

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2561 of 2017

ORDER:

This criminal revision case is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') questioning the propriety and legality of the order passed by the Special Judge for trial of Offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989-cum-V Additional Sessions Judge, Medak at Sanga Reddy, in CrI.M.P.No.165 of 2016 in S.C.No.187 of 2016, dismissing the petition filed under Section 247 Cr.P.C. by the petitioners/accused Nos.2 and 3 for their discharge in the above said sessions case.

2. The petitioners are accused Nos.2 and 3 and accused No.1 is the son of petitioners herein. A charge sheet was filed against the accused including these two petitioners for the offences punishable under Sections 302 and 498-A IPC.

3. The case of the prosecution is that the marriage between the deceased-Smt.Varsha Singh and accused No.1 was performed on 10.12.2006. Three months after the marriage, accused No.1 and the petitioners herein have subjected Smt.Varsha Singh to harassment for her failure to meet illegal demand for payment of additional dowry, for which she lodged a complaint, later it was withdrawn on the assurance given by the petitioners that they will look after well in future without any harassment. After settlement of dispute with accused No.1, the petitioners herein were residing at Isnapur.

Whereas, accused No.1 used to come in drunken state and used to bring his friends to consume liquor at home. Though Smt.Varsha Singh, wife of accused No.1, objected for consumption of liquor at home by accused No.1 with his friends, accused No.1 used to threaten her on the ground that since she gave complaint against his parents, he has compromised the dispute with her and he will kill her. The petitioners did not allow Smt.Varsha Singh to visit their house whenever accused No.1 goes to his parents house what they say to him was not disclosed to Smt.Varsha Singh, but accused No.1 used to return home and ill-treat her.

4. On 05.02.2014, when accused No.1 had come in drunken state Smt.Varsha Singh admonished him, then he stated that he will kill her and he can settle happily by saying so he poured kerosene and lit fire. Thus, on the strength of complaint, a case is registered against accused No.1 and the petitioners. After completion of investigation, a charge sheet was filed against them for the offences punishable under Sections 302 and 498-A IPC.

5. The main contention before this Court is that the petitioners are residing at a distant place i.e., Isnapur, whereas accused No.1 and Smt.Varsha Singh are staying at a different place, therefore, the question of their subjecting the deceased Smt.Varsha Singh to cruelty by the petitioners does not arise and that the statements of witnesses recorded by the police during investigation, which is a basis for setting the criminal law into motion and in the F.I.R., it is not

disclosed any material to rope these petitioners with the offences punishable under Sections 302 and 498-A IPC and in the absence of any allegations against the petitioners to proceed further, they are liable to discharge for the offences punishable under Sections 302 and 498-A IPC.

6. The Magistrate, on receipt of charge sheet and documents, registered the same as P.R.C.No.80 of 2014, and the same was challenged before this Court in a petition filed under Section 482 Cr.P.C. in Criminal Petition No.3658 of 2015 and this Court made the following observation:

“There is no inclusion in the charge sheet either Section 34 IPC or Section 120-B IPC. This court is also of the view that the allegations are not so serious in nature in so far as the petitioners herein are concerned. In any event, the petitioners are directed to file an application seeking discharge before the Sessions Court, after committal of the case and on such application being filed, the Court concerned is directed to consider the same and pass appropriate orders in accordance with law. It is made clear that if the petitioners are aggrieved over any of the order passed by the Court concerned, they are at liberty to approach this Court challenging the said order”.

7. In view of the observations made by this Court and based on the grounds stated supra, the petitioners sought their discharge in S.C.No.187 of 2016 for the offences punishable offences under Sections 302 and 498-A IPC.

8. Upon hearing argument of both the counsel, the trial Court held that there is material to proceed against these petitioners for the offences punishable under Sections 302 and 498-A IPC. The abetment of accused No.1 by these petitioners has to be decided only after full fledged trial and at that stage, the Court found that it is not a fit case to discharge the petitioners for the offences punishable under Sections 302 and 498-A IPC and dismissed the petition.

9. The main contention in the present revision is that the material on record does not disclose any material prima facie to constitute offences punishable under Sections 302 and 498-A IPC and that the charge is groundless. It is also contended that none of the allegations made either in the statement of deceased Smt.Varsha Singh recorded by the police and the statements of other witnesses recorded by the police during investigation under Section 161 Cr.P.C., does not disclose involvement of petitioners either directly or indirectly in the commission of offences by these petitioners. But, the trial Court on erroneous appreciation of facts and law committed error and prayed to set aside the order and discharge these petitioners for the charges punishable under Sections 302 and 498-A IPC, allowing the revision by exercising power under Sections 397 and 401 of Cr.P.C.

