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HIGH COURT OF JUDICATURE OF ALLAHABAD

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Reserved

Criminal Misc. Application No. 4811 of 2004
Jarrar Hussain and others Vs. State of U.P. and another
Connected with

Criminal Misc. Application No. 8479 of 2005
Karrar Hussain Vs. State of U.P. and another

Hon'ble R.K.Rastogi,J

Both these applications under section 482 Cr.P.C. have been filed challenging the orders passed in criminal Case No. 4302 of 2002, Alamara Khatoon Vs. Jarrar Hussain and others under sections 498A,323,504,506 I.P.C. and $\frac{3}{4}$ Dowry Prohibition Act P.S. Kotwali District Jaunpur pending in the Court of C.J.M. Jaunpur.

The facts relevant for disposal of these applications under section 482 Cr.P.C. are that Smt. Alamara Khatoon opposite party no. 2 moved an application under section 156(3) Cr.P.C. against her husband Jarrar Hussain, father in law Karrar Hussain mother in law Alimunisha, brother in laws namely Nazar Abbas, Jauwar Hussain, Gulpham Hussain alias Popat and sister in law (Nanad) Husna with these allegations that her marriage had taken place with Jarrar Hussain on 8.10.2000. The above named accused persons were not satisfied with the dowry given in the marriage and they were demanding a Car and Rs. 1,00,000/- in cash and were committing atrocities upon her. A female child was born out of the above wed lock and after her birth the behaviour of the accused with her had deteriorated. On 31.10.2002 accused beat her with fists, legs and Dandas and forced her to leave their house. She came to her parents house and got her injuries medically examined in the hospital and gave a report at police station Kotwali but the Head Constable refused to write the report stating that it will be written after inquiry. Then she sent an application to the S.P. Jaunpur but no action was taken. Then she moved this application under section 156(3) Cr.P.C..

On the above application the learned Magistrate did not pass any order for investigation by the police but he passed an order for treating it as a complaint, and after recording the statements of the complainant and her witnesses under sections 200 and 202 Cr.P.C. passed an order on 4.7.03 holding that prima facie case was made out against Jarrar Hussain, Alimunisha and Karrar Hussain under sections 498A, 323, 504,506 I.P.C. and $\frac{3}{4}$ Dowry Prohibition Act but no case was made out against the remaining accused who were brother in law and sister in law of the complainant. He therefore discharged them and summoned the above named three accused vide order dated 4.7.03.

Aggrieved with the above order the above named accused persons initially filed Criminal Misc. application no. 1838 of 2004 under section 482 Cr.P.C. which was finally disposed of at the admission stage by Hon'ble Imtiyaz Murtaza, J vide his order dated 4.3.04 in which he permitted the accused applicants no. 1 and 3 i.e. Alimunisha and Karrar Hussain to appear before the Magistrate through counsel till framing of charge. Regarding accused applicant Jarrar Hussain he passed order that he will surrender before the court and apply for bail.

It appears that Jarrar Hussain did not surrender before the Magistrate in compliance of the above order, but he, Karrar Hussain and Alimunnisha filed a joint application for recall of the summoning order and for getting the complaint dismissed. This application was rejected by the CJM Jaunpur vide his order dated 24.4.04 on the ground that it was not maintainable in view of the latest pronouncements of the High Court. Then all the above named three accused persons moved Criminal Misc. Application No. 4811 of 2004, Jarrar Hussain and others Vs State of U.P. and another for quashing the summoning order dated 4.7.03 as well as the order dated 24.4.04 rejecting the application for recall of the above order; and on this application they obtained an order on 9.6.04 staying proceedings of the criminal case against all the accused persons including Jarrar Hussain in spite of the fact that he had not surrendered in the Court which he was required to do vide order dated 4.3.04 in Cr. Misc.

