

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.2339 of 2014

ORDER:

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1. This Criminal Revision Case is filed by the petitioner-complainant under Sections 397 and 401 Cr.P.C. challenging the order dated 29.10.2014 passed in Crl.R.P.No.255 of 2014 by the Metropolitan Sessions Judge, Hyderabad.

2. Brief facts of the case are as follows:

On 11.11.2010, the petitioner lodged a complaint before the Jubilee Hills Police Station, Hyderabad alleging that her husband and in laws sent their henchmen to harass, intimidate and drive the petitioner and her two minor daughters out of their home. She further alleged that for the last 11 years, her in-laws and husband harassed her and her mother-in-law (1st respondent herein) watched her to undergo a miscarriage and refused to call the driver to take her to the hospital. As there was no action, the petitioner filed a complaint before the Deputy Commissioner of Police, Women Police Station, Basheerbagh, Hyderabad with the following allegations:

- i. She was married on 1.1.2000 to Srinivas Motupalli at Annavaram in the presence of their families, elders and friends and they were blessed with two daughters. The petitioner has been practicing as lawyer for 19 years.
- ii. It is alleged that petitioner's husband and her in-laws have been refusing to maintain them and subjecting them to domestic violence and harassment.
- iii. It is alleged that the petitioner's husband and her in-laws subjected her to harassment for the last eleven years and they are continuing the said harassment.
- iv. Her husband and in-laws pressurized her to have children, without any emotional or economic stability, which resulted in four pregnancies in 5-6 years. During her first miscarriage within

three months of her marriage, her husband abused her mother as if she caused the miscarriage. In spite of directions of the doctor, her husband continued to make her pregnant and deliver two children in a span of two and half years. Again, he refused to use contraception and it resulted in another pregnancy and miscarriage. During the second miscarriage, her mother-in-law refused to let her to go to the Doctor, on account of which, the petitioner suffered with incomplete abortion and then, the petitioner telephoned to her mother and went to hospital. It is alleged that her in-laws prevented from going to the hospital at that critical stage. Finally, under threat of divorce from her husband in 2005-06, she went ahead with her family's help. They subjected her to harassment as she has no male issues and they are now attempting to get her and her two daughters out of their home and they would not have done so, if she had a son.

- v. Her husband used to come to the home in a drunken state and abuse her physically and emotionally.
- vi. Her husband and in laws sent henchmen at late night on 11.11.2010 to trespass, intimidate, outrage her modesty.
- vii. She filed a case for divorce in November, 2011 and thereafter, her husband and in laws has installed surveillance cameras in her parking area and her office and they are intimidating her and her children.
- viii. When the petitioner along with her children was out of country, her husband and in laws entered into her house and have stolen her professional and personal files, furniture, law books and journals, computer equipment etc.,
- ix. Her husband and in laws are filing false complaints against the petitioner repeatedly accusing that she was attempting to intimidate their staff.
- x. She has been subjected to repeated and continuous acts of domestic violence. More harassment was caused after filing of DVC

No.274 of 2010 and the O.P. for divorce.

- xi. Her husband and in laws had made no attempts to visit the children from July, 2010. But they are falsely alleging that she is preventing them from doing so.
- xii. The receipt of complaint dated 11.11.2010 filed by her against her husband and in-laws was acknowledged. But, the police did not register the case.

Apart from the above, the petitioner made many allegations against her husband and her in-laws. Basing on the above complaint dated 22.6.2011, a case in Crime No.230 of 2011 was registered against the husband of the petitioner and her in laws, for the offence under Section 498-A IPC and Sections 4 and 6 of the Dowry Prohibition Act. After completion of the investigation, the police filed a closure report due to lack of evidence. Thereupon, the petitioner-complainant filed a protest petition. Hence, the XII Additional Chief Metropolitan Magistrate (Mahila Court), Hyderabad took cognizance after recording the statements of the witnesses. The case was numbered as C.C.No.150 of 2014.

