

Court No. - 40

Case :- CRIMINAL MISC. WRIT PETITION No. - 10081 of 2023

Petitioner :- Lieutenant Colonel Gaurav Pathania And 3 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Amit Shukla, Sr. Advocate

Counsel for Respondent :- G.A.

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prakash Padia, J.

1. Heard Shri Mrigendra Singh, learned Senior Counsel assisted by Shri Amit Shukla, learned counsel for the petitioners; Shri Ayank Mishra, learned counsel for the respondent no.4 and the learned A.G.A. for the State respondents.
2. The petitioners, by means of this writ petition under Article 226 of the Constitution of India, have invoked the jurisdiction of this Court with prayer to quash the impugned First Information Report dated 12.06.2023 registered as Case Crime No. 0050 of 2023, under Sections 498-A, 323, 313, 406 I.P.C. and Section 3/4 of Dowry Prohibition Act, Police Station-Mahila Thana, District-Prayagraj Commissionerate, and for a direction to the concerned respondents not to arrest the petitioners in pursuance of impugned First Information Report.
3. It is submitted by learned counsel for the petitioners that petitioner no.1-Gaurav Pathania is a Lieutenant Colonel and petitioner no.2-Dr. Kiran Pathania is mother of the petitioner no.1. The petitioner no.3 Colonel Gautam Pathania is brother of the petitioner no.1 and petitioner no.4-Shweta Pathania is wife of petitioner no.3. The informant - Shweta Pathania approached to the petitioner no.1 through shaadi.com an online matrimonial website. The marriage of the petitioner no.1 was solemnized with informant on 19.10.2008 according to Hindu Rights without any demand of dowry. Out of their wedlock there is a daughter aged about 13 years. He further submits that with the passage of time, due to bad behaviour of informant and interference of informant's family members, who are of criminal background, some matrimonial dispute arose between the husband and wife. The petitioner no.1 has sent a legal notice through his counsel on 06.06.2023 to the complainant for divorce. Hence as a counterblast to the said proceeding, the present First Information Report has been lodged against the petitioners on 12.06.2023. The petitioners have been falsely implicated in the present case with intention to pressurize them. There is no criminal antecedent against the petitioners.

4. Sri Ayank Mishra, learned counsel for the respondent no.4 has vehemently opposed the prayer for quashing of the FIR, which discloses cognizable offence. He has further submitted that truthfulness of allegations and establishment of guilt take place, when the investigation is done or trial proceeds. Probability, reliability or genuineness cannot be looked under Art.226 of the Constitution. The FIR can only be quashed in a writ jurisdiction, if the FIR does not disclose commission of offence and that too prior to framing of charges. As such it is submitted that no interference is required in the matter.

5. We have occasion to peruse the impugned FIR and considering the arguments advanced by the parties, we still feel that there is matrimonial dispute, which may be amicably settled by way of mediation and conciliation, therefore, the matter may be referred to the Mediation and Conciliation Centre of this Court.

6. Taking into account the statement of learned counsel for the petitioners, it is directed that the petitioners shall deposit a sum of Rs.1,00,000/- (one lac) within three weeks from today with the Mediation Centre of this Court, out of which Rs.95,000/- shall be paid to respondent no.4 for her appearance before the Mediation Centre and Rs.5000/- shall go to the Mediation Centre as mediation fee.

7. The matter is remitted to the Mediation Centre with the direction that after deposit of such amount, by the petitioners, it shall issue notice to the parties fixing some date for mediation and shall make all possible efforts to conclude the mediation and conciliation proceedings expeditiously, preferably within a period of three months.

8. List after expiry of aforesaid period before the appropriate Bench along with the report of Mediation Centre.

9. Till the next date of listing, the respondents are restrained to arrest the petitioners in the above mentioned case.

10. It is made clear that in case there occurs default by the petitioners either in depositing the amount or in appearing before the Mediation Centre on the date fixed, the interim order shall cease to operate and the Mediation Centre shall immediately communicate with the office which in turn shall list the case within a week before the appropriate Bench for passing orders in the matter.

Order Date :- 30.6.2023
Pramod Tripathi