10. During hearing, Sri A.K.Kishore Reddy, learned counsel for the petitioners, reiterated the contentions drawn attention of this Court to the contents of the statements of Smt.Varsha Singh and other

witnesses examined during course of investigation by the Investigating Agency. Whereas, there is no specific allegation against these petitioners, to rope them with the serious offences punishable under Sections 302 and 498-A IPC, to establish *prima facie* Smt.Varsha Singh for her failure to meet the illegal demand for payment of dowry and also would draw the attention of this Court to the contents of the dying declaration recorded by the Magistrate on receipt of requisition from the hospital authorities at Osmania Hospital and the statement also does not disclose involvement of these petitioners directly or indirectly in the commission of causing death of Smt.Varsha Singh, which is the immediate cause of her death. In the absence of any material collected during investigation, the proposed charges are groundless and prayed to set aside the order allowing this revision and discharge the petitioners for the offences punishable under Sections 302 and 498-A IPC.

11. Learned Public Prosecutor for the State of Telangana opposed the revision petition on the ground that material on record *prima facie* disclosed that the petitioners committed the offences punishable under Sections 302 and 498-A IPC and this Court is having limited jurisdiction under Sections 397 and 401 Cr.P.C., call for record, verify and if the Courts found that there is no irregularity in the order passed by the Court below, the Court cannot exercise the power to interfere with the order passed by the Court below and requested this Court to dismiss the revision.

12. The point that arises for consideration is:

Whether the material available on record is sufficient to proceed against these petitioners/accused Nos.2 and 3 for the offences punishable under Sections 302 and 498-A IPC?

POINT:

13. The present petition is filed under Section 397 and 401 of Cr.P.C. Jurisdiction of this Court under Section 397 and 401 of Cr.P.C. is limited and the High Court may exercise such power only when the Court found that there is a manifest perversity in the order or the finding recorded by the Court is without any evidence or material, though section 401 of Cr.P.C. confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity or procedure, neglect or proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some underserved hardship to individuals. The revisional power conferred on the High Court by Section 401 of Cr.P.C. is discretionary power, has to be exercised in the aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon facts and circumstances of each case. The discretion conferred on the High Court by Section 401 of Cr.P.C. has to be exercised judicially, on judicial principles and not arbitrarily.

Therefore, keeping in mind the scope of revision, I would like to decide the present issue before this Court.

14. According to Section 239 of Cr.P.C. if the Court is of the opinion upon considering the police report and documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate or Sessions Judge thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate or Sessions Judge considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing.

15. The documents referred to in Section 207 of Cr.P.C. also must relate to such documents which can be subsequently transferred into evidence at the time of the trial. Hearing of the prosecution and the accused under this section does not mean the hearing of arguments only, it includes the hearing of the evidence if needed. The word “groundless” would mean the absence of reasonable ground to expect a conviction. “Groundless” is equivalent to saying that there is no ground for framing the charges, which depends on the facts and circumstances of each case. Therefore, only when the Magistrate or Sessions Judge comes to conclusion that there are no grounds to frame a charge for specific offence, the Court can discharge the accused for such offence. Even the scope of Section 238 and 239 Cr.P.C. is limited, such power has to be exercised only when the Magistrate or

Sessions Judge came to conclusion that it is groundless, based on charge sheet and documents filed under Section 173 of Cr.P.C.

16. Consideration of records and documents at the stage of framing charge is for the limited purpose of ascertaining whether or not there is sufficient ground to proceed against the accused. Whether the material at the hands of the prosecution is sufficient and whether the trial will end in conviction or acquittal are not relevant considerations at the stage of framing of charge as held by the Apex Court in **P.Vijayan v. State of Kerala**¹.

17. Keeping in mind the scope of Sections 397 and 401 Cr.P.C. and Section 239 Cr.P.C., this Court has to examine the material on record filed along with police report under Sections 173 Cr.P.C. and decide whether the proposed charges are groundless or there is no prima facie material to proceed against the petitioners for the offences punishable under Sections 302 and 498-A IPC.

18. Here, in this case, a charge sheet is filed before the Committal Court i.e., Additional Judicial First Class Magistrate, Sangareedy, against these petitioners and accused No.1 for the offences punishable under Sections 302 and 498-A IPC, specifically alleging that these accused committed murder of Smt.Varsha Singh for her failure to meet the illegal demand for payment of additional dowry and subjected her to cruelty for the same reason. The marriage between Smt.Varsha Singh and accused No.1, who is the son of the petitioners,

¹ AIR 2010 SC 663

is not in dispute and lodging of complaint earlier and the settlement of the matter due to intervention of elders is also not equally in dispute, but specific allegation made against these petitioners is mentioned in para 2 of charge sheet, which is extracted for better appreciation.

“Sometimes my husband use to go his parents house along with children but my in laws not allowed me in their house. After returning from my in laws house by my husband, he abuses me in filthy language and beats me. On the pretext of my in laws, he uses to harass me mentally and physically. Yesterday i.e. on 05-02-2014 evening 5.00p.m., when I was at my house after bringing children from school, my husband came to house in drunken condition, when I objected, threatened to kill me, closed the doors, poured kerosene and lighted flames.”

At the same time, at the last para of the charge sheet it is stated that investigation done so far it is revealed that these petitioners along with accused No.1 subjected Smt.Varsha Singh to cruelty and about eight months ago with the assurance of his parents i.e., petitioners herein, she accompanied with her husband and child living in Isnapur in a rented room and thus at the instance of these petitioners, accused No.1 subjected her to cruelty and caused death of Smt.Varsha Singh.

