

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.376 of 2018

ORDER:

This Criminal Revision Case is a classic example of how the trial Court, without properly understanding the purport of the order passed by this Court in CrI.R.C.No.1875 of 2015 and even without going through the direction therein, committed the same mistake as earlier.

The factual matrix is thus:

2) In Cr.No.7 of 2013 of Women Police Station, Nellore the police filed charge sheet against A1 for the offence under Section 498A IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961 by deleting the names of petitioners/A2 to A4. The 2nd respondent herein has filed protest petition vide CrI.M.P.No.2 of 2015 and learned Magistrate after recording her sworn statement took cognizance for the offence against A2 to A4. The said order dated 27.06.2015 is as follows:

“Complainant present and sworn statement is recorded. Heard. A prima facie case for the offence under Section 498A IPC is made out against the accused Nos.2 to 4. Hence, office is directed to take cognizance for the offence under Section 498A IPC against A2 to A4 also.”

3) Aggrieved, the petitioners/A2 to A4 filed CrI.R.C.No.1875 of 2015. Their grievance was that the trial Court without having any material against them took cognizance.

4) In CrI.R.C.No.1875 of 2015 this Court passed an order dated 10.10.2017 as follows:

“Upon hearing arguments of learned counsel for the petitioner in protest petition, the trial Court satisfied that there is prima facie case for the offence punishable under Section 498(A) IPC and a case is made out against A2 to A4, but instead of taking cognizance by the Court by applying judicial mind to the facts of the case, directed the office to take cognizance.

This order is in clear violation of requirements of law. Without application of mind to the facts of the case, passing such order directing the office to take cognizance is nothing but delegating power to the staff without applying judicial mind. Such an order cannot be sustained. Therefore, the order dated 27.06.2015 in Crl.M.P.No.2 of 2015 in Crime No.7 of 2013 passed by the V Additional Judicial Magistrate of First Class, Nellore is hereby set aside while directing the Magistrate concerned to apply his/her mind and take cognizance by appropriate order within one month 2 from the date of receipt of a copy of this order in accordance with law.

With the above direction, the Criminal Revision Case is disposed of.”

5) In the above order, this Court felt, the trial Court instead of taking cognizance by applying judicial mind to the facts of the case, mechanically directed the office to take cognizance which is violation of requirements of law. Hence, this Court in the earlier occasion, directed the Magistrate to apply his/her mind and take cognizance by “appropriate order” within one month from the date of receipt of a copy of this order.

Thereafter, learned Magistrate passed the following impugned order dated 20.11.2017, which reads thus:

“As per the orders of the Honourable High Court of A.P. Hyderabad in Crl.R.C.No.1875 of 2015 dated 10.10.2017 case is taken on file against A2 to A4 under Section 498A IPC. In default issue summons to A2 to A4. Call on 29.12.2017.”

Aggrieved, petitioners/A2 to A4 preferred the instant Criminal Revision Case.

6) The submission of learned counsel for petitioners is that as per earlier order in Crl.R.C.No.1875 of 2015, this Court has not stated that the learned Magistrate shall directly take cognizance of the offence under Section 498A IPC against the petitioners/A2 to A4. What all this Court directed was that the learned Magistrate shall apply his/her mind and take cognizance by appropriate order within one month. However, without passing any reasoned order, the learned Magistrate simply took cognizance of the offence under Section 498A IPC against A2 to A4 in violation of the directions given by this Court.

7) I find force in the above submission. As rightly argued by the learned counsel, this Court has not directed the Magistrate to directly take cognizance against A2 to A4 for the offence under Section 498A IPC. What all the direction contained in Crl.R.C.No.1875 of 2015 was that the learned Magistrate has to apply his/her mind and take cognizance by appropriate order within one month. Needless to emphasize that since the order is to be passed in a protest petition, the Court is required to give reasons for either taking cognizance or refusing to take cognizance of specified offences against A2 to A4. However, without passing a reasoned order the learned Magistrate has

mechanically took cognizance for the offence under Section 498A IPC against petitioners/A2 to A4 against the direction of this Court. Hence, the attitude of the learned Magistrate is highly deplorable. Therefore, while setting aside the order dated 20.11.2017, the earlier direction by this Court is again reiterated to the effect that learned Magistrate shall apply his/her mind and take cognizance by appropriate order within month from the date of receipt of a copy of this order in accordance with law. Till such order is passed, the presence of the petitioners/A2 to A4 before the trial Court is dispensed with.

8) Accordingly, this Criminal Revision Case is disposed of.

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

Date: 14.02.2018

Dvs/Murthy

U.DURGA PRASAD RAO, J