

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.2944 OF 2017

JUDGMENT:

The present Criminal Revision Case is preferred under Sections 397 and 401 of the Code of Criminal Procedure, 1973, questioning the order dated 27.10.2017 in Criminal Revision Petition No.11 of 2016 passed by the learned V Additional Metropolitan Sessions Judge, Hyderabad.

2. The aforesaid Criminal Revision Petition was directed against the order dated 14.08.2015 in Criminal M.P. No.1061 of 2015 in C.C. No.164 of 2011 passed by the learned XV Additional Chief Metropolitan Magistrate, Hyderabad-cum- Special Court for trial of Video Piracy Cases, Hyderabad.

3. The learned Magistrate, while dealing with an application filed under Section 216 of the Code of Criminal Procedure, 1973 (for short 'Code') requesting to take cognizance against accused Nos.1 and 2 for the offences punishable under Section 406 of Indian Penal Code, 1860 (for short 'IPC') and also for the offences punishable under Section 3, 4 and 6 of Dowry Prohibition Act, 1961 (for short 'DP Act'), on the ground that the prosecution failed to take steps at the appropriate time seeking for addition of the said penal provisions and also on the ground that the learned Magistrate failed to frame charges, held that the offence punishable under Section 406 of IPC and the offences punishable under Section 3, 4 and 6 of DP Act are not

attracted as PW.1 did not speak about the said offences allegedly committed by accused Nos.1 and 2, dismissed the petition filed by the State through Women Police Station, North Zone, Begumpet, Secunderabad.

4. The revision petitioner - complainant, aggrieved over the aforesaid dismissal order, preferred Criminal Revision Petition No.11 of 2016. The learned Sessions Judge, formulated the point for consideration, “whether the lower court order is liable to be set aside as prayed for’ and proceeded with discussing the submissions made by both sides before him.

5. The learned Sessions Judge referred to the stage of the proceedings in C.C. No.164 of 2011 in which charges under Sections 498-A and 506 of IPC were framed and PWs.1 to 7 were examined besides marking Exs.P-1 to P-30. At that stage, Criminal M.P. No.1061 of 2015 under Section 216 of the Code was filed by the State seeking aforesaid reliefs. The learned Sessions Judge referred to the essential ingredients of Section 406 of IPC. With reference to the fact-situation occurring in the present case, the learned Sessions Judge placed reliance in **Harmanpreet Singh Ahluwalia v. State of Punjab** [(2009) 7 SCC 712] for the proposition that taking away dowry articles by husband/in-laws does not attract Section 405 of IPC, but, it squarely comes under Sections 3 and 4 of DP Act and when any property is given by way of dowry, the questions of its entrustment on behalf of the wife would not arise.

6. The learned Sessions Judge referred to two complaints filed by the *de facto* complainant marked as Exs.P-1 and P-2 during the course of trial and according to the learned Sessions Judge, on perusal of Exs.P-1 and P-2 and the statements of the witnesses recorded under Section 161 of the Code and the evidence they have given in Court, and that there is no specific allegation with regard to entrustment of the property and also misappropriation of the same by the accused and thus, affirmed the finding recorded by the learned Magistrate, that in the absence of material, penal provision of Section 406 of IPC, cannot be added.

7. The learned Sessions Judge, then referred to the amount of Rs.25,000/- given to the elder sister of the accused No.1 towards '*adapaduchu katnam*' holding that Section 406 of IPC does not attract the same since it being a customary and convention to pay such amount. Learned Sessions Judge then observed that if it is a '*sthreedhana*', the offence punishable under Section 406 of IPC would attract as held in **Pratibha Rani v. Suraj Kumar** [AIR 1985 SC 628]. Thus, he ruled that any amount paid towards *adapaduchu katnam*' does not fall within the ambit of Section 406 of IPC.

8. Concerning the request to add Sections 3, 4 and 6 of DP Act, observing that the very allegation against the respondents is that they have received dowry and they have also demanded additional dowry which would attract the aforesaid offences, and opined that the trial

Court did not take cognizance for the said offences, held that the order of the learned Magistrate is liable to be set aside.

9. Thus, concerning the offence punishable under Section 406 of IPC, the trial Court order is maintained, while setting aside the same so far as the penal provisions under Section, 3, 4 and 6 of DP Act are concerned. Thus, the learned Sessions Judge partly allowed the revision petition.

10. Aggrieved over the aforesaid order, respondent Nos.1 to 3 therein, who are revision petitioners herein i.e., accused Nos.1 to 3, preferred the present revision case questioning the same.

11. The *de facto* complainant on her own intended to come on record by filing Criminal R.C. M.P.No.4961 of 2017 under Section 482 of the Code and made request to implead her as respondent No.2 in the present revision case and the same was allowed.

12. Heard Sri K. Srinivasa Reddy, learned counsel for the revision petitioners, and Sri M.A.K. Mukheed, learned counsel for respondent No.2, and perused the material on record.

13. In fact, on maintainability of the present application, when once a party avails of the opportunity of preferring the revision before the Sessions Court, loses the chance to have remedy before the High Court is not canvassed.

14. Now, looking at the orders passed by the learned Magistrate as well as the learned Sessions Judge, it is obvious that none of the Courts did deal elaborately the relevant details as to the statements of each of the witnesses recorded under Section 161 of the Code, pointing out the allegations relating to or attracting the offences punishable under Section 406 of IPC. Likewise, relating to the allegations attracting the offences punishable under Sections 3, 4 and 6 of DP Act, in the statements or whether they are not at all occurring in the statements of the witnesses recorded under Section 161 of the Code, were not projected.

15. The learned Sessions Judge, just concentrated on whether there is any entrustment or not which is one of the invariable ingredients of Section 406 of IPC and in that context, referred to the rulings mentioned in the above.

16. When the statements of the witnesses recorded under Section 161 of the Code were not projected in arriving at whether they do *prima facie* make out a case for the offence punishable under Sections 406 of IPC and the offences punishable under Sections 3, 4 and 6 of DP Act, in the orders, it is to be held that the statements were not properly appreciated in arriving at a just conclusion.

17. Thus, it is a case where the matter requires to be remitted to the learned Sessions Judge for disposal of the Criminal Revision Petition No.11 of 2016, by examining the statements of all relevant

witnesses in arriving at whether there is *prima facie* material attracting the offences punishable under Sections 406 of IPC and 3, 4 and 6 of DP Act.

18. Therefore, the present Criminal Revision Case is allowed, at the admission stage itself, setting aside the order under challenge and remitting the matter to the Court of learned V Additional Metropolitan Sessions Judge, Hyderabad, by restoring Criminal Revision Petition No.11 of 2016 to its file, directing to dispose of the same, in accordance with law, by keeping in view the observation made hereinabove.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present revision case stand closed.

December 7, 2017.

MD/PV

A. SHANKAR NARAYANA, J