3. The 1st respondent-mother-in-law of the petitioner was arrayed as A3 in C.C.No.150 of 2014. She filed a petition in CrI.M.P.No.1801 of 2015 under Section 245 Cr.P.C. praying to discharge her from the main case. The learned Magistrate dismissed the said petition. Aggrieved by the same, the 1st respondent-A3 filed a Criminal Revision Petition No.255 of 2014 before the Metropolitan Sessions Judge, Hyderabad. The learned Sessions Judge allowed the revision petition. Consequently, the revision petitioner was discharged from the above case. Aggrieved by the same, the petitioner-complainant filed the present revision.

4. Learned Counsel for the petitioner submitted that the learned Sessions Judge passed the order discharging the 1st respondent without considering the reasoned order passed by the trial Court and that at the initial stage of trial, the truth, veracity and effect of the evidence, which the prosecution proposed to adduce, cannot be meticulously judged. He further contended that the lower Revisional Court ought to have considered the evidence as a whole, but not as a part and parcel to suit the

convenience of the 1st respondent and that the age of respondent No.1 was wrongly mentioned so as to gain the sympathy of the Court and therefore, the order of the learned Sessions Judge suffers from illegality and irregularity..

5. Placing reliance on the closure report submitted by the Police, the learned Public Prosecutor submitted that order passed by the learned Sessions Judge, does not warrant any interference by this Court. Therefore, this revision case is liable to be dismissed.

6. Learned Counsel appearing for the 1st respondent -A3 submitted that the entire order passed by the lower appellate Court is in accordance with law and that in the evidence of L.W.1, there is nothing against the 1st respondent-A3 more particularly attracting the offence under Section 498-A IPC and Sections 4 and 6 of the Dowry Prohibition Act, except one allegation that the 1st respondent had not taken care of the petitioner while she was suffering from miscarriage.

7. From the material on record, it is apparent that as a matter of fact, the police after completion of the investigation closed the complaint given by the petitioner on the ground that the DVC case is pending and her in-laws were old aged persons and are not in a position to harass the complainant and apart from that, they are staying separately since a long time. While observing so, the police referred the case as 'lack of evidence'. At this stage, on the protest petition filed by the petitioner, the XIII Additional Chief Metropolitan Magistrate (Mahila Court) took cognizance of the case vide C.C.No.150 of 2012.

8. The main allegations made against the 1st respondent-A3 are that on the death of the father of the petitioner, A3 telephoned to her mother and asked as to her share of property and that when the petitioner suffered miscarriage, she refused to let her to go to the hospital or to take care of her minor daughters, who were aged about 5 or 4 years.

9. With regard to the allegation that A3 telephoned to the mother of the petitioner and

asked her as to the property fell to her share after the death of the father of the petitioner and then, her mother in order to protect her from further harassment, transferred two flats in the name of her two minor daughters, the lower appellate Court observed that the said allegation does not disclose that A3 has insisted for the said transfer of property. It is observed that the allegation against A3 is only that she has telephoned to the mother of the petitioner and simply asked her as to the property fell to her share consequent to the death of her father, and that the said statement cannot be interpreted as harassment made by A3 and even the transfer of property allegedly made by her mother is only in the names of her minor daughters and the petitioner was shown as guardian. It is not the case of the petitioner that there was harassment or any grievance expressed by A3 for not transferring the property in favour of A1. Even the evidence of P.Ws.2 to 4 does not show that there was any harassment made by A3 with regard to dowry.

10. The above findings recorded by the lower appellate Court in regard to the said allegation viz., the 1st respondent telephoned to the mother of the petitioner and asked about the property, are on sound footing. It is very natural that if any elder male member/manager of the family dies, many persons enquire as to the means or assets left over by the deceased person for the welfare and maintenance of the remaining family members. Therefore, the said statement alleged to have been made by A3, cannot be misinterpreted as harassment, that too after a long lapse of time in order to connect the 1st respondent-accused with the offence.

