



HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 22626 of 2021

Shivnaresh GautamApplicant(s)

Versus

State of U.P. and anotherOpposite Party(s)

Counsel for Applicant(s)	: Ravi Kant, Vatsala
Counsel for Opposite Party(s)	: G.A., Himanshu Pandey, Rajesh Kumar Singh, Suved Kumar Sharma

Court No. - 52

HON'BLE MRS. MANJU RANI CHAUHAN, J.

1. The applicant – Shivnaresh Gautam has preferred instant application under Section 482 Cr.P.C., challenging proceedings of Case No. 552/IX/2021¹, under Sections 498-A, 323, 504 IPC and Section 3/4 of Dowry Prohibition Act, Police Station Baberu, District Banda, and charge-sheet dated 30.05.2021, in first information report dated 04.12.2020, and cognizance order dated 15.09.2021 passed by Judicial Magistrate, Baberu, District Banda.

2. Initially, on 12.05.2025, this Court granted an interim order in favour of the applicant, directing that no coercive measure shall be taken against him till the next date of listing i.e. 20.05.2025. The order dated 12.05.2025 is quoted herein below:

“1. Heard Mr. R.P. Yadav, counsel for the applicant, Mr. Mohd. Rehan Ansari, Advocate, holding brief of Mr. Suved Kumar Sharma, counsel for opposite party no.2 and learned A.G.A. for the State.

2. The counsel for the applicant submits that the other family members of the present applicant Shivnaresh Gautam, who is the husband of opposite party no.2 Smt. Archana Dwivedi, have filed an application being Application u/S 482 No.21730 of 2021 (Bajinath

1 State v. Shivnaresh Gautam

Gautam and 4 others Vs. State of U.P. and another), wherein they have been granted protection. The present applicant is presently in United Kingdom. He next submits that there are chances of amicable settlement between the parties. The court concerned has not granted any protection in favour of the present applicant and has proceeded to initiate proceedings under Sections 82 and 83 Cr.P.C.

3. The wife Smt. Archana Dwivedi is also present before this Court and she has been identified by her counsel. She has given her consent for mediation.

4. In theses circumstances, the applicant Shivnaresh Gautam (husband) is directed to produce a demand draft of Rs.50,000/- (Rupees Fifty Thousand) in the name of wife "Archana Dwivedi" (Archana Gautam) by the next date to show his bonafides.

5. List this case on 20.05.2025 at 10:00 A.M. for further hearing.

6. Till 20.05.2025, no coercive measure shall be taken against the applicant in pursuance of Case No.552/IX/2021 (State Vs. Shivnaresh Gautam), arising out of Case Crime No.332 of 2020, under Sections 498-A, 323 and 504 I.P.C. and Section 3/4 D.P. Act, P.S. Baberu, District Banda.

7. Needless to say that the interim order granted today shall stand vacated in case the applicant's counsel does not turn up with the aforesaid draft and in that case court concerned shall proceed against the applicant in accordance with law."

3. On 20.05.2025 following order was passed by this Court:

"Heard learned counsel for the parties.

In compliance of earlier order of this Court, learned counsel for the applicant has come up with a draft of Rs.50,000/-, dated 19.05.2025, bearing Cheque No.987158, issued from State Bank of India, Triveni Branch, Allahabad, in the name of Archana Dwivedi.

The opposite party no.2 Smt. Archana Dwivedi is present before this Court today and has been identified by her counsel. The aforesaid draft is being handed over to Smt. Archana Dwivedi, opposite party no.2 in presence of learned counsel for the parties, after retaining the photo-copy of the same and she acknowledges the same.

Learned counsel for the applicant submits that Shivnaresh Gautam, applicant in the present case, will return to India in the month of August, 2025, therefore, some time may be granted.

Accordingly, list this case on 11.08.2025, for further hearing, along with connected matter.

Applicant Shivnaresh Gautam and Smt. Archana Dwivedi, opposite party no.2, are directed to be present before this Court on the said date for the purpose of mediation.

Till 11.08.2025, no coercive action shall be taken against the applicant.

On the said date, in case the applicant is not present before this Court, learned counsel for the applicant shall move an application on affidavit mentioning details as to when the applicant is returning to India.

