

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.1641 OF 2011

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C., challenging the order, dated 03.05.2011 in CrI.M.P.No.2784 of 2010 in C.C.No.338 of 2010 on the file of the XV Addl. Chief Metropolitan Magistrate: Spl. Court for the Trial of Video Piracy Cases, Hyderabad.

2. Learned counsel for the petitioners strenuously submitted that even if the allegations made in the complaint are *ex facie* taken to be true and correct, no *prima facie* case is made out against the petitioners. He further submitted that the trial Court has failed to consider that the 1st petitioner obtained divorce from the competent authority on 31.03.2004, whereas the complaint was lodged on 06.04.2004. He further submitted that if the order passed by the trial Court is allowed to continue, it would amount to mis-carriage of justice.

3. Learned Additional Public Prosecutor representing the State submitted that the material available on record is *prima facie* sufficient to proceed further against the petitioners.

4. Learned counsel for the 2nd respondent submitted that the allegations made in the complaint *prima facie* constitute the offences alleged to have been committed by the petitioners.

5. The point that arises for consideration in this revision is: Whether there is any illegality or irregularity in the order of the trial Court, which warrants interference of

this Court while exercising the revisional jurisdiction under Sections 397 and 401 Cr.P.C?

6. A perusal of the record reveals that the petitioners are facing trial in C.C.No.338 of 2010 for the offences punishable under Sections 498-A r/w 34 IPC and 4 and 6 of Dowry Prohibition Act. Pending the above C.C., the petitioners herein filed the above CrI.M.P. under Section 239 Cr.P.C. for discharge. The trial Court after affording reasonable opportunity to both parties, dismissed the petition. Hence, this revision.

7. While deciding the petition filed under Section 239 Cr.P.C., the Court has to consider whether there is any *prima facie* material against the petitioners to proceed further or not. The Court shall not conduct roving enquiry at the time of framing of charges. Whether the material available on record is sufficient to convict the accused or not is not a criterion at the time of framing of charges.

8. In **STATE OF HIMACHAL PRADESH V KRISHAN LAL PARDHAN**¹, the apex Court held thus:

“For scrutiny within the limits of Section 239 Cr.P.C., all that is required at the stage of framing of charges is to see whether a *prima facie* case regarding the commission of certain offences is made out. The question whether the charges will eventually stand proved or not can be determined only after the evidence is recorded in this case, which cannot be decided on merits without giving the prosecution an opportunity to adduce evidence against the accused.”

9. In **STATE OF J&K V ROMESH CHANDER**², the apex Court held thus:

“It is now settled law that the charge-sheet constitutes *prima facie* evidence constituting the offence for proceeding further in the matter. Necessarily, therefore, the Court has to look into the relevant law and the allegations made in the charge-sheet and then consider whether any offence has

¹ AIR 1987 SC 733

² (1997) 1 SCC 90

been committed to frame charges for trial before discharging the accused. Since the High Court has not done that, we think it proper that the High Court should reconsider the matter and dispose of it in accordance with law. All the contentions raised by the learned counsel on either side are left open. It is open to the counsel to argue the matter in the High Court.”

10. Let me consider the facts of the case on hand, in the light of the above legal principle.

11. The marriage of the 2nd respondent was performed with the 1st petitioner on 07.09.2003 as per Muslim Rites and caste customs. Immediately after the marriage, the 2nd respondent joined the 1st petitioner to lead happy marital life. For one reason or the other, disputes arose between the 2nd respondent and the petitioners. Therefore, the 2nd respondent left the matrimonial home. The case of the prosecution is that at the time of marriage, the parents of 2nd respondent gave cash and gold ornaments to the petitioner towards dowry. It is the further case of the prosecution that the petitioners herein subjected the 2nd respondent to cruelty for additional dowry.

12. This Court carefully perused the charge sheet and the statements of witnesses to appreciate the contention of the petitioners. All witnesses stated that the petitioners subjected the 2nd respondent to cruelty.

13. The predominant contention of the learned counsel for the petitioners is that the 1st petitioner had obtained divorce from the 2nd respondent by pronouncing Talaq as per Muslim Law. As rightly pointed out by the learned counsel for the petitioners, the complaint was lodged on 06.04.2004. Whether the 1st petitioner has given divorce to the 2nd respondent or not cannot be looked into while deciding the petition filed under Section 239 Cr.P.C.

The binding nature or the legality of the Talaq alleged to have been pronounced by the 1st petitioner has to be decided by the appropriate Forum. The material placed before the Court is *prima facie* sufficient to proceed further against the petitioners. I am fully agreeing with the findings recorded by the trial Court.

14. The trial Court considered the material on record in right perspective and dismissed the petition. The trial Court assigned reasons, much less, cogent and valid reasons while dismissing the petition. Therefore, there is no illegality or irregularity in the order passed by the trial Court, which warrants interference of this Court while exercising the revisional jurisdiction under Sections 397 and 401 Cr.P.C.

15. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the revision lacks merits and bona fides and is liable to be dismissed.

16. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any pending, in this revision shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 14-09-2017.
Hsd