

**THE HON'BLE SRI JUSTICE M.S.K. JAISWAL**

**Criminal Revision Case No. 1783 of 2007**

**Order:**

This Criminal Revision Case is filed by the petitioners, who are A-1 and A-2 in CC No.609 of 2004, questioning the correctness of the orders, dated 20.11.2007, passed by the learned Judicial Magistrate of First Class, Kurnool, in CrI.MP No.1842 of 2007 in CC No.609 of 2004, filed under Section 227 Cr.P.C., seeking to discharge the petitioners/accused on the grounds that the Court cannot take cognizance for the offence punishable under Section 494 IPC on the charge sheet filed by the police and that the complaint is barred by limitation.

2. Briefly stated the facts of the case are that the *de facto* complainant by name Nalini married the petitioner-A1 on 10.12.1979 and they had two daughters and one son. Subsequently, the petitioner/A1 is said to have contracted second marriage with the petitioner/A2 during the subsistence of the marriage in between the *de facto* complainant and the petitioner/A1. It is also on record that the petitioners/A1 and A2 also had two sons, they having married about 8 years prior to lodging of the complaint.

3. When the case came up before the learned Magistrate for consideration, the petitioners/A1 and A2 filed the petition in CrI.MP No.1842 of 2007 seeking to discharge them on the grounds stated supra. The learned Magistrate, by the impugned order, held that the petitioners/A1 and A2 are not entitled to be discharged on the grounds that the cognizance of offence punishable under Section 494 IPC cannot be taken on the basis of police report and that the complaint filed by the *de facto* complainant is barred by limitation.

4. It is also on record that on previous occasion the petitioner/A2 preferred Crl.MP No. 4625 of 2004 on the file of this Court and, by an order, dated 12.04.2006, this Court clearly held that taking of cognizance by the Magistrate of the offence punishable under Section 494 IPC is proper since the said offence is coupled with an offence punishable under Section 498-A IPC. With regard to request of the petitioner-A2 that she is entitled to be deleted from the charge sheet on the ground that there is absolutely no accusation that she has been subjecting the *de facto* complainant to harassment and cruelty and for this, this Court granted liberty to her to file a petition to discharge from the said accusation punishable under Section 498-A IPC before the lower Court. Thereafter, the present petition in Crl.MP No.1842 of 2007 came to be filed.

5. What is to be seen from the above facts is that the *de facto* complainant namely Nalini had accused the petitioner/A1 of subjecting her to cruelty and harassment, thereby he committed the offence punishable under Section 498-A IPC. In so far as the offence punishable under Section 494 IPC is concerned, the contention of the *de facto* complainant is that her husband-A1 has married A2 during the subsistence of their marriage and, hence, A1 and A2 committed the offence.

6. The question as to whether taking of cognizance by the Magistrate for the offence under Section 494 IPC is concerned, the same has already been adjudicated by this Court. With regard to accusation attracting the offence punishable under Section 498-A IPC is concerned, it was left open to the petitioner/A2 to seek discharge on the ground that there are no specific accusations against her attracting the ingredients of Section 498-A IPC. It is noticed from the order of the Court below that those grounds were not taken and subsequently there was no adjudication by the learned Magistrate on the question as to whether there is sufficient material on record so as to proceed against

the petitioner/A2 in so far as the offence punishable under Section 498-A IPC is concerned. The objections that were raised previously are with regard to maintainability of the complaint under Section 494 IPC on the basis of a charge sheet being filed by the police and about the complaint itself being barred by limitation. Therefore, the impugned order now challenged cannot be said to suffer from any irregularity or illegality warranting interference of this Court. However, the aspect as to whether the material that is placed before the Court prior to framing of the charge is sufficient to attract the offences punishable under Sections 494 and 498-A IPC are concerned, has not been adverted to. It is obligatory on the part of the trial Court to consider the record of the case and the documents submitted therewith and after hearing if the Judge considers that there is not sufficient ground for proceeding against the accused the learned Judge shall discharge the accused under Section 240 Cr.P.C., which contemplates that after such consideration and hearing if the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, charges should be framed.

7. In that view of the matter, the Criminal Revision Case is dismissed. However, it is left open to the learned Magistrate to consider the material on record with reference to the provisions of Sections 239 and 240 Cr.P.C., and only on being satisfied that the material on record is sufficient to proceed against the accused he can proceed in the matter in accordance there with.

8. As a sequel thereto, the miscellaneous petitions, if any, pending in the Criminal Revision Case shall stand closed.

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**M.S.K. JAISWAL, J.**

Date: 24.06.2015

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