

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No.15 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, (hereinafter, 'the Code') is filed by the petitioner-*de facto* complainant having been aggrieved of the order, dated 09.08.2016, of the learned XIII Additional Sessions Judge, Narasaraopet, passed in CrI.R.P.No.56 of 2015.

1.1 By the said orders, the learned Additional Sessions Judge, while allowing the revision case of the revision petitioners therein, set aside the order, dated 16.04.2015, of the learned Additional Judicial Magistrate of First Class, Chilakaluripet, passed in CFR.No.1734 of 2009 in C.C.No.482 of 2008, and consequently discharged the revision petitioners-A4 to A6 in the said Calendar Case.

2. I have heard the submissions of *Sri C. Prakash Reddy*, learned counsel for the petitioner-*de facto* complainant, learned Public Prosecutor (AP) representing the 1st respondent-State, and of *Sri M. Subba Reddy*, learned counsel appearing for the respondents 2 to 4. I have perused the material record.

3. At the outset, it is to be noted that the learned Magistrate by orders, dated 16.04.2015, has taken cognizance against the proposed A4 to A6 also, *inter alia*, observing in her cryptic orders that after perusing the statements of PWs1 to 4, a *prima facie* case is found to have been made out against them and that, therefore, they are also liable to be tried for the offence punishable under Section 498-A IPC. As noted supra, the said orders are set aside by the learned Additional Sessions Judge.

4. The facts and events that lead to the filing of this revision case before this Court, in brief, are as follows:

4.1 On the report of the *de facto* complainant, the criminal law was set into motion and the Station House Officer, Chilakaluripet Town Police Station, registered a case in Crime No.180 of 2008 against five accused, including the proposed A4 & A6, Pothuri Durga Bhuvaneswari & Yakkala Sakunthala. However, after investigation, a charge sheet/final report, dated 19.11.2008, was filed before the Court of the learned Magistrate opining that A1 to A3 are only liable for punishment under Section 498-A read with 34 IPC. It was opined in the charge sheet that no evidence came forth during the course of investigation in regard to the participation of A4 & A5, that is, proposed A4 & A6. Hence, based on the outcome of the investigation, their names were deleted from the array of the accused. However, the *de facto* complainant filed CFR.No.1734 of 2009 before the Court of the learned Magistrate requesting to implead the present proposed A4 to A6 as A4 to A6 in the above said case. Observing that the veracity or truth of the allegations has to be ascertained only at the stage of trial and that the statements of PWs1 to 4 recorded during investigation make out a *prima facie* case against the proposed accused and that the ingredients of Section 498-A IPC are attracted, the learned Magistrate took cognizance against the proposed A4 to A6 as well and took the Calendar Case on file.

4.2 Aggrieved thereof, A4 to A6 preferred the revision petition before the Court of the learned Additional Sessions Judge. On the said revision being allowed and the proposed accused being discharged from the case, the petitioner-*de facto* complainant filed the instant revision case before this Court.

4.3 In-fact, when the charge sheet is filed only against A1 to A3 by deleting the other accused, the learned Magistrate proceeded to examine A1 to A3, on

10.02.2009, under Section 239 of the Code. They have denied the imputations and claimed to be tried. When the matter was coming for trial, the *de facto* complainant filed CFR, on 12.03.2009, requesting to take cognizance against the two persons already named in the FIR, viz., Pothuri Durga Bhuvaneswari & Yakkala Lakshmi Sakuntala, and another, Pothuri Seshu, that is, proposed A4 to A6. While conducting enquiry into the said petition, the learned Magistrate recorded the statements of PWs1 to 4 including that of the *de facto* complainant and her mother.

5. In this backdrop, learned counsel for the *de facto* complainant would submit as follows: “A plain perusal of the statements recorded by the police during the course of investigation and the inquiry proceedings conducted by the learned Magistrate in the Protest petition (CFR) would make it manifest that there is sufficient material on record to show that the proposed A4 to A6 also harassed the *de facto* complainant and meted out ill treatment to her and that, therefore, there is sufficient material, grounds and *prima facie* case regarding the offence under section 498 A IPC as well to frame charges against the said proposed A4 to A6 and try them along with A1 to A3. The 1st accused, who is the husband of the *de facto* complainant, and the other accused A2 & A3, who are his parents, harassed the *de facto* complainant for additional dowry by complaining that the dowry already paid was short of their expectations. All the accused, including the proposed A4 to A6, used to together harass the *de facto* complainant for additional dowry. A1 abused in filthy language and beat the *de facto* complainant very often at the instance of the remaining accused. As she was treated inhumanly and was subjected to ill-treatment, having left with no other option, she lodged a report, on 26.09.2008, with the police. The accused having come to know of the said report given to the police enacted a drama of compromise before the police and became successful in seeing that the *de facto* complainant joins the matrimonial home. However, even after the *de facto* complainant joining the matrimonial home there was no change in

