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OMVEER SINGH

v.

STATE OF UTTAR PRADESH & ANR.

(Criminal Appeal No. 1541 of 2018)

B

DECEMBER 03, 2018

[ABHAY MANOHAR SAPRE AND INDU MALHOTRA, JJ.]

Code of Criminal Procedure, 1973: s. 482 – Quashing of proceedings – Complaint filed against the appellant under ss.498A, 323, 376 IPC and ss. 3 and 4 of Dowry Prohibition Act, 1961 – Application for quashing of proceeding dismissed by High Court – On appeal, held: Single Judge of High Court quoted the principles of law laid down in several decisions relating to powers of the High Court under s.482 of the Code but did not refer to the facts of the case to appreciate the controversy of the case – Matter remitted to High Court for consideration afresh – Penal Code, 1860 – ss.498A, 323, 376 – Dowry Prohibition Act, 1961 – ss. 3 and 4.

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Allowing the appeal and remanding the matter to High Court, the Court

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HELD : The Single Judge ought to have first set out the brief facts of the case with a view to understand the factual matrix and then examined the challenge made to the proceedings in the light of the principles of law laid down by this Court with a view to record the findings on the grounds urged by the appellant as to whether any interference therein is called for or not. This exercise was not done by the High Court while passing the impugned order. [Paras 10 and 11][458-B-C]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1541 of 2018.

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From the impugned final Order dated 13.09.2018 of the High Court of Judicature at Allahabad in Application U/s 482 - No.36284 of 2017.

Rakesh Taneja, N. Rajaraman, Advs. for the Appellant.

Chandra Shekhar, Prashant Shikhar, Ms. Meena Hassan, S.K. Verma, Advs. for the Respondents.

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The Judgment of the Court was delivered by A

ABHAY MANOHAR SAPRE, J.

1. Leave granted.

2. This appeal is filed against the final judgment and order dated 13.09.2018 passed by the High Court of Judicature at Allahabad in an Application filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”) bearing No.36284 of 2017 whereby the Single Judge dismissed the application filed by the appellant herein. B

3. Few facts need mention hereinbelow to appreciate the short controversy involved in this appeal. C

4. By impugned order, the Single Judge dismissed the appellant’s application filed under Section 482 of the Code wherein the challenge was to quash the order dated 21/09/2017 as well as entire proceedings in Complaint Case No.2540 of 2017 (**Mamta vs. Jagdish Prasad & Ors.**) under Sections 498A, 323, 376 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) and Sections 3 and 4 of the Dowry Prohibition Act, 1961 Police Station Mahila Thana, District Hathras pending in the Court of Chief Judicial Magistrate, Hathras. D

5. The short question, which arises for consideration in this appeal, is whether the High Court was justified in dismissing the appellant’s application filed under Section 482 of the Code. E

6. Heard Mr. Rakesh Taneja, learned counsel for the appellant and Mr. Chandra Shekhar, learned counsel for the respondents.

7. Having heard the learned counsel for the parties and on perusal of the record of the case we are inclined to set aside the impugned order and remand the case to the High Court for deciding the appellant’s application, out of which this appeal arises, afresh on merits in accordance with law. F

8. On perusal of the impugned order, we find that the Single Judge has quoted the principles of law laid down by this Court in several decisions relating to powers of the High Court on the issue of interference in cases filed under Section 482 of the Code from Para 2 to the concluding para but has not referred to the facts of the case to appreciate the controversy of the case. G

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A 9. We are, therefore, unable to know the factual matrix of the case after reading the impugned judgment except the legal principles laid down by this Court in several decisions.

B 10. In our view, the Single Judge ought to have first set out the brief facts of the case with a view to understand the factual matrix and then examined the challenge made to the proceedings in the light of the principles of law laid down by this Court with a view to record the findings on the grounds urged by the appellant as to whether any interference therein is called for or not.

C 11. We find that the aforementioned exercise was not done by the High Court while passing the impugned order.

D 12. We, therefore, find ourselves unable to concur with such disposal of the application by the High Court and feel inclined to set aside the impugned order and remand the case to the High Court (Single Judge) with a request to decide the application afresh on merits in accordance with law keeping in view the aforementioned observations.

13. Having formed an opinion to remand the case in the light of our reasoning mentioned above, we do not consider it proper to go into the merits of the case.

E 14. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. Impugned order is set aside. The case is remanded to the High Court for its decision on merits uninfluenced by any of our observations in this order.