

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C.No.459 of 2017

ORDER

Aggrieved by the order passed by the Judicial Magistrate of First Class, Palamaner, Chittoor District, in C.F.R.No.1029 of 2013 in Cr.No.140 of 2013 of Gangavaram Police Station dated 15.09.2014, the present revision is filed under Sections 397 and 401 of Cr.P.C., by petitioners/A2 to A4, against whom the cognizance was taken for the offence punishable under Section 498-A IPC and under Sections 3 and 4 of Dowry Prohibition Act.

2. The de-facto complainant, by name, Smt Bhagyalakshamma @ Bhagyam, lodged a complaint with the police, and after conducting investigation, the police filed charge sheet before the Magistrate deleting the names of A2 to A4 after obtaining permission from the Sub-Divisional Police Officer, Palamaner. Thereafter, she lodged a private complaint before the Magistrate, who in turn, referred the matter by exercising power under Section 156(3) Cr.P.C. After conducting necessary investigation, the police filed charge sheet deleting the names of petitioners/A2 to A4 in Cr.No.140 of 2013 of Gangavaram Police Station for the offence punishable under Section 498-A IPC and under Sections 3 and 4 of Dowry Prohibition Act. The Magistrate issued a notice to the de-facto complainant, who in turn filed protest petition before the Magistrate on 20.03.2014 raising several contentions, and the Magistrate, during enquiry in the petition, recorded the evidence of P.Ws.1 to 4 and took cognizance against petitioners/A2 to A4 for the

offence punishable under Section 498-A IPC and under Sections 3 and 4 of Dowry Prohibition Act and issued process vide order dated 15.09.2014.

3. Aggrieved by the order dated 15.09.2014, the present revision is filed mainly on the ground that the Court below has no option except to record the final report filed by the police and that conducting an enquiry without affording a reasonable opportunity to the petitioners is violation of the principles of natural justice and thereby, requested to set aside the order passed by the Magistrate in C.F.R.No.1029 of 2013 in Cr.No.140 of 2013.

4. During hearing, learned counsel for petitioners Sri K. Nageswar Reddy, contended that taking cognizance against petitioners when the police filed a final report finding no material against them is a grave irregularity committed by the Magistrate. He placed reliance on the judgment of the Apex Court in **VASANTI DUBEY v. STATE OF MADHYA PRADESH**¹ and contended that when a complaint was filed before the Court by the complainant and when the police conducted investigation and filed a charge sheet, the duty of Court is to record the final report to avoid unnecessary harassment to the civil litigants. But, in the present case, the Magistrate took cognizance without affording any opportunity to the petitioners to contest the matter and committed a grave error and therefore, he requested to set aside the order under challenge.

¹ (2012)2 SCC 731

5. Whereas, learned counsel for 1st respondent/complainant while contending that the Magistrate is competent to take cognizance even if a final report is filed and if a *prima facie* material is found to proceed against the petitioners, placed reliance on the larger bench judgment of the Apex Court in **DHARAM PAL AND OTHERS v. STATE OF HARYANA AND ANOTHER²** and on the strength of the principle laid down in the said judgment, he requested this Court to dismiss the revision.

6. Considering the rival contentions of both parties, the point that arises for consideration is;

Whether the Magistrate is competent to conduct enquiry, record the statements of witnesses and take cognizance of offence punishable under Section 498-A IPC and under Sections 3 and 4 of Dowry Prohibition Act against the petitioners, though, the final report filed under Section 173 of Cr.P.C., excludes the petitioners?

7. **POINT**

Admittedly, Smt Bhagyalakshamma @ Bhagyam filed a complaint before the Magistrate under Sections 190 and 200 Cr.P.C., which was referred to the police by exercising power under Section 156(3) Cr.P.C. On receipt of the same, police registered a case, issued FIR in Cr.No.140 of 2013 of Gangavaram Police Station, investigated into the offence and filed charge sheet before the Magistrate against A1 deleting the names of the petitioners/A2 to A4 after obtaining orders from the Sub-Divisional Police Officer.

² (2014) 3 SCC 306

Thereupon, the Magistrate issued a notice to the complainant. Subsequently, the complainant filed a protest petition, and after enquiry, the Magistrate took cognizance of the offence against these petitioners also. But the contention of petitioners is that when the police filed final report, the Court is bound to record the same, but proceeding further against the accused is illegal. He would draw the attention of this Court in **VASANTI DUBEY's** case, referred supra, wherein the Apex Court highlighted the power of the Magistrate under Section 200 Cr.P.C and held as under:

“It may be worthwhile to highlight at this stage that the enquiry under Section 200 Cr.P.C., cannot be given a go-by if the Magistrate refuses to accept the closure report submitted by the investigating agency as this enquiry is legally vital to protect the affected party from a frivolous complaint and a vexatious prosecution in complaint cases. The relevance, legal efficacy and vitality of the enquiry enumerated under Section 200 Cr.P.C., therefore, cannot be undermined, ignored or underplayed as non-compliance with enquiry under Section 200 Cr.P.C., is of vital importance and necessity as it is at this stage of the enquiry that the conflict between the finding arrived at by the investigating agency and enquiry by the Magistrate can prima facie justify the filing of the complaint and also offer a plank and a stage where the justification of the order of cognizance will come to the fore. This process of enquiry under Section 200 Cr.P.C. is surely not a decorative piece of legislation but is of great relevance and value to the complainant as well as the accused”.

In paragraph No.29, the Apex Court held as under:

“While in a case based on police report, the Court while taking cognizance will straightaway examine whether a prima facie case is made out or not and will not enter into the correctness of the allegation levelled in the FIR, a complaint case requires an enquiry by the Magistrate under Section 200 Cr.P.C., if he takes cognizance of the complaint. In case he refuses to take cognizance he may either dismiss the complaint or direct the investigating agency to enter into further investigation. In case he does not exercise either of these two options, he will have to proceed with the enquiry himself as envisaged and enumerated under Section 200 Cr.P.C. But, he cannot exercise the fourth option of directing the police to submit a

charge sheet as such a course is clearly not envisaged under Cr.P.C., and more so in a complaint case.”

A bare look at the principle laid down in the above judgment, it is the duty of the Magistrate to conduct enquiry if it is on complaint case to protect the interest of the affected parties. But this view is some what changed in view of the larger bench judgment in **DHARAM PAL's** case, referred supra, wherein it was held as under:

“In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) Cr.P.C. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter”.

If the principle laid down in the above judgment is applied to the present facts of the case, the Magistrate when issued a notice to the complainant, the complainant filed a protest petition, thereupon, the Magistrate is bound to enquire and record the findings. Therefore, taking cognizance by the Magistrate acting upon the protest petition after recording evidence is not an illegality and such procedure is accepted by the larger Bench of the Supreme Court itself in **DHARAM PAL's** case, referred supra, which is a subsequent judgment of the Supreme Court in **VASANTI DUBEY's** case, referred supra. In view of the same, the procedure followed by the Magistrate in taking cognizance against the revision petitioners is in accordance with law and there is no illegality or irregularity in the

order under challenge warranting interference by this Court, while exercising power under Sections 397 and 401 Cr.P.C. Therefore, the point is held against the petitioners and in favour of the 1st respondent holding that the Magistrate is competent to act upon the protest petition, enquire and take cognizance despite filing a final report under Section 173(2) of Cr.P.C., and proceed further.

8. In the result, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

M. SATYANARAYANA MURTHY, J

11th September, 2017

sj

