

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.2021 OF 2009

MAHENDRI & ORS.

.....APPELLANTS

VERSUS

STATE OF U.P. & ANR.

.....RESPONDENTS

O R D E R

The marriage of Sunita was originally solemnized, with Praveen alias Bittu, the son of appellant No.1, on 31.05.2005. Praveen aforesaid was the elder brother of appellant No.5 - Sanjeev alias Sanju. Praveen alias Bittu with whom the original marriage was solemnized died on 22.03.2007. Sunita, therefore, allegedly came to be married with appellant No.5 i.e. the younger brother of the deceased, on 03.04.2007.

Sanjeev alias Sanju, filed a criminal complaint against Sunita and her parents and brother before the Judicial Magistrate, Deoband, Saharanpur, under Sections 323, 342, 384, 504 and 506 IPC, as well as, Section 5 of the Child Marriage Prevention Act on 24.07.2007 based on the fact that he was below the marriageable age.

It is the case of the appellants before this Court, who are the immediate family of appellant No.5 (i.e., the second husband of the complainant Sunita), that Sunita, as a counter to the complaint filed by appellant No.5, also lodged a complaint with the Senior Superintendent of Police, Saharanpur on 08.08.2007. On

a consideration of the matter, in furtherance of an application filed under Section 156(3) of the Criminal Procedure Code, 1973, the competent Court at Deoband, rejected the same by an order dated 04.10.2007.

It is the contention of the learned counsel for the appellants that on the same allegations, which were contained in the complaint, before the Senior Superintendent of Police, on 08.08.2007 (and which was rejected by the Court having jurisdiction on 04.10.2007), the complainant registered a fresh First Information Report on 10.10.2007 at Police Station Nagal. The appellants raised a challenge to the above First Information Report, by filing Crl.Mis.Writ Petition No.17386 of 2007, before the High Court of Judicature at Allahabad (hereinafter referred to as 'the High Court'). By an order dated 29.10.2007, whilst not accepting the prayer for quashing the FIR, a Division Bench of the High Court, stayed the arrest of the appellants, till the submission of the chargesheet. Additionally, the appellants were directed to cooperate with the investigating agencies.

Consequent upon the investigation of the FIR dated 10.10.2007, the chargesheet being Case Crime No.233 of 2007 dated 01.11.2007, came to be filed against the appellants. In order to assail the aforesaid chargesheet, the appellants again approached the High Court seeking exercise of its jurisdiction under Section 482 of the Crl.P.C., for quashing the proceedings in Case No.455 of 2007 (arising out of Case Crime No.233 of 2007). The aforesaid prayer for quashing came to be declined by the High Court on 05.01.2008. The order passed by the High Court on 05.01.2008, is a

subject matter of challenge before this Court, through the present Criminal Appeal.

The solitary contention advanced at the hands of the learned counsel for the appellants was, that since in the earlier complaint filed by the complainant on 08.08.2007, the prayer for further investigation under Section 156(3) of the CrI.P.C. came to be rejected, by a Court of competent jurisdiction on 04.10.2007, it was not open to the complainant to raise the same grievance, through a subsequent First Information Report (dated 10.10.2007) wherein the same facts were alleged. It was also contended, that even if such a complaint had been filed by the complainant, it was not permissible in law to proceed thereon.

We have given our thoughtful consideration to the solitary contention advanced at the hands of the learned counsel for the appellants. As noticed hereinabove, it is apparent that the application filed by the complainant under Section 156(3) of the Criminal Procedure Code was declined by the Court of competent jurisdiction at Deoband vide order dated 04.10.2007. The prayer made by the complainant in the aforesaid application was to order further investigation in the matter. The declining of the aforesaid prayer, would not affect the merits of the controversy, nor would it reflect the veracity of the allegations made by the complainant in the First Information Report which was subsequently lodged on 10.10.2007. Consequent upon the filing of the subsequent FIR dated 10.10.2007, the matter came to be investigated by the concerned Sub-Inspector of Police. A perusal of the chargesheet dated 01.11.2007 reveals, that the same came to be filed on the basis of

the statement of the complainant, the statement of the witnesses, as also, the inspection of the place of incident, the medical report, and relevant photographs. In the above view of the matter, it is not possible for us to say, that the order passed by the concerned Court on 04.10.2007 would have any effect on the veracity of the merits of the allegations made by the complaint on 10.10.2007 or the proceedings which would emanate therewith.

For the reasons recorded hereinabove, we find no merit in the instant appeal and the same is accordingly dismissed.

The appellants are directed to appear before the trial Court on 20.04.2015 to surrender.

.....J.
(JAGDISH SINGH KHEHAR)

.....J.
(S.A.BOBDE)

NEW DELHI;
MARCH 18, 2015.

ITEM NO.103

COURT NO.4

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s).2021/2009

MAHENDRI & ORS.

Appellant(s)

VERSUS

STATE OF U.P. & ANR.

Respondent(s)

(With appln.(s) for ex-parte stay and permission to file additional documents and exemption from filing O.T.)

Date : 18/03/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR
HON'BLE MR. JUSTICE S.A. BOBDE

For Appellant(s) Mr. T. N. Singh, Adv.
 Mr.Vikas K.Singh, Adv.
 Ms.Rajshree Singh, Adv.

For Respondent(s) Mr.Ratnakar Dash, Sr.Adv.
 Mr.Sudeep Kumar, Adv.
 Mr. Abhishth Kumar, Adv.

 Mr. Ambrish Kumar, Adv.

Upon hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

The appellants are directed to appear before the trial
Court on 20.04.2015 to surrender.

(SATISH KUMAR YADAV)
COURT MASTER

(RENU DIWAN)
COURT MASTER

(Signed order is placed on the file)