Judgment reserved on: 20.05.2025
Judgment delivered on: 03.06.2025

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application u/s 482 No.1883 of 2023

Kapil Kapoor .....Applicant

Vs.

State of Uttarakhand and Another .....Respondents

Presence:

Mr. Prashant Khanna, learned counsel for the applicant.
Mr. Shailendra Singh Chauhan, learned D.A.G. with Mr. Vikas Uniyal, learned Brief Holder for the State of Uttarakhand/ respondent No.1.
Mr. Gaurav Kandpal, learned counsel for respondent No.2.

Hon'ble Pankaj Purohit, J. (Per)

By means of the present C482 application, the applicant has challenged the charge-sheet No.10 of 2022 dated 24.02.2022, summoning/cognizance order dated 22.04.2022, passed by learned Judicial Magistrate, Purola, District Uttarkashi, in Criminal Case No.103 of 2022, *State of Uttarakhand Vs. Kapil Kapoor and Others*, punishable u/s 323, 498-A, 504, 506, 120-B IPC and under Section 3/4 of the Dowry Prohibition Act, 1961, along with the entire proceedings of the aforesaid criminal case.

2. The facts in brief are that the applicant and respondent No.2 got married on 24.11.2020 as per Hindu Rites and Customs. On 18.08.2021, respondent No.2 lodged an FIR with P.S. Purola, District Uttarkashi implicating her husband (applicant), father in-law, sister in-law, brother in-law and even mother in-law of the sister of applicant under the aforementioned Sections alleging therein that in spite of receiving various costly gifts during marriage ceremonies, the applicant along with other family members are demanding 20 lakhs rupees from the family of the respondent No.2-complainant and are subjecting her to cruelty for the said demand.

3. Learned counsel for the applicant pleads that the FIR is lodged on false and concocted facts. He submits that the conduct of respondent No.2 was of quarrelling nature and since, the inception of marriage did not get along with the applicant or his family members, she herself on 12.04.2021 left the matrimonial house along with all her belongings and started living in her parental house. He further submits that respondent No.2 got furious and lodged an FIR against the applicant and his family members when she got to know that the father of her husband has disowned and disinherited her husband and her from all his property.

4. Learned counsel for the applicant submits that before lodging of the FIR, respondent No.2, on the same set of facts has filed an application under Section 156(3) Cr.P.C. on 07.07.2021, but she herself had withdrawn it as not pressed on 31.07.2021. She again filed the second application under Section 156(3) Cr.P.C. on 11.08.2021 on same concocted grounds against the applicant and his family members. In between, during the pendency of the said application, she lodged an FIR against the applicant and his family members on 18.08.2021. He further submits that she did not bring the instant FIR to the notice of learned Judicial Magistrate, Purola, District Uttarkashi and again withdrew the said application on 28.08.2021 on the ground that respondent No.2 was no more interested in continuing the case. This conduct of respondent No.2 itself is sufficient to show that the FIR was lodged out of pure ill will. He further submits that the Investigating Officer without proper investigation and without collecting evidence, has submitted the charge-sheet under the aforementioned Sections and the learned Judicial Magistrate without applying its judicial mind, has mechanically taken cognizance and issued summons.

5. Per contra, learned State Counsel has supported the prosecution story and submits that the Investigating Officer after due investigation and after taking in consideration the statement of respondent No.2 recorded under Section 161 Cr.P.C. has duly submitted the charge-sheet, on which the learned Judicial Magistrate has lawfully take cognizance and summoned the applicant.

6. Learned counsel for the respondent No.2 also took the same line of argument as that of learned State Counsel. He further submitted that veracity of the case can only be tested during trial before the learned Magistrate. He also submits that the present matter does not fall in the rarest of the rare category.

7. I have heard learned counsel for the parties at length and perused the FIR, charge-sheet and entire material available on record. Since, the offences lodged against the applicant are very serious in nature and *prima-facie* make out a case against the applicant, it is essential for the ends of justice that the applicant 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. So far as the argument of learned counsel for the applicant regarding withdrawal of the application under Section 156(3) Cr.P.C. twice, is concerned, it would not have any bearing on the prosecution, simply for the reasons that it was not decided on merits. Further, FIR was lodged and there was no point pursuing with such application.

8. 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;***

9. After keeping the above principle in mind, this Court is of the opinion that as *prima-facie* case is made out against the applicant and the charge-sheet has been submitted and the applicant was 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.

10. Accordingly, the C482 application is dismissed.

11. Interim order dated 21.09.2023 stands vacated.

12. Pending application, if any, also stands disposed of.

(Pankaj Purohit, J.)
03.06.2025

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