

Court No. - 76

Case :- APPLICATION U/S 528 BNSS No. - 21671 of 2025

Applicant :- Shariq Mian And 3 Others

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

Counsel for Applicant :- Amal Kumar Srivastava, Kamal Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Vikram D. Chauhan, J.

1. Heard learned counsel for the applicants and learned A.G.A. for the State.

2. The present application has been filed by the applicants for quashing and setting aside the Charge Sheet No. 156 of 2024 dated 26.12.2024, cognizance order dated 10.02.2025 and entire proceeding of Case No. 185 of 2025 (State Vs. Shariq Mian and Others) arising out of Case Crime No. 0056 of 2024 under sections 498A, 323, 504, 506 I.P.C. and 3/4 D.P. Act and 3/4 Muslim Women Protection Act, for Shariq Mian (Applicant No. 1) and under sections 498A, 323, 504, 506 I.P.C. and 3/4 D.P. Act for Smt. Phool Shabnam (Applicant No.2 & 3) and under Section 406 I.P.C. for Shaheen Khan (Applicant No. 4), Police Station Mahila Thana, District Saharanpur, pending in the court of Additional Civil Judge (J.D.) IV/J.M., Room No. 33, Saharanpur.

3. It is submitted by learned counsel for applicants that ends of justice would be served if the applicants are permitted to appear before the court concerned through counsel in terms of Section 205 of the Code of Criminal Procedure.

3-A. Learned counsel for the applicants submits that applicants undertake to ensure presence of their Counsel/Pleader before the court concerned on each date fixed. It is further submitted that the applicants shall not seek any unnecessary adjournment and will participate in the trial court proceedings through the Advocate/Pleader. It is further submitted that the applicants will have no objection in the event the evidence is recorded in the presence of Advocate/Pleader of the applicants.

4. The applicants are subjected to prosecution for the following offences:-

(i) The applicant nos. 1, 2 and 3 are subjected to an offence under section 498-A of the Indian Penal Code. The punishment provided under the aforesaid Section is for imprisonment for a term which may extend to three years.

(ii) The applicant nos. 1, 2 and 3 are also subjected to prosecution under Section 323 of I.P.C. and the same is punishable with a term which may extend to one year.

(iii) The applicant nos. 1, 2 and 3 are also subjected to the provisions of Sections 504 and 506 IPC and the same are punishable with a term which may extend to two years.

(iv) The applicant nos. 1, 2 and 3 are also subjected to the provisions of Section 3 of the Dowry Prohibition Act, 1961 which is punishable with a term not less than five years.

(v) The applicant nos. 1, 2 and 3 are also subjected to the provisions of Section 4 of the Dowry Prohibition Act, 1961 which may extend to two years.

(vi) The applicant no. 1 is also subjected to the provisions of Sections 3 and 4 of The Muslim Women (Protection of Rights on Marriage) Act, 2019 which may extend to three years.

(vii) The applicant no.4 is also subjected to the provisions of Section 406 of I.P.C. and the same is punishable with a term which may extend to three years.

5. The present case arises out of matrimonial dispute. The applicants are husband, sister-in-law and Nandoi. As per the prosecution case, it is alleged that there is demand of dowry by the accused persons, the wife was subjected to cruelty in respect of unlawful demand of dowry, there are allegations of assault on accused persons. Learned AGA has not placed any injury report before this court. It is not the case of the State that the applicants have any previous criminal history or the applicants may tamper with the evidence. It has also not been suggested on behalf of opposite party that the applicants would flee away from justice or that applicants have not co-operated at the time of investigation.

6. Marriage is an institution which admits persons to family life. Marriage is an institution of great social relevance. The marriage also recognises the union of two individuals. The relationship also recognises the moral, social and legal obligations of parties to marriage. The Society embraces the married spouses in a way

distinguished from others. The married couples are heirs of social order and principles of engagement with each other and with the society. It is also means of spiritual growth of individuals.

7. In marriage, sometimes individuals enter into disharmony which results in friction in matrimonial relationship. Such a disharmony between spouses and their family members arises out of matrimonial dispute between the parties. Such a matrimonial dispute even extend to the criminal jurisdiction. The parties to the marriage levy criminal charges against each other to scale up the matrimonial dispute between parties. Sometimes such scaling up of the dispute between parties is at the behest of family members and near ones. In the heat of the moment over trivial issues without proper deliberations the criminal complaints are lodged. At the time of filing of the complaint, the implications and consequences are not properly visualised by complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations and even the marriage as institution is affected.

