

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C.No.1594 of 2015

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C questioning the propriety, legality and regularity of the order, dated 05.05.2015 in Crl.M.P.No.3118 of 2014 in C.C.No.131 of 2013 passed by the II Additional Judicial Magistrate of First Class, Kadapa dismissing the petition filed under Section 239 Cr.P.C. to discharge A1 to A7 for the offences punishable under Sections 498-A, 323, 506 IPC and Sections 3 and 4 of the Dowry Prohibition Act.

2. The 2nd respondent lodged a complaint with the police making serious allegations against the petitioners herein about subjecting her to cruelty for her failure to meet the illegal demand for payment of dowry etc. On the strength of the same, she filed private complaint before the Judicial Magistrate of First Class and the same was referred to the police by exercising power under Section 156(3) Cr.P.C. and on such reference, the police registered a case in Crime No.67 of 2011 of Women Police Station, Kadapa, for the offences referred supra and issued FIR against the petitioners.

3. During investigation, the police recorded statements of LWs.1 to 11 under Section 161 Cr.P.C. and after completion of investigation, filed charge sheet before the Magistrate. The petitioners, on appearance, received charge sheet and connected documents in compliance of Section 207 Cr.P.C. and filed a petition under Section 239 Cr.P.C to discharge them on the ground that the prosecution is groundless and apart from that the material on record, more particularly, the statements recorded by the police during investigation does not disclose anything that the

petitioners subjected the *de fact* complainant to cruelty, except the statement of LW.1, the victim, who is wife of the 1st petitioner herein.

4. The Court below, upon hearing argument of both counsel passed the impugned order dismissing the petition on the ground that the material available on record is sufficient to proceed further against the petitioners for the offences referred supra.

5. Aggrieved by the said order, the present revision is filed on various grounds.

6. During hearing, learned counsel for the petitioners would draw the attention of the Court to the statements of LWs.2 to 11 to show that they are not direct witnesses to the occurrence and they received information from LW.1 and therefore, no credence can be given to their statements. However, admitted that there is a specific allegation in the statement of LW.1 recorded under Section 161 Cr.P.C that petitioners 2 to 7 instigated the 1st petitioner and at their instigation, the 1st petitioner subjected her to cruelty. But such allegation is not sufficient to rope these petitioners for the offences referred supra and that the prosecution cannot proceed further, since, the prosecution is groundless.

7. Per contra, learned counsel for the 2nd respondent while supporting the order passed by the Magistrate, would draw the attention of this Court to the statement of LW.11, Shaik Abdul Lathief, who is direct witness to the incident of beating Tasneem Bhanu in his presence when he visited the house of the petitioners herein. Apart from that the statement of L.W.1, victim women, is also suffice to conclude that at the instigation of petitioners 2 to 7, the 1st petitioner subjected her to cruelty demanding additional dowry.

8. The scope of revision under Section 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 lack of 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 judiciously, 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.

9. Section 239 of Cr.P.C. deals with discharge of the accused and in any application filed under Section 239 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.

10. 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 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 it is groundless, based on charge sheet and documents filed under Section 173 of Cr.P.C.

11. 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”.

12. Learned counsel for the petitioners would draw the attention of this Court to the statements recorded by the police under Section 161 Cr.P.C. and statement of the victim women clearly shows that at the instance of petitioners 2 to 7, the 1st petitioner subjected her to cruelty for her failure to meet the illegal demand and whereas, the statement of other witnesses, LWs2 to 10 would show that they are not direct witnesses, but they subjecting her to cruelty, the statement of LW.11 shows that he is direct witness to the incident of kicking and beating the *de facto* complainant Thasneem Bhanu with legs and hands in his presence. The contention of the petitioners is that witnessing of incident by LW.11, Shaik Abdul Lathief, was not mentioned in the complaint and in Section 161 Cr.P.C. statement of victim as witnesses, consequently statement of LW.11 cannot be taken into consideration. But, at the stage of deciding the application under Section 239 Cr.P.C. these omissions are not relevant.

13. On overall consideration of statement of witnesses more particularly, LW.1, the victim women, there is a clear assertion that at the instigation of petitioners 2 to 7, the 1st petitioner subjected her to cruelty for her failure to meet the illegal demand for payment of dowry. If her statement alone is taken into consideration, petitioners 2 to 7 are abettors. The word abetment is defined under Section 107 IPC. According to it, a person abets the doing of a thing,

¹ AIR 2010 SC 663

who (1) Instigates any person to do that thing; or (2) Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or (3) Intentionally aids, by any act or illegal omission, the doing of that thing. Therefore, instigating the 1st petitioner by petitioners 2 to 7 would fall within the definition of abetment and such abettors also liable for punishment along with the 1st petitioner, if proved under Section 115 IPC. Therefore, on this ground it is difficult to discharge the petitioners holding that the prosecution is groundless.

14. Apart from the statement of LW.1, victim women, in the statement of LW.11 he categorically stated as follows:

“Then I went to Haniff house and asked them about that said dowry amount, her husband, mother in law, and father in law and her brother in laws and sister in laws beat the said Tassim Bhanu with their legs and hands in my presence by saying that why did you say our family matters to them through phone called.”

15. This act of abetting the 1st petitioner may attract the offence punishable under Section 323 Cr.P.C or cruelty within clause (1), explanation to Section 498-A IPC. But, at this stage, it is difficult to conclude that the prosecution is groundless to discharge the petitioners for the offences referred supra. Therefore, the order passed by the Court below is free from any illegality warranting interference of this Court by exercising limited jurisdiction under Section 397 Cr.P.C.

16. Learned counsel relied on **Preethi Gupta and another v State of Jharkhand**², where the Supreme Court made certain observations while deciding petition under Section 482 Cr.P.C. for the offence punishable

² (2010) 7 SCC 667

under Sections 498-A, 406, 341, 323 and 120-B IPC. But those principles have no application to the present facts of the case since the jurisdiction of the Magistrate under Section 239 Cr.P.C. is limited and if the Magistrate find *prima facie* material and sufficient ground to proceed against the accused the Magistrate can proceed further, the power under Section 482 Cr.P.C. is distinct from power under Section 239 Cr.P.C., consequently, the principles laid down in the above judgment cannot be applied to the present facts of the case for discharge of the accused.

17. On close analysis of entire material, I find no ground to discharge these petitioners, interfering with the order, dated 05.05.2015 in CrI.M.P.No.3118 of 2014 in C.C.No.131 of 2013 passed by the II Additional Judicial Magistrate of First Class, Kadapa for the offences referred supra and consequently, the revision case is devoid of merits and is liable to be dismissed.

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

Miscellaneous petitions, if any, pending in the criminal revision case, shall stand closed.

M. SATYANARAYANA MURTHY J

Date: 24.08.2017
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