Application no. 1838/04

It may be mentioned that an order was passed by this court on 20.1.05 in CrI. Misc. Application No. 4811/04 that the above stay order shall not be extended beyond 3.2.05. Thereafter an order was passed by the Magistrate on 30.5.2005 directing the Regional Passport Authority Lucknow to get the passport and Visa of Karrar Hussain deposited. Aggrieved with that order Karrar Hussain filed an Application before the C.J.M. concerned in which he alleged that the orders have already been passed staying coercive process against him and so this order directing the authority concerned for deposit of passport and Visa should be recalled. This application was rejected by the Magistrate vide his order dated 27.6.05 holding that the order requiring deposit of Passport and Visa does not amount to coercive process. Aggrieved with both these orders Karrar Hussain filed Criminal Misc. Application no. 8479 of 2005.

I have heard the learned counsel for the parties at length and have perused the record.

It may be mentioned that counter affidavit and rejoinder affidavit have been filed in both these cases and they have also been perused by me.

It is to be seen that so far as the impugned summoning order passed in the aforesaid criminal case is concerned, it is based on evidence of the complainant and her witnesses under sections 200 and 202 Cr.P.C. and the defence of accused applicant which is based on factual pleas can not be considered at this stage, and those pleas are to be considered by the Magistrate at the proper stage of evidence. No illegality in the summoning order passed by the learned Magistrate has been pointed out. The learned Magistrate has adopted a very reasonable approach and he has summoned the husband, father in law and mother in law only of the complainant and has discharged her brothers in law (Dewar) and sister in law (Nanad). There is no sufficient ground at this stage to quash the proceedings of the complaint and the summoning order, as such the Criminal Misc. Application no. 4811 of 2004 which has been filed to quash the summoning order and the order passed on the recall application is liable to be dismissed at this stage.

Now I take up the Criminal Misc. Application no. 8479 of 2005 which has been filed for recall of the order requiring deposit of Passport and Visa of the accused Karrar Hussain in the office of the Regional Passport Authority, Lucknow.

It was submitted by the learned counsel for the applicant that it is a fundamental right of the applicant to go abroad to earn his livelihood. He further submitted that he has got a contract of work at Dubai and if any breach is committed by him he would have to lose contract. On the other hand, learned counsel for the opposite party no. 2 submitted that if the accused is permitted to go outside India, he will not return back and so there was no justification for permitting him to go abroad. It was also submitted by him that an order requiring deposit of Passport and Visa does not amount to coercive process.

It is to be seen that in spite of the order of this Court dated 4.3.04 passed in Criminal Misc. Application no. 1838/04 the accused Jarrar Hussain has not put in appearance before the Magistrate so far though there was specific direction in respect of Jarrar Hussain that he should surrender before the Magistrate and apply for bail. Regarding other two accused there was direction that they can appear through counsel and they appeared through their counsel and moved application for recall of the summoning order passed by the learned Magistrate. After rejection of that application it was duty of Karrar Hussain to surrender before the Magistrate and seek bail but he did not do so. The order for deposit of Passport and Visa has not been passed as punitive measure but it is only to procure his appearance before the court. It is to be seen that it is a complaint case and after putting in appearance before the Magistrate the accused can apply for bail and after grant of bail, he can move before the court that he should be permitted to go to Dubai to complete his work contract there so that he may not suffer any financial loss and he may give an undertaking before the court that he shall appear before the court whenever he is required to do so, and if he moves any such application that shall be considered expeditiously by the court concerned.

The position in this way is that the Criminal Misc. Application no. 4811 of 2004 is liable to be dismissed and it is accordingly dismissed. So far as the Criminal Misc. Application No. 8479 of 2005 is concerned, it is hereby ordered that the applicant Karrar Hussain should appear before the court concerned and after putting in appearance and grant of bail he may apply for permission to go abroad and for return of Visa and Passport if they have already been deposited. An undertaking shall be given by the accused applicant Karrar Hussain that he shall appear before the court whenever required to do so and during remaining period his personal

appearance may be exempted through counsel, and if such an application is filed by Karrar Hussain, suitable order shall be passed on that application by the Magistrate concerned. This application under section 482 Cr.P.C. (Crl. Misc. Application no. 8479/05) is disposed of finally with the above observations.

Dated 25.9.07

MLK