the attitude of the accused and A1 did not show any interest in leading matrimonial life with the *de facto* complainant and he continued the harassment at the instance of the other accused. In-fact medical investigation revealed that A1 is an impotent person. He suppressed the said fact. However, after investigation, for the reasons best known to them, the police filed a charge sheet/ final report against A1 to A3 only by deleting the names of A4 and A5 therein. Hence, the *de facto* complainant was constrained to file the protest petition. The learned Magistrate having enquired into the matter and recorded the statements of PWs1 to 4 rightly took cognizance against the proposed A4 to A6 also after having recorded satisfaction that a *prima facie* case is made out against the said proposed accused also and that the ingredients of the offence under Section 498-A IPC are attracted in view of the statements of PWs1 to 4. As per settled law, the trial Court rightly examined the existence or otherwise of a *prima facie* case without making a roving enquiry, as at the time of taking cognizance, the Court has to be satisfied as to whether there is a *prima facie* case or not and is not required to appreciate and evaluate the evidence and examine its probative value. The order of the learned Additional Sessions Judge, setting aside the well considered order of the learned Magistrate is unsustainable under facts and in law and, therefore, the said order is to be set aside and the order of the learned Magistrate is to be restored.'

6. Per contra, learned counsel for the proposed accused would submit as follows: - 'Admittedly, the name of the proposed A5 was neither there at the stage of FIR or at any later point of time. His involvement and complicity for the first time is stated in the protest petition and was spoken to by the *de facto* complainant in her evidence during the course of her enquiry. The other proposed A4 & A6, Bhuvanewari and Sakuntala, are the sisters-in-law of the *de facto* complainant and the proposed A5 is the husband of the proposed A4. Even in the statements recorded by the investigating officer, there are no

specific allegations against the proposed A4 & A6 and till the protest petition is filed the entire events upto that date are totally silent insofar as the proposed A5 is concerned, who is the husband of one of the sisters-in-law of the *de facto* complainant. Even in the protest petition, PW1 did not make any specific allegations and did not attribute individual overt acts and she only made omnibus allegations that all the other accused instigated A1 and all the accused together harassed her and ill-treated her. No details are alleged. The investigating officer having recorded the statements of eight witnesses came to an opinion that no specific individual overt acts are attributed to the proposed A4 & A6 and, therefore, he deleted the names of the other accused and filed the charge sheet against A1 to A3 only by duly exercising his discretion in accordance with law. The aim of the *de facto* complainant is to somehow rope in the innocent sisters of the petitioner-A1 and his brother-in-law only to harass A1 and his parents and to make them to come to her terms. Even though the name of the proposed A5 did not figure in the matter at any earlier point of time, the *de facto* complainant falsely made a statement even against him in her protest petition and in her evidence as PW1 by roping him also along with the other proposed accused. It shows her attitude and the oblique motive and the falsity of her claims. When the FIR disclosed no specific allegations and when the Investigating officer found that the evidence collected does not disclose the involvement or complicity of the present accused and the allegations in the case are omnibus in nature and intended to rope in the innocent people just to harass the main accused, such innocent people cannot be arraigned as accused and proceeded against and made to suffer the ordeal of criminal trial. The learned Judge of the Court below who is a senior and experienced Judge rightly did not act merely as a Post Office or a mouthpiece of the *de facto* complainant, but has considered the broad probabilities of the case, the total effect of the evidence and noted the basic infirmities appearing in the case before allowing the revision of the proposed accused. Except

mentioning the names of her two sisters-in-law, no specific allegations or overt acts are attributed to them. The well considered orders of the Court below do not warrant interference.'

7. I have given earnest and thoughtful consideration and I have carefully gone through the FIR, charge sheet, the statements recorded during the course of investigation and the statements recorded by the learned Magistrate and also the orders of the Courts below.

8. It is not in dispute that the proposed A5, P. Seshu, is nowhere in the picture and his name does not figure either in the FIR or in the charge sheet. Therefore, it is obvious that the roping in of the said proposed accused is only an after thought and is intended with an oblique motive. Hence, the allegations made against him either in the protest petition or in the statements of the witnesses need no countenance. And so it can straight away be held that there are no grounds to proceed against the proposed A5 and that the charge levelled against the said proposed accused is groundless.

8.1 Coming to the other proposed accused, who are the sisters-in-law of the *de facto* complainant, admittedly, they never resided permanently with A1 and the *de facto* complainant in the matrimonial home and they were staying elsewhere with their respective families. The investigating officer having recorded the statements of eight witnesses during the course of investigation came to a conclusion that no evidence came forth during the course of investigation in regard to the participation of A4 & A5/ proposed A4 & A6 in the charge sheet and opined that no case is made out against the said accused, that is, proposed A4 & A6, and deleted their names from the array of accused while filing the final report. Though the witnesses examined by the learned Magistrate gave lengthy statements running into several pages, the learned Magistrate did not pass a reasoned order. In her orders, the learned Magistrate stated *verbatim* as follows:

'Perused the record and statements of PWs1 to 4, after perusing, I found that prima facie case is made out against the accused and the ingredients which are stated by PWs1 to PWs4 would attract U/s.498-A IPC.

