

HON'BLE SRI JUSTICE P. KESHA VA RAO

CRIMINAL REVISION CASE No. 1786 of 2010

ORDER

Heard the learned counsel for the petitioners and the learned Public Prosecutor appearing for the first respondent.

2. Though notice is served on the second respondent on 8.10.2018 vide track consignment report filed into court in USR No.82817 of 1998, none appeared.

3. The present criminal revision case is filed challenging the orders dated 12.8.2010 in C.C.No.255 of 2010 on the file of the Court of the Additional Junior Civil Judge, Chilakaluripeta, Guntur District, taking cognizance for the offence under Section 498-A r/w 34 IPC against the petitioners/A.2 to A5 as well as issuance of non-bailable warrants.

4. The facts in brief are that the de facto complainant i.e. the second respondent herein lodged a complaint on 26.5.2010 before the Sub-Inspector of Police, Yedlapadu Police Station against the petitioners and another for the offences under Sections 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act. Pursuant thereto, Crime No.82 of 2010 was registered for the offence under Sections 498-A r/w 34 IPC and Sections 3 and 4 of Dowry Prohibition Act. During the course of investigation, LW-12 examined LWs.1 to 11 and recorded their statements under Section 161 Cr.P.C. After completion of investigation, LW-12 filed charge sheet on 3.07.2010. In the charge sheet, it is mentioned that basing on the evidence of

LWs.4 to 11, there is no involvement of A-2 to A-5 i.e. the petitioners herein for the offences and therefore, their names have been deleted from the list of the accused after obtaining permission orders from the Sub-Divisional Police Officer, Narsaraopet. However, a case is made out for the offence under Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act against A-1. The learned Magistrate while taking cognizance of the offences against A-1, was also pleased to take cognizance of the offence against the petitioners for the offence under Section 498-A r/w 34 IPC and issued non-bailable warrants by orders dated 12.08.2010. Aggrieved by the same, the present revision case is filed.

5. Learned counsel appearing for the petitioner would contend that taking cognizance for the offence under Section 498-A r/w 34 IPC against the petitioners and issuance of non-bailable warrants is contrary to law, weight and evidence and probabilities of case. The investigating officer after thorough investigation and after examining as many as 8 independent witnesses, more particularly, LWs.4 to 11, observed that there is no involvement of the petitioners in the offence and no fresh material was available before the Court to take cognizance of the said offence against the petitioners. Except making omnibus allegations, nothing is mentioned against the petitioners. The learned counsel also contended that LWs.4 to 11 have categorically stated before the police that the petitioners are residing in a separation portion and never interfered in the affairs of the de facto complainant and her husband i.e. A-1. That apart, even the de facto complainant either in the complaint or in 161 Cr.P.C. statements did not state as to how the petitioners have

instigated A-1 to harass the de facto complainant. The learned Public Prosecutor though not seriously opposed the case of the petitioners, contended that since there are disputed questions of fact, the same will be elicited during the course of trial.

6. Having heard both the learned counsel and from the perusal of the material on record, the point that arises for consideration is whether there is any prima facie material staring at the petitioners to take cognizance of the offence against them under Section 498-A r/w 34 IPC?

7. It is mentioned in the charge sheet that after the marriage, A-1 left with his family for 1½ year and thereafter A-1 and the de facto complainant lived separately in another portion of the house. It is also mentioned that LW-1 and A-1 often quarrelled resulting LW-1 leaving to her parents' house without informing anybody. It is also mentioned that A-1 did not see the welfare of his wife and children and on the other hand, demanded additional dowry from her parents. When she expressed inability, she was harassed. Even from the statements of LWs.4 to 11, there is no involvement of the petitioners since they have categorically stated that the petitioners are residing in a separate portion and they never interfered with the affairs of the de facto complainant and her husband. Merely because an omnibus allegation is made in the complaint, the petitioners cannot be roped in as an accused for the offence under Section 498-A r/w 34 IPC. Merely because a complaint is filed for the offence under Section 498-A IPC and Sections 3 and 4 of Dowry

Prohibition Act, unless and until specific allegations are made, all the family members cannot be roped in as the accused.

8. In the recent times, various complaints are being lodged for the offences under Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act, in which, whether any allegation is made out or not, all the family members are being roped in as accused only for the purpose of harassing the innocent family members whereby forcing them to come to terms. In **RAJESH SHARMA AND OTHERS v. STATE OF U.P. AND ANOTHER**¹ and another, the Apex Court held as under:

“Section 498A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the Statement of Objects and Reasons of the Act 46 of 1983. The expression ‘cruelty’ in Section 498A covers conduct which may drive the women to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand¹. It is a matter of serious concern that large number of cases continued to be filed Under Section 498A alleging harassment of married women. We have already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualised. At times such complaints lead to uncalled for harassment not only to the Accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement. This Court had earlier observed that a serious review of the provision was warranted². The matter also appears to have been considered by the Law Commission, the Malimath Committee, the Committee on Petitions in the Rajya Sabha, the Home Ministry, which have been referred to in the earlier part of the judgment. The abuse of the

¹ 2017 (2) G.L.H.818

provision was also noted in the judgments of this Court referred to earlier. Some High Courts have issued directions to check such abuse".

9. Therefore, in the factual matrix as discussed supra, when there is no prima facie case made out against the petitioners, more particularly, when the investigating agency have already deleted the names of the petitioners from the array of the accused, the learned Magistrate ought not to have taken the cognizance of the offence under Section 498-A r/w 34 IPC against the petitioners and issued non-bailable warrants. Therefore, this Court is inclined to interfere with the orders impugned in the revision since it is contrary to the evidence on record.

10. Accordingly, the criminal revision case is allowed setting aside the orders dated 12.8.2010 in C.C.No.255 of 2010 on the file of the Court of the Additional Junior Civil Judge, Chilakaluripeta, Guntur District, taking cognizance for the offence under Section 498-A r/w 34 IPC against the petitioners/A.2 to A5 as well as issuance of non-bailable warrants.

Miscellaneous petitions, if any, pending in this criminal revision case shall stand dismissed.

P. KESHAVA RAO,J

Date:12.10.2018
ccm

HON'BLE SRI JUSTICE P. KESHA RAO



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