

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.3122 OF 2016

ORDER:

This Criminal Revision Case is filed under Section 397 read with 401 of Cr.P.C. challenging the order dated 03.11.2016 passed in CrI.M.P.No.101 of 2016 in S.C.No.78 of 2015 on the file of the VI Additional District Judge-cum-Sessions Judge, Mahila Court, Visakhapatnam.

2. The contention of the learned counsel for the petitioner is three fold: (1) Even if the allegations made in the charge sheet are *ex facie* taken to be true and correct, no offence is made out against the petitioner, much less, the offences alleged to have been committed by the petitioner under Sections 498-A and 306 I.P.C.; (2) The allegations made in the charge sheet do not *prima facie* satisfy the ingredients of Section 107 I.P.C.; and (3) The alleged suicidal note is no way helpful to the prosecution.

3. *Per contra*, the learned Assistant Public Prosecutor submitted that the petitioner used to visit the house of Aruna Kumari (hereinafter referred to as 'the deceased'), who is his wife, and harassed her due to which, she committed suicide on 13.02.2014. She further submitted that the allegations made in the charge sheet are *prima facie* sufficient to proceed further against the petitioner. She also submitted that there is no illegality or irregularity in the order of the trial Court, which warrants interference of this Court.

4. In order to appreciate the rival contentions, it is apt to refer the following decision:

Union of India v. Prafulla Kumar Samal and another¹,
wherein the Hon'ble Apex Court held at paragraph No.10 as follows:

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

¹ 1979 (3) SCC 4

5. The same principles were reiterated by the Hon'ble Apex Court in **Dilawar Balu Kurane v. State of Maharashtra**².

6. Let me consider the factual background of the case in the light of the above legal principles.

7. A perusal of the record reveals that the deceased fell in love with the petitioner and they got married in the year 2005. Out of their lawful wedlock, they were blessed with one daughter by name Vasundara Laxmi Sahasra. The petitioner and the deceased lived together happily upto 2012. The deceased lodged a complaint to the police, who in turn registered a case in Crime No.43 of 2013 against the petitioner for the offence punishable under Section 498-A I.P.C. After completion of the investigation, the investigating officer laid charge sheet against the petitioner for the offence punishable under Section 498-A I.P.C. The learned I Additional Chief Metropolitan Magistrate, Visakhapatnam, has taken the cognizance of the offence under Section 498-A I.P.C. against the petitioner and numbered it as C.C.No.1174 of 2013. Subsequently, basing on the complaint lodged by the deceased, another Crime No.23 of 2014 was registered against the petitioner for the offence punishable under Section 498-A I.P.C. On 13.02.2014, the deceased committed suicide. Thereafter, the section of law was altered to Sections 498-A and 306 I.P.C. After completion of the investigation, the investigating officer laid charge sheet against the petitioner for the offences punishable under Sections 498-A and 306 I.P.C. The learned District and Sessions Judge has taken the cognizance of the offences under Sections

² (2002) 2 SCC 135

498-A and 306 I.P.C. against the petitioner and numbered it as S.C.No.78 of 2015.

8. The petitioner filed CrI.M.P.No.101 of 2016 in S.C.No.78 of 2015 under Section 239 of Cr.P.C. for discharge and the same was dismissed.

9. The predominant contention of the learned counsel for the petitioner is that the allegations made in the charge sheet do not constitute any offence, much less, the offences alleged to have been committed by the petitioner under Sections 498-A and 306 I.P.C. As rightly pointed out by the learned counsel for the petitioner, the prosecution has to establish the ingredients of Section 107 I.P.C. in order to convict a person under Section 306 I.P.C.

10. I have carefully scanned word by word and line by line of the alleged suicidal note of the deceased. A perusal of the same *prima facie* reveals the torture undergone by the deceased. Even as per the allegations made in the charge sheet, the petitioner used to come to the house of the deceased and harassed her both mentally and physically. Whether the petitioner visited the house of the deceased or not has to be decided at the time of full-fledged trial only. If the Court expresses any opinion while disposing of this revision case, the same may cause prejudice to one of the parties to the proceedings. It is a settled principle of law that the Court cannot conduct a roving enquiry at the time of framing of the charges. The Court has to see whether the material placed before it is *prima facie* sufficient to proceed further against the petitioner or not. The material placed before the Court is *prima facie*

sufficient to proceed further against the petitioner. The various queries raised by the learned counsel for the petitioner involve complexity of disputed questions of fact, which cannot be gone into at the time of framing of the charges. The trial Court has considered various aspects in right perspective and dismissed the petition. I am fully agreeing with the observations made by the trial Court while dismissing the petition.

11. Having regard to the facts and circumstances of the case, I am of the considered view that there is no illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court, by exercising the revisional jurisdiction under Section 397 of Cr.P.C. Hence, the revision lacks merits and *bona fides*.

12. Accordingly, the Criminal Revision Case is dismissed. However, the trial Court is hereby directed to dispose of the matter without being influenced by any of the observations made in this revision.

13. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

T.SUNIL CHOWDARY, J

Date: 20.12.2016
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