The veracity or truth of said allegations can be ascertained only at the stage of the trial by adducing the evidence from various witness. The prima facie ingredients of offence is satisfied. Since in this case, the essential ingredients which would attract the offence U/s.498-A IPC.'

Thus, the said order of the learned Magistrate is a cryptic order bereft of reasons.

8.2 Whereas the learned Additional Sessions Judge examined the whole matter in a detailed manner. He noted that no specific individual overt acts were attributed to the proposed accused by the *de facto* complainant in her first information to the police, which set the criminal law into motion, and that the investigation also did not reveal or bring forth any evidence with regard to the participation of A4 & A5, that is proposed A4 & A6, and, therefore, the charge sheet came to be filed only against the husband and the parents-in-law of the *de facto* complainant. Eventually, the learned Additional Sessions Judge held that the proposed accused 4 to 6 need not be arraigned as accused and be tried in the absence of any *prima facie* material against them. In the case on hand, it is apt to note that the *de facto* complainant earlier filed a case in C.C.No.169 of 2011 on the file of the Court of the learned Additional Junior Civil Judge, Chilakaluripet, against her husband and parents and also the present proposed A4 to A6 for the offences punishable under Sections 3 & 4 of the Dowry Prohibition Act, 1961, and Sections 420 & 406 IPC. In the said case, the *de facto* complainant alleged that her husband, A1, is impotent. Finally, she failed to prove the accusations made in that case against accused. In the said case which ended in acquittal, apart from PW1- the *de facto* complainant herein, the following witnesses were examined: PW2-S. Ramakoti Rathnamma, PW3-Ramamurthy, PW4-Madar Saheb & PW5-Dr.Chebrolu Visweswara Rao. In the case on hand, though the appendix of evidence of the judgment passed by

the learned Magistrate would show that no oral and documentary evidence is adduced, it is undisputed that the learned Magistrate examined apart from the *de facto* complainant - PW1, her mother, Sakala Rama Koteswaramma as PW2, and one, Shaik Madar Saheb as PW3, and another, L. Ram Murthy as PW4. As already noted supra, the very same witnesses were examined in the above said Calendar Case, which ended in acquittal. PW2 is the mother of the *de facto* complainant, and the other two witnesses are the stock witnesses of PW1. In the judgment rendered in CC.No.169 of 2011, which ended in acquittal, it is observed that PW4 therein, that is PW3 herein, is none other than the friend of PW1's father and that he is one of the planted witnesses and that he deposed in all cases in favour PW1 in order to help her. Even PW3 therein, that is, PW4 herein, is a close relative of PW1 and the learned Magistrate in the judgment in C.C.No.169 of 2011 rendered, on 30.09.2016, also found that he is also a planted witness. No doubt the relationship of a witness or interestedness in PW1 may not alone be a crucial or relevant factor but the fact that the said witnesses are characterized as implanted witnesses in a judicial proceeding is a vital factor in the facts and circumstances of this instant case.

8.3 In matters of this nature, where there is a tendency to rope in the close relatives particularly the brothers-in-law and sisters-in-law, the Court has to proceed with caution while taking cognizance against the accused, who are not in the picture and against whom no charge sheet is filed based on the outcome of the investigation. The Court should not encourage prosecutions of the relatives of the husband when there is only a casual reference of their names in a matrimonial dispute and when the investigation discloses absence of their active involvement in the matrimonial dispute between the spouses. Merely because some statements are made by the *de facto* complainant or her close relatives against such close relatives of the husband, the same would not justify taking cognizance as it is by now well known that there is a tendency to involve the entire family in the domestic quarrel. The bald and general

allegations made against her sisters-in-law seem to suggest the motive of the informant/ *de facot* complainant to rope in as many of the husband's relations as possible. Neither the FIR nor the charge-sheet, with the material on record, furnished the legal basis to the Magistrate to take cognizance of the offence alleged against the proposed accused.

8.4 In this regard it is apt to refer to the decision of the Supreme Court in *G.V. Rao v. L.H.V. Prasad & Others* [(2000) 3 SCC 693] wherein it was held as under:

‘...there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their cases in different courts.’

8.5 In view of the facts peculiar to this case and the legal position obtaining, this Court finds that the learned Additional Sessions Judge was justified in passing the order impugned. In that view of the matter, this Court holds that the revision case is devoid of merit and is liable to be dismissed.

9. In the result, the Criminal Revision Case is dismissed.

Miscellaneous petitions pending, if any, shall stand closed.

13.07.2017
VJI

M. SEETHARAMA MURTI, J