Needless to say that in case the applicant is not present before this Court and no application is moved by the learned counsel for the applicant for excusing his appearance, if any, interim order will stand vacated and it will be open to the Court concerned to proceed in accordance with law.

Learned counsel for the parties shall ensure presence of the parties on the said date."

4. On 11.08.2025, neither Mr. R.P. Yadav, learned counsel for the applicant, who had filed his vakalatnama on 25.11.2024 along with an affidavit and handed over the demand draft to O.P. No. 2 on 20.05.2025, as directed by this Court vide order dated 12.05.2025, has put in appearance nor did the applicant remain present and also no affidavit as

specifically directed in third-last paragraph of the order dated 20.05.2025, has been filed. On the said date, it was noticed that names of two new counsels Mr. Vishal Mishra and Dr. Rahila Sikandar were shown on behalf of the applicant but no affidavit was filed by them in light of the observations and directions mentioned in previous order dated 20.05.2025. As no such affidavit, as directed by this Court in the order dated 20.05.2025, was filed, the matter was directed to be posted for 19.08.2025 for further hearing. The order dated 11.08.2025 reads thus:

1. Although names of Ms. Rahila Sikandar, Mr. Ravi Kant, Mr. Ram Naresh Shukla, Ms. Vatsala as well as Mr. Vishal Mishra, are shown on behalf of the applicant but there is an illness slip of Mr. Vishal Mishra, learned counsel for the applicant.
2. Record shows that Mr. R.P. Yadav and Mr. Ram Naresh Shukla, learned counsels, have filed their Vakalatnama along with the affidavits on 25.11.2024 on behalf of applicant. Subsequently, a Vakalatnama has been filed by Ms. Rahila Sikandar, Advocate and Mr. Vishal Mishra, Advocate, on behalf of applicant on 17.07.2025.
3. In compliance of earlier order dated 20.05.2025, Smt. Archana Dwivedi, opposite party no.2, is present before this Court and has been identified by her counsel.
4. Despite having knowledge of the order passed by this Court on 20.05.2025 and the fact that the matter will be listed on 11.08.2025, one of the counsels namely, Mr. Vishal Mishra has marked illness.
5. Seeing the seriousness of the matter, this Court takes notice of the matter wherein the wife has been harassed and has been left to stay with her parents, whereas the applicant is enjoying out of India and no affidavit has been filed on behalf of the applicant, which goes to show the conduct of the learned counsel for the applicant as well as the applicant.
6. As there is illness of one of the counsels, therefore, the Court is not proceeding with the matter today. However, while taking notice of the absence of learned counsels for the applicant and non compliance of the earlier order passed by this Court as well as marking of illness in such a serious issue which shows contemptuous conduct towards the order of this Court. The matter is posted for 19.08.2025, peremptorily, along with connected matter.
7. Learned counsel for opposite party no.2 shall give a notice in writing to Mr. Ram Naresh Shukla, Mr. R.P. Yadav, Mr. Vishal Mishra and Ms. Rahila Sikandar, informing about the aforesaid order.

5. The record shows that an affidavit regarding no objection from the earlier counsels Mr. R.P. Yadav and Mr. Ram Naresh Shukla, is on the record. On perusal of the same, it is clear that Sri Vishal Mishra and Dr. Rahila Sikandar filed their vakalatnama on 17.07.2025, which has been placed on record. Record further reveals that Supplementary Affidavit No. 15 of 2025 has been placed on record on 19.08.2025 as is evident from the office report dated 19.08.2025, wherein a declaration has been

given by the subsequently engaged counsel, Dr. Rahila Sikandar. Said affidavit is placed before this Court, today.

6. From the aforesaid, it is clear that on 11.08.2025, aforesaid affidavit was not on the record. Paragraphs of the said affidavit dated 14.08.2025 are being reproduced below:

“1. That the deponent is the real brother of the applicant and is doing pairavi on behalf of the applicant in the instant case as such he is well acquainted with the facts of the case deposed below. The deponent further affirms that the disclosures and averments made in the instant affidavit are correct.

2. That, the applicant is filing instant supplementary affidavit in compliance to the order dated 20.05.2025 as it was referred in the said order that "in case the applicant is not present before this Court, learned counsel for the applicant shall move an application on affidavit mentioning details as to when the applicant is returning to India". Hence, this supplementary affidavit mentioning therein for the unavailability of applicant on the date fixed before this Hon'ble court.

