



2026:AHC:56083

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 37453 of 2024

Anamika Tiwari And 4 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Manish Tripathi
Counsel for Opposite Party(s)	:	G.A., Upendra Kumar Tiwari

Court No. - 80

HON'BLE CHAWAN PRAKASH, J.

1. Sri Avinash Kumar, Advocate holding brief of Sri Manish Tripathi, learned counsel for the applicants submits that he does not intend to file any rejoinder affidavit.

2. Heard Sri Avinash Kumar, Advocate holding brief of Sri Manish Tripathi, learned counsel for the applicants, Sri Upendra Kumar Tiwari, learned counsel for opposite party No.2, learned A.G.A. for the State and perused the record.

3. The present application under Section 482 Cr.P.C. has been filed for quashing the summoning order dated 17.11.2022 as well as entire proceeding of Complaint Case No.8240 of 2018 (Ajay Tiwai Vs. Anamika Tiwari and others) under Sections 323, 504, 406 I.P.C., P.S. Panaki, District Kanpur Nagar, pending in the court of Additional Chief Metropolitan Magistrate-II, Kanpur Nagar.

4. Learned counsel for the applicants submits that the marriage of applicant no.1 was solemnized with opposite party no.2 on 19.04.2012, and sufficient dowry was given by her family members. However, the opposite party no.2 and his family members were dissatisfied with the dowry and started making additional demands, subjecting the applicants to harassment. It is further submitted that applicant no.1 lodged an FIR against opposite party no.2 and his family members on 27.09.2018, registered as Case Crime No.53 of 2018, under Sections 498-A, 323 IPC and Section 3/4 of the Dowry Prohibition Act, at P.S. Mahila Thana,

District Kanpur Nagar. Upon completion of investigation, the Investigating Officer submitted a charge-sheet dated 18.12.2018 against opposite party no.2 and his family members. Learned counsel further submits that opposite party no.2 neglected to maintain the applicant, compelling her to file an application under Section 125 Cr.P.C., being Case No. 246 of 2021 (Smt. Anamika Tiwari & Anr. vs. Aajy Tiwari), which was decided vide order dated 17.05.2022. By the said order, opposite party no.2 was directed to pay maintenance of Rs. 4,000/- per month to applicant no.1 and Rs. 1,000/- per month to her son. It is contended that, thereafter, as a counterblast, opposite party no.2 filed a false complaint alleging that on 29.09.2018 the applicant No.1 along with other applicants entered his house and took away Rs. 6,400/-, ornaments worth approximately Rs. 1,50,000/-, and certain household articles. In support of his complaint, opposite party no.2 got himself examined under Section 200 Cr.P.C., and his witnesses, namely Pawan Singh Chauhan and Arvind Kumar, were examined under Section 202 Cr.P.C. On the basis of the said material, the learned Magistrate summoned the applicants under Sections 323, 504, and 406 IPC. However, it is submitted that no offence under Sections 323, 504, or 406 IPC is made out against the applicants. It is further argued that the wife is the absolute owner of her *streedhan*, and even otherwise, the household articles alleged to have been taken are, at best, jointly used and possessed by both husband and wife. It is also contended that the learned Magistrate has failed to record any specific finding as to how the ingredients of Section 406 IPC are attracted. The impugned summoning order has been passed in a mechanical manner without proper application of judicial mind and is therefore is liable to be set aside.

5. Per contra, learned counsel for opposite party no.2 opposed the application and submitted that neither he nor his family members ever demanded any additional dowry. It is further contended that applicant no.1 is not residing with opposite party no.2 and she is living at her parental home. It is alleged that on 29.08.2018, applicant no.1 along with other applicants came to his house and took away Rs. 6,400/-, ornaments worth Rs. 1,50,000/-, and other household articles. Opposite party no.2 examined himself under Section 200 Cr.P.C. and produced witnesses,

namely Pawan Singh Chauhan and Arvind Kumar, under Section 202 Cr.P.C. It is submitted that the learned Magistrate has passed a well-reasoned order based on the material available on record and has rightly summoned the applicants. Hence, the present application is liable to be dismissed.

6. As per the facts of this case the marriage of applicant No.1 was solemnized with opposite party No.2 on 19.4.2012 and sufficient dowry was given by her family members. During the course of arguments by learned counsel for opposite party No.2 that applicant No.1 is nor residing with her maternal house. The applicant No.1 got lodged an FIR against the opposite party No.2 and his family members on 27.9.2018 as Case Crime No.53 of 2018 under Sections 498A, 323 I.P.C. and Section 3/4 of D.P. Act, P.S. Mahila Thana, District Kanpur Nagar. The Investigating Officer after completing investigating filed a charge sheet on 18.12.2018 against the opposite party No.2 and his family members. The applicant No.1 filed application under Section 125 Cr.P.C. being Case No. 246 of 2021 (Smt. Anamika Tiwari & Anr. vs. Aajay Tiwari), which was decided vide order dated 17.05.2022. By the said order, opposite party no.2 was directed to pay maintenance of Rs. 4,000/- per month to applicant no.1 and Rs. 1,000/- per month to her son. Thereafter as a counter blast the opposite party No.2 filed a complaint against the applicant No.1 and her family members regarding an incident that on 29.9.2018, the applicants came at the house they have took away Rs.6,400/- and ornaments of about Rs.1,50,000/- and also households articles. The opposite party No.2 got himself examined under Section 200 and witnesses namely, Pawan Singh Chauhan and Arivind Kumar under Section 202 Cr.P.C. Learned Magistrate has summoned the applicants under Sections 323, 504, 406 I.P.C.

7. Criminal breach of trust is defined in Section 405 I.P.C., which reads:

"Section 405. Criminal breach of Trust.-Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any

legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

8. Section 406 I.P.C. reads as under:

"406. Punishment for criminal breach of trust-Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

9. As per above mentioned definition, if any property is entrusted to someone and that person dishonestly misappropriates or converts the same to his own use, then an offence of criminal breach of trust is made out.

10. It is well settled principle of law that the properties given to a woman before marriage, at the time of marriage or thereafter are her 'streedhan' property. It is her absolute property with all rights to dispose at her own pleasure. The husband or other in-laws has no control over her 'streedhan' property. The husband may use it during the time of his distress but, nevertheless, he has a moral obligation to restore the same or its value to his wife. Therefore, 'streedhan' property does not become a joint property of wife and husband. In other words, it can be said that wife is an absolute owner of the 'streedhan' property.

11. In the present case, the applicant no.1, who is legally wedded wife of opposite party no.2 has been summoned to face trial under Section 406 I.P.C. whereas as per facts of this case, no offence under Section 406 is made out against the applicant no.1. So far as the remaining Sections 323, 504 against the other applicants is concerned, they are general in nature. A perusal of the impugned order reveals that the impugned order has been passed in a very casual manner. The learned Magistrate, while passing the impugned order, has not taken into consideration the definition as given in Sections 405 and 406 I.P.C. The impugned summoning order has been passed against the facts of the case and, therefore, the same is liable to be quashed.

12. Accordingly, the application is **allowed**.

13. The order of summoning dated 17.11.2022 passed by the learned Additional Chief Metropolitan Magistrate-II, Kanpur Nagar in Complaint Case No.8240 of 2018 (Ajay Tiwai Vs. Anamika Tiwari and others) under Sections 323, 504, 406 I.P.C., P.S. Panaki, District Kanpur Nagar is set aside and entire proceedings of the aforesaid case are hereby quashed.

(Chawan Prakash,J.)

March 16, 2026

Md Faisal