

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.R.C. NO.1586 OF 2017

ORDER:

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C. aggrieved by the order, dated 10.05.2017 in CrI.M.P.No.3403 of 2016 passed by the Addl.Judicial Magistrate of First Class, Siddipet in petition filed under Section 239 Cr.P.C. for discharge of petitioner/A-4 for the offence punishable under Section 498-A IPC.

2. The main contention of the petitioner is that there is no material to proceed against her for the offence punishable under Section 498-A IPC and the prosecution is groundless. The petitioner/A-4 herein never harassed the de facto complainant and that the petitioner is living separately from the family, immediately after the marriage with her husband and therefore, the prosecution against this petitioner is not maintainable.

3. It appears that the petitioner is living separately after her marriage with her husband and that she did commit no offence, much less an offence punishable under Section 498-A IPC.

4. The petitioner earlier filed CrI.P.No.9472 of 2016 under Section 482 Cr.P.C. before this Court to quash the proceedings in C.C.No.184 of 2016 which ended in dismissal with an observation that there is material to proceed against the petitioner for the offence punishable under Sections 498-A and Sections 3 and 4 of Dowry Prohibition Act. Therefore, the learned Magistrate dismissed the petition filed by the petitioner for

discharge extracting the observation made in CrI.P.No.9472 of 2016 dt.30.06.2016.

5. Aggrieved by the order, the present revision petition is filed on various grounds and the main contention before this court is that the petitioner is no way concerned with the offences allegedly committed by her and since she is living separately with her husband immediately after her marriage.

6. As seen from the material on record, she is resident of Rangaipally village, hamlet of Vittalapur village, Chinnakodur mandal, Medak District; whereas the offence allegedly committed is also at the same place i.e. Rangaipally village, hamlet of Vittalapur village, Chinnakodur mandal, Medak District. Thus, the petitioner and the de facto complainant and other two accused are residents of same village.

7. The specific allegation made against this petitioner in the charge sheet is as follows:

“After their marriage they lived happily and enjoyed their conjugal life and they blessed with two sons, after that A-1 was not attending to any work and harassed his wife physically and mentally to bring additional dowry of Rs.2 lakhs from her parents and also A-1 to A-4 harassed the wife of A-1 physically and mentally and pulled up pustelathadu and necked her out from the house.”

8. Demanding dowry and subjecting her to cruelty for her failure to meet illegal demand would constitute an offence punishable under Section 498-A IPC in view of Clause 2 of explanation under Section 498-A IPC.

9. The present revision is filed under Section 397 and 401 Cr.P.C. under which the jurisdiction of this court is limited.

10. [Section 397](#) of the Code 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 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.

11. The well-accepted norm 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.

12. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of Apex Court under [Article 136](#) of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when

factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

13. The jurisdiction of the Court under [Section 397](#) can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under [Section 397](#) is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under [Section 397](#) but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily, as held by the Apex Court in *Amit Kapoor vs Ramesh Chander & Anr.*¹

14. In view of limited jurisdiction of this court under Sections 397 and 401 Cr.P.C. unless this court finds that there is material perversity against this petitioner for the offence punishable under Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act, this Court cannot interfere with such finding.

15. Here the petitioner produced copy of the charge sheet which disclosed that she is residing at the same place where the offence took place and the specific allegation made against her is that she along with

¹ 2012(9) SCC 460

other accused harassed the wife of PW-1, the de facto complainant by name Smt.Kolanupaka Padma for her failure to meet illegal payment of dowry and pulling of her pusthelathadu and necked her out from the house, such act would prima facie attract an offence punishable under Section 498-A IPC.

16. According to Sections 238 and 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.

17. Section 239 of Cr.P.C. deals with discharge of the accused, whereas Section 238 of Cr.P.C. deals with power of the Court to discharge the accused in cases instituted on a police report, but quoting wrong provision of law is not a ground to deny the relief if the petitioner is otherwise entitled.

18. 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.

19. 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*²”

20. 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

² AIR 2010 SC 663

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*”³

21. The law declared by the Apex Court in the above judgment is not in quarrel, but in the present facts of the case several question cannot be decided at this stage.

22. While deciding a petition filed under Section 238 and 239 of Cr.P.C. the Court has to look into the entire material on record including the evidence oral and documentary, taken together must justify framing of a charge for an offence as held by the Apex Court in “*R.S.Nayak v. A.R.Antulay*”⁴

23. Thus, it is obligatory on the part of the Court while deciding an application filed under Section 238 and 239 of Cr.P.C. 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 by the Magistrate under Section 164 of Cr.P.C.

24. In the present case, except filing charge sheet before the court, no other material is collected during the investigation for perusal of the court. Apart from that, this Court also made clear observation in CrI.P.No.9472 of 2016 that there is substantial material against this petitioner to proceed further and declined to exercise power under Section 482 Cr.P.C. to quash the proceedings. When this Court also concluded that there is material to proceed against the petitioner, the Magistrate is bound by observations of this Court and therefore, the order passed by the trial Court does not suffer from any illegality, warranting interference of this Court by exercising

³ AIR 1998 SC 128

⁴ AIR 1986 SC 2045

power under Sections 397 and 401 Cr.P.C. Hence, the revision is devoid of merits and deserves to be dismissed.

25. In the result, the criminal revision case is dismissed at the stage of admission.

Miscellaneous petitions, if any, pending in this case shall stand closed.

M.SATYANARAYANA MURTHY,J

DATE:12-09-2017
ccm



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRLRC.NO.1586 OF 2017

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