8. The Hon'ble Supreme Court in the case of **Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 667** has held hereunder:-

"37. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislature. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law."

9. The Supreme Court in the case of **Sharif Ahmed and Another Vs. State of Uttar Pradesh and Another, 2024 INSC 363** in respect of granting exemption from personal appearance has held as under in paragraph 47:-

"Further, the observation that there is no provision for granting exemption from personal appearance prior to obtaining bail, is not correct, as the power to grant exemption from personal appearance under the Code [Section 205 of the Code. also see Section 317 of the Code] should not be read in a restrictive manner as applicable only after the accused has been granted bail. This Court in Maneka Sanjay Gandhi and Another v. Rani Jethmalani (1979) 4 SCC 167, held that the power to grant exemption from personal appearance should be exercised liberally, when facts and circumstances require such exemption. [see also, Puneet Dalmia v. Central Bureau of Investigation, Hyderabad, (2020) 12 SCC 695]. Section 205 states that the Magistrate, exercising his discretion, may dispense with the personal attendance of the accused while issuing summons, and allow them to appear through their pleader. While provisions of the Code are considered to be exhaustive, cases arise where the Code is silent and the court has to make such order as the ends of justice require. In such cases, the criminal court must act on the principle, that every procedure which is just and fair, is understood as permissible, till it is shown to be expressly or impliedly prohibited by law."

10. Considering the nature of controversy, it is directed that in case application in terms of Section 205 of the Code of Criminal Procedure, 1973 is filed by applicants, the court concerned to dispense with the personal attendance of applicants and the applicants be permitted to appear through pleader/counsel subject to the following conditions:-

(a) The applicants shall appear before the court concerned through counsel on the next date or within 20 days from today whichever is earlier. In default, the present order and direction shall automatically stand vacated.

(b) The applicants shall execute bond with or without sureties for their appearance to the satisfaction of the court concerned in terms of Section 88 of Cr.P.C. In default, the present order and direction shall automatically stand vacated.

(c) The applicants shall on affidavit submit their permanent address as well as the current address of residence before the court concerned within 15 days from today. The applicants shall also submit before the court concerned the contact number (if any) of the applicants as well as the e-mail address (if any) of the applicants.

- (d) The applicants shall also submit an affidavit before the court concerned that they would not tamper with the evidence or threaten the witnesses during the pendency of the trial.
- (e) In the event, the applicants change address of residence, they shall submit an affidavit with regard to change of address within two weeks before the court concerned.
- (f) It shall be the duty of the applicants to ensure that the pleader/counsel engaged by the applicants is present before the court concerned on the date fixed without exemption. The failure on the part of the pleader/counsel to appear before the court concerned when the matter is taken up will be construed as absence of applicants and the court concerned, thereafter, would be at liberty to take such measures for enforcing the personal attendance/personal appearance of the applicants as may be required under law.
- (g) The applicants shall not seek any unnecessary adjournment before the court concerned. In the event, the counsel/pleader engaged by applicants is not available, it shall be the duty of the applicants to engage another counsel and ensure that the newly engaged counsel is present before the court concerned for progress of the case.
- (h) The court concerned at any stage of proceeding can direct personal attendance of applicants by order in writing and that if necessary enforce such attendance in accordance with law. It is further provided, where court concerned issues any summon or warrant on account of absence of counsel for applicants before the court concerned or in respect of any other matter, the police authorities shall be obliged under law to execute the summon or warrant and ensure the attendance of the applicants before the court concerned.
- (i) Whenever the court concerned directs personal attendance of the applicants before the court concerned, it shall be duty of the applicants to remain present before the court concerned and to ensure that the trial court proceedings are not adjourned on account of absence of the applicants. It shall be the duty of the counsel engaged by applicants to inform the applicants with regard to the progress of the case and, in the event, the personal attendance of the applicants is required. The non-communication by the counsel for the applicants about the progress of the case or the order of the court concerned for personal attendance of the applicants shall not be permissible as defence on behalf of the

applicants.

(j) The prosecution/police authority/complainant shall ensure that the witnesses are produced before the court concerned without delay as and when directed by the court concerned.

(k) The court concerned shall not grant any unnecessary adjournment to any of the parties.

(l) The court concerned will be at liberty to take coercive measures in accordance with law where the applicants are found to be tampering with the evidence or delaying the trial without any justification.

11. Subject to the aforesaid observations/directions, the present application under Section 528 BNSS stands ***disposed of***.

Order Date :- 2.7.2025

VMA