

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.2636 of 2013

ORDER:

The challenge in this CrI.R.C is the order dated 16.12.2013 in CrI.M.P.No.3506 of 2013 in C.C.No.83 of 2003 passed by the Judicial Magistrate of First Class, Pulivendla, whereunder the learned Magistrate dismissed the petition filed by the petitioners/A.1 to A.4 under Section 239 Cr.P.C to discharge them.

2) The 2nd respondent is the wife of 1st petitioner/accused No.1. She gave complaint against petitioners/A.1 to A.4 on 23.08.2002 to the Superintendent of Police, Kadapa and the same was forwarded to Sub-Inspector of Police, Vempalli. Basing on which, a case in Crime No.66/2002 was registered against petitioners/A.1 to A.4 on 02.09.2002 for the offences under Sections 498-A and 506 IPC and Sections 3 & 4 of D.P. Act. After investigation, the police filed charge sheet under Sections 498-A, 420, 506 IPC and Section 4 of D.P Act and the Court on 13.06.2003 took cognizance for the offences under Sections 498-A, 420 IPC and Section 4 of D.P. Act against A.1 to A.3 and under Section 506 IPC against A.4.

3 a) The main ground on which the discharge petition was filed before the Trial Court was that petitioner/A.1 divorced the 2nd respondent by pronouncing Triple Talaq on 02.05.1998 in the presence of Government Khazi and the same was communicated to her and subsequently A.1 married the daughter of A.4 and thereby the 2nd respondent ceased to be the wife of A.1 from 02.05.1998 onwards and even assuming that cruelty and harassment meted out to her prior to the divorce is accepted to be true, she cannot give complaint against A.1 to

A.4 on 23.08.2002 as the alleged offences were barred by limitation. It is also argued that a divorced wife cannot give complaint against her former husband and his relations for the offences under Sections 498-A IPC and Sections 3 & 4 of D.P Act. It is further contended before the Trial Court that the factum of divorce was very much to the knowledge of the 2nd respondent/complainant as she herself filed a suit—O.S.No.76 of 1998 before the Senior Civil Judge's Court, Kadapa, for delivery of properties and for amounts towards maintenance for Iddat period and the difference in Mehar amount etc., and in the said suit, she admitted that A.1 divorced her on 02.05.1998. The petitioners/A.1 to A.4 to substantiate their contention filed certified copy of plaint in O.S.No.76 of 1998.

- b) The 2nd respondent/complainant opposed the discharge application.
- c) The Trial Court dismissed the application mainly on the observation that at the time of framing charges, the Court has to consider only the documents filed by the prosecution but not the accused, as per the decisions reported in *Angusami v. Kaleeswaran Ambalam*¹; *State of Orissa v. Debendra Nath Padhi*² and *Ramakrishna Sharma. S and others v. Inspector of Plantations and others*³. Therefore, when the documents sought to be produced by the accused are not taken into consideration, the Court held, it would not be possible to accept the contention of petitioners/A.1 to A.4 regarding the factum of divorce. The limitation in filing the complaint has to be considered only after full-fledged trial. The Trial Court having found *prima facie* material showed proclivity to frame charges.

Hence the instant Crl.R.C.

¹ MANU/TN/0441/1988

² AIR 2005 SC 359

³ ILR 2008 (1) Kerala 303 = MANU/KE/0770/2007

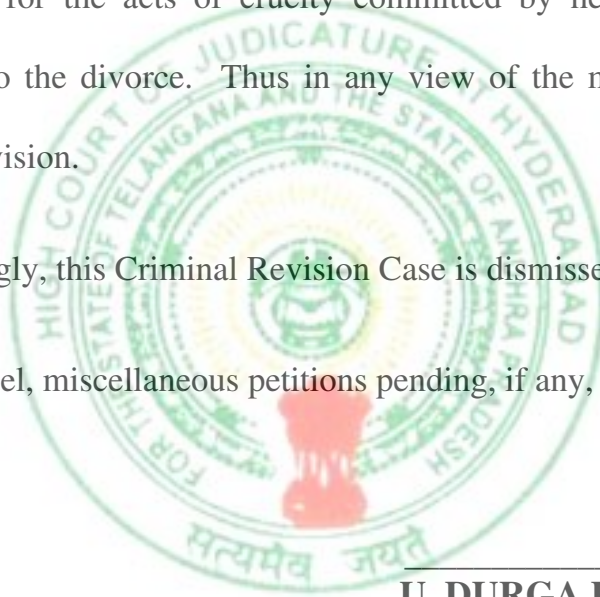
4) Heard arguments of Sri D. Raghava Reddy, learned counsel for petitioners and learned Additional Public Prosecutor for the State.

5) The offences for which the charge sheet was filed and cognizance was taken against petitioners/A.1 to A.4 are under Sections 498-A, 420 and 506 IPC and Section 4 of D.P.Act. It is to be noted that the offence under Section 498A IPC is punishable with imprisonment for a term which may extend to three(3) years; Section 420 IPC is punishable with imprisonment for a term which may extend upto Seven (7) years; Section 506 IPC is punishable with imprisonment for a term which may extend to two (2) years and Section 4 of D.P. Act is punishable with imprisonment for a term which shall not be less than six(6) months, but which may extend to two (2) years. That being so, as per Section 468(3) Cr.P.C, for the purpose of cognizance, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with more severe punishment or as the case may be, the most severe punishment. In the instant case, the offence under Section 420 IPC is punishable with more severe punishment of Seven(7) years. In that view, the limitation has to be computed with reference to the offence under Section 420 IPC as the other offences are minor offences and they are to be tried together with the offence under Section 420 IPC. In that view, the complaint filed on 23.08.2002 for the offences allegedly committed during and prior to 1998 can be said to be well within the period of limitation as indeed there is no limitation for the aforesaid offences in view of the presence of Section 420 IPC among them. So at the outset, the petitioners/ A.1 to A.4 at this stage cannot seek for discharge on the plea of limitation.

6) Even otherwise, if for arguments sake, the petitioners' contention that the 2nd respondent/complainant was well aware of the factum of Talaq pronounced by A.1 on 02.05.1998, by virtue of her admitting the same in her suit—O.S.No.76 of 1998 is accepted, still on that ground it cannot be said that her complaint is barred by limitation for the reason as aforesaid, no limitation is applicable to the offence under Section 420 IPC and for other offences which are included with it. The contention that a divorced wife cannot file a complaint for the offence under Section 498-A IPC against her former husband and his relations also cannot be accepted for the reason that she can maintain such complaint for the acts of cruelty committed by her husband and his relations prior to the divorce. Thus in any view of the matter, there are no merits in this revision.

7) Accordingly, this Criminal Revision Case is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.



U. DURGA PRASAD RAO, J

Date: 18.07.2018

scs