11. Insofar as the allegation that when the petitioner suffered miscarriage, the 1st respondent-A3 refused to let her to go to the hospital or to take care of her minor daughters, who were aged about 5 or 4 years, is concerned, the lower appellate Court observed as follows:

“The Counsel submitted that the said allegation, even if taken to be true, is stale as it relates to the incident in the year 2006. Moreover, A3 is a woman aged about 80 years and hence, she cannot be expected to take care of two children. Her evidence however, shows that the children were put in the guest room of A2 and A3. Moreover, the injury, if any caused, was due to miscarriage but not by the cruelty meted out by A3 and hence, her miscarriage does not bear any nexus with the alleged cruelty by A3. There is sufficient force in the above argument”.

12. The findings recorded by the lower appellate Court with regard to the allegation that the 1st respondent had not taken care of the petitioner while she was suffering from miscarriage, are reasonable. Even if it is assumed to be true that the 1st respondent had not taken care of the petitioner while she was suffering with miscarriage, it would not attract the offence under Section 498-A IPC. Insofar as the allegations referred to above are general in nature and there is no specific date or time on which the petitioner was subjected to harassment by the 1st respondent herein.

13. From the material on record, it is apparent that the alleged miscarriage pertained to the year 2006. There is no sufficient reason to attribute malafides against the 1st respondent in the year 2011. The allegations made by the petitioner against her mother-in-law-1st respondent, who is unable to take care of herself as per the closure report, are not believable. Apart from that, the material on record does not disclose that the report dated 11.11.2010 has not been preceded by any immediate and recent incidents, so as to draw any inference as to the bonafide approach of the petitioner against the 1st respondent-A3.

14. Admittedly, the petitioner was blessed with two daughters. From the closure report, it is obvious that the 1st respondent has been residing separately since a long time. The alleged attributions made against the 1st respondent appear to be vague in nature, without there being any basis. In the complaint dated 11.11.2010, it is stated that as she initiated legal action against her husband and in laws, they instigated their office persons to lodge complaints against her. In the said complaint, she stated that her mother-in-law watched her to undergo a miscarriage, whereas in the second complaint dated 22.6.2011, she made several allegations against her.

15. Further, it is alleged by the petitioner that the age of the 1st respondent-A3 was wrongly shown in order to gain sympathy of the Court. The age of the 1st respondent is not material to decide the issue.

16. The entire material gathered from the record goes to show that the report made by the petitioner appears to have been given only when a report was given against her by the office boy and watchman of the office of her father-in-law.

17. Further, from the material on record, it is obvious that four witnesses including the petitioner were examined on the protest petition filed by her. Except P.W.1, P.Ws.2 to 4 did not speak anything against the 1st respondent. Even if the evidence of P.W.1 coupled with the allegations made by her is taken into consideration, it does not disclose any prima facie case attracting the ingredients of either Section 498-A IPC or under Sections 4 and 6 of the Dowry Prohibition Act.

18. From the arguments also, it seems that the grievance of the petitioner is mainly against her husband. But by way of including the 1st respondent as accused with the 1st accused, she intends to settle the issue with A1. Further, the allegations in the complaint are also against her husband but not against the 1st respondent. The husband of the 1st respondent also died during the pendency of this case. As observed above, the present complaint was lodged after lapse of long period connecting the 1st respondent with the crime basing on the refusal alleged to have been made by the 1st respondent to take care of the children while the petitioner was suffering from miscarriage.

19. For the reasons stated in the foregoing paragraphs and considering the findings recorded by the trial Court, this Court is of the view that the order passed by the learned Metropolitan Sessions Judge does not warrant interference and hence, the revision case is liable to be dismissed.

20. Accordingly, the Criminal Revision Case is dismissed. Consequently, the miscellaneous petitions pending, if any, shall stand dismissed.

JUSTICE RAJA ELANGO

Dated:06.10.2015

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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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