instant application has been moved by applicant under Section 378(4) of Cr.P.C. for granting leave to prefer appeal against the judgement and order of acquittal dated 15.3.2017 passed by learned Additional Chief Judicial Magistrate, Court No. 12, Azamgarh in Criminal Complaint Case No.1574 of 2016 (Smt. Habiba Vs. Jamal Ahmed and another).

3. The brief facts of the case is that the complainant moved an application under Section 156(3) Cr.P.C. on 1.12.2009, which was treated as complaint alleging therein that her marriage was solemnized with opposite party no.2 Jamal Ahmed on 21.5.2008 in the village Asadha, Police Statio- Saraimeer, District- Azamgarh according to Muslim Rights and Ceremonies. Opposite party no.2 is the resident of Village Bisaham, Police Station- Mehnagar, District- Azamgarh. After her marriage she went to the house of opposite party No.2 and performed her obligations as wife. After sometime they blessed with a son namely Ismaile. The family members of her in-laws are very rich, but they are very greedy for dowry. After sometime of marriage, her husband Jamal Ahmed, mother-in-law Farzana, Nanad Nazia began to taunt her for bringing meagre dowry and starting creating pressure upon her for bringing Rs.3,50,000/- from her father so that Jamal Ahmed may go to abroad or may purchase a shop. On account of non-fulfilment of the

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demand, they used to taunt and harass her and were also not giving her sufficient food. They were torturing her physically and mentally. On 8.8.2008 at about 10:00 a.m., she was beaten by them and driven out from the house with only clothes which she wore and they retained her remaining clothes and ornaments. Anyhow she reached at the house of her parents weeping and told the entire incident to her parents. She did not sustain any visible injury, therefore, she was not subjected to medical examination. She went to the Police Station- Mehnagar to lodge the report along with her father, but the Station House Officer of that police station assured them stating that wait he will registered the case against the accused after inquiry he will arrest them, but no action was taken by him. Thereafter, she visited the Circle Officer and apprised him regarding the incident, but no action was also taken. Thereafter, she sent an application by registered post on 8.9.2009 to the Senior Superintendent of Police, Azamgarh, but again no action was taken. Thereafter, the application under Section 156(3) of Cr.P.C. was moved on 1.12.2009, which was treated as complaint vide order dated 1.12.2009.

4. Learned Judicial Magistrate has recorded the statement of complainant Smt. Habiba under Section 200 of Cr.P.C. and also recorded the statements of Kashif and Sahabuddin under Section 202 of Cr.P.C. and after hearing the learned counsel for the complainant vide order dated 9.8.2010 has summoned opposite party no.2 Jamal Ahmed and opposite party no.3 Farzana for facing trial for offence punishable under Sections 498-A & 323 I.P.C. Thereafter, opposite party nos.2 & 3 appeared and the statement of Smt. Habiba was recorded as PW-1 and Kashif was recorded as PW-2 under Section 244 of Cr.P.C. Thereafter, charges of offence punishable under Sections 498-A & 323 I.P.C. was framed against the accused opposite party nos.2 & 3 to which they have not pleaded guilty and claimed to be tried. PW-1 Smt. Habiba and PW-2 Kashif were cross examined at the stage of Section 246 of Cr.P.C. and witnesses Shahabuddin (PW-3) and R.V. Yadav (PW-4) were also examined at the stage of Section 246 of Cr.P.C.

5. Learned lower court after appreciating the evidence of witnesses has held that in cross examination the complainant has stated that her first

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marriage was taken place with Asif who is resident of village Chhaun, District Azamgarh on 25.12.2006 and no child was born out of that wedlock. She has further admitted that she did not go to village Chhaun second time after marriage. She went to Bhimandi and remained there for five months and being tensed with her in-laws family she came to her parental home, thereafter, her first husband divorced her in year 2008. She has further stated that after that she married with Jamal Ahmed. She has further admitted that it was the first marriage of Jamal Ahmed. Kashif (PW-2) has stated that he is the brother of complainant and Jamal Ahmed is son of his maternal uncle. Learned lower court has held that there are contradictions in the statement of complainant and complainant witnesses. Learned lower court has also held that the marriage of Smt. Habiba with Jamal Ahmed was taken place under pressure of her maternal grandfather Athar Ali. She has also admitted in her cross examination that when she first time went to her in-laws house she felt no problem. She was harassed and maltreated thereafter, but has not given the detail in what manner she was harrassed and maltreated. Kashif (PW-2) has also stated that when Smt. Habiba went to her in laws house she lived there happily. He has further stated that her second marriage has taken place with Jamal Ahmed and out of their wedlock a son namely Ismaile was born. Learned lower court has also held that the complainant and her husband are close relatives. Learned lower court has also held that no injury was found on the body of complainant which establishes that she was not beaten and maltreated. The defence witness Martin as has stated that complainant is free minded (*azad khayaal*) women. Due to her incompatibility, her first husband has given divorce to her. There was no chance of her second marriage. The complainant was close relative of Jamal Ahmed and her marriage with Jamal Ahmed was taken place under pressure of her maternal grandfather without any dowry. Her husband and her mother-in-law never maltreated her or demanded dowry and held that offence punishable under Sections 323, 498-A I.P.C. is not made out against accused Jamal Ahmed and Farzana and has acquitted them from the above charges vide impugned judgement against which the application for grant of leave to prefer appeal has been filed.

