

Court No. - 13

Case :- APPLICATION U/S 482 No. - 19037 of 2018

Applicant :- Smt. Usha Jain And Anr

Opposite Party :- State Of U.P. And Anr

Counsel for Applicant :- Manish Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Ajit Kumar,J.

The present application under Section 482 Cr.P.C. is directed against the summoning order issued to the applicants on 05.09.2017 in Complaint Case No. 2990 of 2016 calling for them to appear before the Court on 11.10.2017 to face the charges under Sections 323, 498-A, 452, 504, 506 I.P.C. and Section 3/4 D.P. Act, Police Station- Hari Parvat, District- Agra as well as the entire above noted criminal proceeding.

The applicant has questioned the summoning order on the ground that, prima facie, satisfaction recorded by the Magistrate concerned with regard to the involvement of the applicants in the offence of demand of dowry is not supported by the convincing statements of facts that have come to be recorded under Sections 200 & 202 Cr.P.C. On the point of delay in approaching this Court, specific averments have been made in paragraph 6 of the affidavit that neither summons were received by the applicants nor, the learned Judicial Magistrate has recorded his satisfaction regarding service being successfully effected and yet he avoided appearance, while issuing bailable warrant against the applicants on 27.11.2017 and repeatedly thereafter.

Learned counsel for the applicants has drawn the attention of the Court to the order-sheet of the criminal complaint case and from very perusal of the order sheet, I find that learned Magistrate before issuing bailable warrant on 27.11.2017 has not recorded his satisfaction with regard to the service of the summons upon the accused applicants.

A large number of applications under Section 482 Cr.P.C. are being filed every day challenging the summoning order, bailable and non-bailable warrants issued more than 90 days before and even such applications are filed as belatedly as after 12 months from the date of summoning order and the only excuse taken to justify the delay is that summons were not served/ received and hence no knowledge.

It is very unfortunate state of affairs at the end of the Judicial

Magistrate that before proceeding to issue bailable warrant, no satisfaction is recorded regarding effective service of summons against the accused persons, which should be a condition precedent for issuing bailable warrant. In the absence of any such satisfaction being recorded, the issuance of bailable and non-bailable warrant is not justified.

Under Chapter-III of the General Rules (Criminal) regarding service of process or register the processes as maintained his circular letter being **C.L.No.42/98 dated: Allahabad: 20/8/1998** has been issued which reads as under:-

"The Hon'ble court has noticed that the present system of service of summons is not effectively working and service upon the witness/ accused persons are not being effected within the period fixed by the courts. The system is effecting the speedy trial of sessions and magisterial cases. In this regard, the court has taken the following decisions for strict compliance by all :-

1. Old practice of fixing one sessions trial for three days in continuation is revived. No other sessions trial except any formal party-heard trial in which one or two formal witnesses are to be examined should be fixed on the that day.
2. The process register as mentioned in rule 12 of chapter III of G.R.Criminal be strictly maintained by all courts. A police official who is receiving the summons must state his name and number in clear block letters in columns no.5 so that the responsibility be fastened upon him.
3. Public prosecutor and D.G.C. (Criminal), as the case may be, should be asked to apply to the court for issue of summons but giving complete particulars of the witness. The summons should, thereafter, be prepared and served upon the witnesses.
- 4. If the police personnel are not complying with the directions of the court then appropriate action under the provision of the contempt of courts Act be initiated against them."**

By issuing the aforesaid circular, the High Court has virtually taken due care of the speedy disposal of trial in criminal cases but ultimately, it appears, the circular letter (*supra*) is not complied with in its true spirit either at the end of Magistrates as they do not take due care to ensure that police report regarding service of summons is available on record, or the police is not at all submitting any report in most of the cases.

Laxity on the part of either Judicial Officers or on the part of police administration is a serious issue and calls for an immediate action. I, therefore, direct that the Judicial Magistrates will ensure strict compliance of the circular letter dated 20th August, 1998 (*supra*) mandatorily.

Let a copy of this order be circulated to all the Judicial Magistrates in the State to ensure strict compliance of the circular and recording their satisfaction with regard to the service of summons before issuing bailable or non-bailable warrants.

Registry of this Court is also directed to send a copy of this order to the Director General of Police, U.P. and to the Secretary, Home Affairs, Government of Uttar Pradesh for issuing necessary directions at their respective ends to the subordinate police officers to act in accordance with the procedure in matter of service of processes as desired under the circular letter dated 20th August, 1998 issued under General Rules (Criminal).

Issue notice to the opposite party no.2. calling for reply fixing 23rd July, 2018.

Steps may be taken within a week.

Learned Additional Government Advocate has accepted the notice on behalf of the opposite party no.1.

State may also file counter affidavit in the matter by the next date fixed.

The case shall be listed on 23rd July, 2018 before appropriate Bench.

Until the next date, further proceedings of the aforesaid complaint case against the applicants shall remained stayed.

However, it is made clear that this order will not dilute in any manner the summoning order and the proceedings in pursuance thereof as against the husband of the complainant; Anurag Jain. The proceedings against Anurag Jain, therefore, shall continue.

Order Date :- 29.5.2018

Atmesh