3. That, the applicant is presently residing at Nottingham, United Kingdom (England) and working there as a priest in a Hindu Temple, Nottingham, Cultural Community Centre, United Kingdom, (England).

4. That, the applicant is re-affirming that he shall be available in the month of November as court may fix any of the dates in the month of November.

5. That, the applicant is willing and tried very hard to return to India but Air India crash mishap took place in Ahmedabad, due to which the flights were cancelled and now when the services are resumed few flights are in the operation however, they are very much expensive which puts unbearable burden on the applicant as he is the only person to earn bread and butter to his family.

6. That, the applicant is a priest in England in a Hindu Temple, Nottingham, Cultural Community Center and the family ceremonies of many of the Hindu families have already been decided to be performed according to the Hindu rites and rituals and the applicant has been engaged to conduct the aforesaid puja and ritual ceremonies at Nottingham, United Kingdom.

7. That, the applicant is the only priest in the aforesaid Hindu Temple, Nottingham, Cultural Community Center to conduct pooja and ritual ceremonies in the upcoming DIWALI festival for which the preparations are going on.

8. That, the applicant is re-affirming that he shall be available in the month of November, as the Hon'ble Court may please to fix any of the date in the month of November.

9. That, the applicant is re-affirming that he is ready to appear online on the next date as fixed by this Hon'ble court.

10. That, it is pertinent to mention here that for all the aforementioned reasons it is most respectfully begs before this Hon'ble court to fix any date in the month of November or kindly permit the applicant to appear online on any date fixed, so that the applicant ensures his presence before this Hon'ble court.

11. That, it is therefore necessary and expedient in the interest of justice that this Hon'ble Court be pleased to take this supplementary affidavit on record of the instant revision and treat it as a part of the same.”

7. Perusal of the averments made in aforementioned supplementary affidavit, as presented on 14.08.2025, placed on record on 19.08.2025, it is evident that for the first time, that too by the subsequently engaged

counsels, Mr. Vishal Mishra and Dr. Rahila Sikandar, it has been mentioned that the applicant is ready to appear through online (video conferencing). In the said supplementary affidavit, there is no averment on behalf of the subsequently engaged counsels (Mr. Vishal Mishra and Dr. Rahila Sikandar) as to why they did not move any application in compliance with earlier order dated 20.05.2025, prior to the date fixed i.e. 11.08.2025, whereas they had already filed their vakalatnama on 17.07.2025.

8. This Court has time and again observed that dilatory tactics are being employed by the litigants, frequently engaging new counsels with the purposeful malafide intent, especially either in between the proceedings at crucial stage or at the time of final decision in the matters where married women are pestered in matrimonial disputes. Previously, this Court has also expressed displeasure over the subsequent engagement of new counsels in the case of **Shiv Kumar Sharma Vs. State of U.P. and another**², wherein this Court has deprecated the practice of engagement of subsequent counsel without being aware of the entire earlier facts and circumstances as argued, and also about the orders which are available on official website of this Court.

9. While assisting the Court Mr. P.K. Singh, learned Counsel for the State, has place reliance on a judgment of the Apex Court in the case of **M/s Chithra Woods Manors Welfare Association v. Shaji Augustine**³. In the said case, the Hon'ble Apex Court has taken care of the situation, wherein the lawyers as well as litigants have given statements before the court with intention not to comply with the orders as passed by the Court. Aforesaid fact was taken into consideration in the order 11.08.2025 as passed by this Court in the present case. Relevant excerpt of the judgement passed in **M/s Chithra Woods Manors Welfare Association (supra)**, reads as under:

2 Application U/s 482 No. 42663 of 2022, decided on 29.03.2023, 2023 SCC OnLine All 4414

3 Contempt Petition (Civil) No. 712 of 2023 in SLP (Civil) No. 17433 of 2021, Dated : 24.04.2025

“36. A party, misguiding the Court to pass an order which was never intended to be complied with, would constitute an act of overawing the due process of law and, thus, commit contempt of Court. In the instant case, the opportunity having been availed, time having been sought and granted by the Court further reflects the intent on the part of the Respondent-Contemnor to discard and tarnish the judicial process by polluting it. Disobedience of the order of the Court in such circumstances would be the only result and thus, civil contempt.”