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6. It is contended by learned counsel for the applicant that from the statement of PW-1, PW-2, PW-3 it is proved that opposite party no.2 has demanded dowry of Rs.3,50,000/- and when the applicant failed to fulfil the demand, the applicant was kicked out from her in-laws house on the very same year of marriage, but learned lower court without considering the said evidence has illegally acquitted the opposite party nos.2 & 3. It is further contended that the complainant as well as all the witnesses of the fact established and proved the case against opposite party nos.2 & 3 for offence punishable under Sections 498-A I.P.C., but they were illegally acquitted by learned lower court. It is further contended that the learned lower court has over looked and failed to consider the ingredients of Section 498-A I.P.C. It is further contended that from perusal of the complaint and the statement of the witnesses before the court, the offence punishable under Section 498-A I.P.C. is proved without any reasonable doubt against opposite party nos.2 & 3. It is further contended that there was ample evidence to prove the offence punishable under Sections 498-A, 323 I.P.C., but learned Judicial Magistrate has illegally held that the case of complainant for offence punishable under Sections 498-A, 323 I.P.C. is not proved and illegally acquitted the opposite party nos.2 and 3. On these grounds, learned counsel for the applicant has contended that this court may graciously be pleased to grant leave to prefer appeal against the impugned judgement and order of acquittal.

7. Learned A.G.A. has opposed the application and has contended that the second marriage of the complainant has taken place with the son of her maternal uncle in close relation. It is further contended that the applicant is quarrelsome lady and her divorce has taken place with her previous husband and thereafter her second marriage has taken place with opposite party no.2. It is further contended that she is non-compatible so she used to quarrel with her husband and his family members. It is further contended that there is no infirmity in the impugned judgement and order of the lower court by which the opposite party nos.2 & 3 were acquitted from the charges of offence punishable under Sections 498-A, 323 I.P.C. and prayed that the application for grant of leave to prefer appeal is liable to be dismissed.

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8. I have gone through the file and lower court record including the depositions of the witnesses. From perusal of the complaint and the testimonies of the witnesses, it is proved that second marriage of the complainant has taken place on 21.5.2008 with opposite party no.2 Jamal Ahmed. From the evidence on record, it is also proved that opposite party no.3 Farzana is her mother-in-law. It is not disputed that they were blessed with a son named Ismaile. She had stated in her statement recorded under Section 200 of Cr.P.C. that the demand of dowry of Rs.3,50,000/- was demanded after two months of marriage. She has categorically stated that her son was born in June, 2009, who is living with her. She has also stated that she has driven out from in-laws house on 8.8.2008, thereafter, she did not go to her husband's house. Witness Shahabuddin is her Mause. Witness Kashif is her brother. PW-1 Smt. Habiba in her statement recorded under Section 246 of Cr.P.C. has stated that her first marriage was taken place with Asif resident of village Dhaun, Police Station Gambhirpur, District Azamgarh on 25.12.2006. After marriage, she did not go to village Dhaun second time. Thereafter, she went to Bhimandi, Maharashtra and remained there for five months and returned thereafter due to tension in her family and did not go to the resident of her first husband. She has further stated that there was some quarrel with her family members of in-laws between her. She did not file any complaint against her first husband and her family members. She was divorced by her first husband in February, 2008. She showed ignorance regarding payment of maintenance during *iddat* by her first husband after divorce. She has further stated that divorce with her first husband was taken place with mutual consent. She has further stated that her maternal uncle Athar father of the accused Jamal Ahmed was in Dubai at the time of her marriage. She has further stated that her family members of in-laws forbade her not to make complaint regarding dowry to her maternal grandfather. She has further stated that she remained in her in-laws house only for one month and thereafter she came to her parents house after *bidai* and since then she is living in her parents house. She has further stated that the relations of her Mause Shahabuddin and Jamal Ahmed was tensed. She has further stated that after the divorce from her first husband her son was

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born after 11 months. She has admitted in her statement that her first husband has divorced her in February, 2008 and her marriage with Jamal Ahmed was taken place on 21.5.2008. From perusal of the statement of Smt. Habiba (PW-1), it is clear that she has admitted that she went to the house of her in-laws once and thereafter her brother visited to her and taken her back to his home.

9. In above circumstances, I find it justified that prosecution case is not proved beyond reasonable doubt and learned lower court has rightly acquitted the accused from the charges of offence punishable under Sections 498-A, 323 I.P.C. From above discussion, it is proved that the complaint was filed on false and frivolous ground. A special leave to appeal could be granted only where the view taken by acquitting judge is clearly unreasonable, it is the duty of the court to punish the guilty person when the guilt is established beyond reasonable doubt not less than, it is the duty to acquit the accused when it is not so established.

10. In such circumstances, the impugned judgement and order of acquittal is justified and even it is not a such case in which two opinion can be drawn. Accordingly, I find no merit in the application for special leave to appeal and consequently, the application for special leave to appeal is **dismissed**.

11. Lower court record be returned back to the concerned court forthwith.

Order Date :- 2.3.2022

Anil K. Sharma