19. In view of these allegations in the charge sheet, accused No.1 at the instigation of the petitioners herein subjected Smt.Varsha Singh to cruelty and killed her by pouring kerosene and lit fire while alive.

20. The basis for registration of crime is statement recorded by the police on the information furnished by the Sub Inspector of Police, on

06.02.2014, at Osmania General Hospital, Hyderabad. In the statement, she disclosed as to how she was subjected to cruelty by accused No.1, the petitioners and the settlement of dispute about eight months prior to this incident, withdrawing the complaint lodged by her on the assurance given these petitioners to look after properly. But, the statement is silent as to the actual role allegedly played by these petitioners, which resulted death of Smt.Varsha Singh. Similarly, the statement recorded by the police during investigation under Section 161 Cr.P.C., none of the witnesses did stated anything about direct involvement of these petitioners in the crime. But, the statements were consistent with regard to the earlier incident of subjecting her to cruelty and settlement of the dispute. Though the statements recorded by the police did not disclose the direct involvement of these petitioners in commission of murder by accused No.1 i.e., at the instance of these petitioners, the counsel for the petitioners produced a copy of the dying declaration recorded by the Magistrate, dated 06.02.2014 at 4.30 a.m. on receipt of requisition from the Osmania Hospital. A reading of the entire allegations in the dying declaration of Smt.Varsha Singh just before her death, she narrated entire incident as to how she was subjected to cruelty by accused No.1 and these petitioners and she made it clear that mother-in-law Rajpuri Laxmi Bhai @ Gajalakshmi, father-in-law Rajpuri Sundar Raj Singh used to abuse her in filthy language while supporting accused No.1. These allegations may attract an offence

punishable under Section 115 of IPC i.e., abetment to cruelty as defined under Section 107 IPC. Even the entire material including dying declaration of Smt.Varsha Singh recorded by the Magistrate is taken into consideration, it is difficult to conclude at this stage that there was no prima face material to proceed against the petitioners for the offences punishable under Sections 302 and 498-A IPC. Therefore, in such case it would be difficult to exercise jurisdiction under Section 239 Cr.P.C. to discharge these petitioners for the offences punishable under Sections 302 and 498-A IPC.

21. In **Amit Kapoor v. (sic) Ramesh chander and another**², the apex court considered the scope of Section 397 Cr.P.C. and the succinctly held that Section 397 Cr.P.C. vests the Court with the power to call for and examine the records of an inferior Court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the Court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is

² (2012) 9 SCC 460

ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits. Another well-accepted norms is that the revisional jurisdiction of the higher Court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories afore-stated. Even framing of charge is a much advanced stage in the proceedings under the Code of Criminal Procedure.

22. In para 29 of the same judgment, the apex Court in **State of Rajasthan v. Fatehkaran Mehdu**³ recorded the following parameters discussing the scope of jurisdiction under Sections 397 and 482 Cr.P.C. concluded that it will be appropriate to enlist the principles with reference to which the Courts should exercise such jurisdiction.

“Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with

³ AIR 2017 SC (Crl.) 393

precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.¶ Considering the above said settle proposition of law along with the facts and circumstances of the present case, there is no imperative or illegality in the order passed by the learned Special Judge and the same does not warrant any interference by this Court, by exercising the revisional jurisdiction under

Section 397 read with 401 of Cr.P.C.. and this criminal revision fails and the same is liable to be dismissed.

23. Even otherwise the jurisdiction of this Court under Section 397 and 401 Cr.P.C. is limited as stated above and this Court is required at best to examine the record to find out whether there is any illegality or irregularity in the order passed by the Court below while exercising power under Section 239 Cr.P.C.

24. Applying the above decisions, this Court has to decide the petitions filed under Sections 397 and 401 or 482 Cr.P.C. based on the principles laid down in the earlier judgment, and if those parameters applied to the present facts of the case, there is material prima facie to proceed against the petitioners in view of the earlier incident of lodging complaint which ended in compromise due to intervention of elders about eight months prior to the incident of recording the statement by the Magistrate and Sub Inspector of Police, subjecting her to harassment for her failure to meet the illegal demand of dowry and later their conduct discloses that they did not allow Smt.Varsha Singh to their house and at their instance accused No.1 used to beat her, which resulted death of Smt.Varsha Singh, ultimately on account of pouring kerosene and setting ablaze to her body and she succumbed to the injuries while undergoing treatment in Osmania General Hospital, Hyderabad. Thus, it is difficult for me to exercise the jurisdiction under Section 239 Cr.P.C. or 497 Cr.P.C. to interfere with the order passed by the Court below by applying the parameters laid down by the Apex Court in the above judgment referred supra. I find

no ground to interfere with the findings recorded by the Court below and the revision is liable to be dismissed.

25. In the result, the criminal revision case is dismissed.

Miscellaneous Petitions pending, if any, shall stand closed.

M.SATYANARAYANA MURTHY, J

15th November 2017.

mar