10. Dr. Rahila Sikandar, learned Advocate, who is one of the subsequently engaged counsels, neither marked illness on 11.08.2025 nor sent any information as to why she has not appeared before this Court. Though illness of another counsel, namely, Mr. Vishal Mishra who had filed his vakalatnama at subsequent stage, was there. Out of four names shown in the list as counsels on behalf of the applicant, two of them, namely, Mr. R.P. Yadav and Mr. Ram Naresh Shukla had already informed the Court that the client has already taken away the file from them and new counsels have been engaged. It has been experienced that some lawyers have imbibed it as a practice to dodge one Court and approach the Higher Court by concealing certain true facts. As in the present case the fact of not filing affidavit appears to have been concealed before the Apex Court while filing **Special Leave Petition (Criminal) Diary No(s). 48014 of 2025**⁴. Such practice of lawyers of such a virtuous and noble profession is not expected and deserves to be deplored. Mr. Vishal Mishra and Dr. Rahila Sikandar are young lawyers, they ought to have shown due regard and sense of uprightness.

11. Attention of this Court engaged over the impatient stance showed by Dr. Rahila Sikandar, during the course of dictation of this order. Over such miserable demeanour being expressed by Dr. Rahila Sikandar, as a practicing lawyer of this Court, I resist myself from explicit observation in specific words, however, record discontent sans any comment.

12. Aforementioned circumstances, as in the present case, constrain this Court to take serious note of the conduct of subsequently engaged counsels, who despite having been warned of their fault, did not feel

4 Vishnunaresh Gautam & Anr. v. The State of Uttar Pradesh & Anr.

apology. In the order dated 12.05.2025 it was specifically mentioned that a draft of Rs.50,000/- shall be brought in the name of Mrs. Archana Dwivedi by the applicant to show his bonafide and not for the purposes of mediation. Learned counsels appearing for the applicant Mr. Vishal Mishra and Dr. Rahila Sikandar are not in a position to deny the aforesaid fact which is well evident from the order dated 12.05.2025, as they were not counsel for the applicant on the said date.

13. It appears that the aforesaid facts have not been brought to the notice of Hon'ble Apex Court, which amounts to concealment of facts on the part of lawyers.

14. Though, such matters necessitate close watch and remarks over the unwelcoming conduct of such lawyers by the Bar Council of Uttar Pradesh, however, this Court desists from issuing any such directions at this stage.

15. In compliance with the order of Hon'ble Apex Court dated 01.09.2025, which has been passed on to the Court today, learned counsel for the parties state that the parties are ready for mediation. The petitioner is permitted to appear through video conferencing. However, in view of the conduct of counsels, namely, Mr. Vishal Mishra and Dr. Rahila Sikandar, let an affidavit be filed by the next date as to what amount the applicant is ready to pay to opposite party no. 2 for mediation to be conducted by this Court or Mediation Centre of this Court, and as to when and on which date, the applicant (husband) shall appear before the Court through video conferencing for the purposes of mediation.

16. Mr. R.P. Yadav and Mr. Ram Naresh Shukla, learned Advocates submit that they may be permitted to withdraw their vakalatnama as the client has engaged other counsels. In this regard, as prayed, they are granted a week's time to file an application.

17. Mr. K.K. Dwivedi, Senior Vice President, Allahabad High Court Bar Association, is present on behalf of the President and the Secretary.

18. List this case on **16th September, 2025**, for further hearing, along with connected petition.

19. Shri Vishnu Naresh (brother of applicant) who has been brought by SI Yogendra Singh Yadav (PNO 872610459) and Mrs. Archana Dwivedi (O.P. No. 2), identified by respective counsels, are present before this Court. Appearance of Sri Vishnu Naresh is not required on the next date.

20. Office shall ensure that names of Mr. Vishal Mishra and Dr. Rahila Sikandar be shown as counsel for the applicant and Sri Arvind Kumar as counsel for opposite party, in the cause title of the case.

(Mrs. Manju Rani Chauhan,J.)

September 1, 2025

DS