

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.826 of 2017

ORDER:

This revision is preferred under Sections 397 and 401 of Code of Criminal Procedure (for short "Cr.P.C.") questioning propriety and legality of the order dated 04.01.2017 passed in CrI.M.P.No.1301 of 2016 in C.C.No.81 of 2016 by the I Additional Junior Civil Judge, Kovvur, whereby petition filed under Section 239 of Cr.P.C. to discharge the accused Nos.1 to 3 for the offence punishable under Sections 498-A of I.P.C. and Sections 3 and 4 of Dowry Prohibition Act (for short "D.P.Act"), was dismissed.

The main allegation made in the petition is that there is no material against accused Nos.2 and 3 to proceed further by framing charges to attract either offence punishable under Section 498-A of I.P.C. or Sections 3 and 4 of D.P.Act. Simultaneously, material on record, more particularly, the evidence produced along with final report before the Court is not sufficient to proceed against the petitioners framing charges for the offences referred above. Thus, the prosecution is groundless and requested the Court to allow the petition. The trial Court dismissed the petition.

The present revision is filed reiterating that the material on record is not sufficient to proceed against the petitioners for framing charges and the prosecution is groundless.

Learned counsel for the petitioners would draw the attention of this Court to the allegations made in the charge sheet, where the prosecution specifically admitted that there was no material *prima facie* to proceed against accused No.3 in any manner, but filed charge sheet against accused Nos.1 to 3 for the offences punishable under Section 498-A of I.P.C. and under Sections 3 and 4 of D.P.Act.

Considering rival contentions and perusing material available on record, the point that arises for consideration is as follows:

“Whether material available on record is sufficient to proceed against the accused Nos.1 to 3 for the offence punishable under Section 498-A of I.P.C. and under Sections 3 and 4 of D.P.Act?”

P O I N T:

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 I.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.

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.

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

on 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 239 Cr.P.C. is limited, such power has to be exercised only when the Magistrate or Sessions Judge came to conclusion that the prosecution is groundless, based on charge sheet and documents filed under Section 173 of Cr.P.C.

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 Kerala¹”**

As seen from the charge sheet, the husband of the defacto complainant received Rs.5,00,000/- as dowry and the same was kept in deposit in her name for development. After Ashadam, husband of defacto complainant demanded

¹ AIR 2010 SC 663

Rs.1,00,000/- and motorbike, when she expressed inability to meet the said illegal demand, petitioners-accused subjected the defacto complainant to cruelty and this would fall within the ambit of explanation – B to Section 498-A of I.P.C. Similarly, the allegation made against accused No.2 is also sufficient to attract the offence *prima facie* punishable under Section 498-A of I.P.C.

When adverted to complaint dated 07.12.2015, which is the basis for setting the criminal law into motion, though it is an intimation to the police about the occurrence of cognizable offence and it did not contain minute details, those allegations would show that accused Nos.1 and 2 subjected the defacto complainant to cruelty. Even the material produced before the Court i.e. statements recorded under Section 161 of Cr.P.C. filed along with final report would disclose *prima facie* material against accused Nos.1 and 2 to proceed against them for the offence punishable under Section 498-A of I.P.C. and under Sections 3 and 4 of D.P.Act. But no material is available to proceed against accused No.3 and the prosecution itself made it clear that no *prima facie* material is available to proceed against accused No.3, in such case continuation of proceedings against accused No.3 would cause serious inconvenience to her.

It is also contended that when the material available on record is groundless, the Court cannot proceed, since, it would amount to harassment. No doubt, summoning of an

accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused as held by the Apex Court in “**Pepsi Foods Ltd. v. Special Judicial Magistrate**”²

Thus, it is obligatory on the part of the Court to go into the material available on record including the statements recorded by the police under Section 161 of Cr.P.C. or confessional statements recorded under Section 164 of Cr.P.C. or any other material produced before the Court. But

² AIR 1998 SC 128

here the trial Court passed a cryptic order without adverting to any material including the allegations made in the charge sheet. Hence, the order passed by the trial Court in Crl.M.P.No.1301 of 2016 in C.C.No.81 of 2016 is erroneous to the extent of dismissing the petition to discharge accused No.3 for the offence punishable under Section 498- A of I.P.C. and under Sections 3 and 4 of D.P.Act and the dismissal of petition against accused Nos.1 and 2 is in accordance with law, as sufficient material is available to proceed against accused Nos.1 and 2 by framing necessary charges, however prosecution against accused No.3 is groundless. Therefore, the order is liable to be set aside to the extent of refusing to discharge accused No.3 for the offence punishable under Section 498- A of I.P.C. and under Sections 3 and 4 of D.P.Act.

In the result, the criminal revision case is allowed in part setting aside the order passed in Crl.M.P.No.1301 of 2016 in C.C.No.81 of 2016 by the I Additional Junior Civil Judge, Kovvur against accused No.3 only and the petitioner No.3/accused No.3 is hereby discharged for the offence punishable under Section 498-A of I.P.C. and under Sections 3 and 4 of D.P.Act in Cr.No.268 of 2015 of Kovvur Town Police Station and the order passed in Crl.M.P.No.1301 of 2016 in C.C.No.81 of 2016 against accused Nos.1 and 2 is hereby confirmed.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

11.08.2017
Ksp

