

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Crl.R.C.No.1977 of 2012

ORDER:

This Criminal Revision Case is filed by the accused aggrieved by the order dated 05.09.2012 in Crl.M.P.No.2230 of 2012 in C.C.No.54 of 2012 passed by learned II Additional Judicial Magistrate of First Class, Tirupati, allowing the petition filed by Assistant Public Prosecutor under Section 216 Cr.P.C. to add additional charges under Sections 3 and 4 of Dowry Prohibition Act and under Section 506 IPC against the accused.

2) The facts would show that the petitioners are facing trial for the charge under Section 498A IPC. When the matter came up for hearing, the Assistant Public Prosecutor filed Crl.M.P.No.2230 of 2012 under Section 216 Cr.P.C. requesting the trial Court to frame additional charges under Sections 3 and 4 of Dowry Prohibition Act and Section 506 IPC. The said petition was opposed by the petitioners contending that at the fag end of the trial the said petition was filed and hence not maintainable. However, the trial Court on the observation that the evidence and facts would reveal *prima facie* material to frame the additional charges allowed the petition and embarked to frame the additional charges.

Hence, the instant Criminal Revision Case.

3) Severely fulminating the impugned order, learned counsel for petitioners would submit that in view of express language in Section

220 Cr.P.C., framing of additional charges after the closure of trial is quite unwarranted which will cause any amount of prejudice to the accused.

4) On the other hand, learned Additional Public Prosecutor would submit Section 220 Cr.P.C. has no application in the present case and at any rate, the said Section will not curtail the power of the Court under Section 216 Cr.P.C. and he would submit, having found *prima facie* material to frame additional charges, the trial Court allowed petition. He thus prayed to dismiss the petition.

5) In the light of respective arguments, I gave my anxious consideration to the impugned order. Section 220 Cr.P.C. reads thus:

Section 220: *Trial for more than one offence.*

(1) *If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.*

(2) *When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub- section (2) of section 212 or in sub- section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.*

(3) *If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person*

accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860).

a) The Section at the first instance says that if, in one series of acts which are so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence.

b) Sub-section (2) postulates a situation where similar types of offences are committed. It says when a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of Section 212 or in sub-section (1) of Section 219 is accused of committing for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with and tried at one trial for every such offence. Since the present case is not connected with any of the aforesaid offences, sub-section (2) has no application.

c) Then, sub-section (3) says that if the acts alleged constitute an offence falling within two or more separate definitions of any law in

force for the time being by which offences are defined or punished, the person accused of them may be charged with and tried at one trial for each of such offences.

d) In this context, learned counsel would argue that since the alleged demanding of dowry would amount to an offence under Section 498A IPC and also under Sections 3 and 4 of Dowry Prohibition Act, the trial Court ought to have framed charges under Sections 3 and 4 of Dowry Prohibition Act at the first instance and might have tried the case in the earlier trial itself, but it cannot frame additional charge after the end of the trial. This argument, in my considered view, does not hold conviction. Even if the aforesaid argument is accepted, still the power of the Court to frame additional charge under Section 216 Cr.P.C. is not curtailed.

e) Then, sub-Section (4) says if several acts of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined and for any offence constituted by any one or more of such acts. The situation postulated in sub-section (4) also is not applicable in the present instance.

6) So, when Sections 216 and 220 are juxtaposed, as rightly submitted by the Addl.P.P., the power of the Court to frame additional charge under Section 216 Cr.P.C. is not curtailed by Section 220.

7) It is needless to emphasize that Section 216 Cr.P.C. says the Court may alter or add to any charge at any time before judgment is pronounced. Therefore, the argument that at the fag end of the trial additional charge cannot be framed does not hold water.

8) Coming to the impugned order, the trial Court found that evidence adduced on behalf of prosecution indicated that in connection with the marriage, the accused demanded dowry including house property and evidence further revealed accused threatened PW1 with dire consequences. Basing on the said evidence and also basing on the allegations in the charge sheet, it appears, trial Court embarked upon framing additional charges under Sections 3 and 4 of Dowry Prohibition Act and under Section 506 IPC. I find no illegality or irregularity in the order impugned. No prejudice can be pleaded by the accused because Section 217 Cr.P.C. takes care of the rights of the accused who are affected by addition of new charges.

Section 217 Cr.P.C. reads thus:

Recall of witnesses when charge altered:

Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed-

1. *to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-*

examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

2. also to call any further witness whom the Court may think to be material.

9) Thus, the above section says whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to re-call or re-summon and examine with reference to such alteration or addition, any witness who may have been examined unless the court for reasons to be recorded in writing, considers that the prosecutor or the accused as the case may be desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice. The court may also to call for any further witness whom the Court may think to be material.

10) In that view of the matter, the accused, if so advised, may as well request for further examination of the witnesses who are already examined with reference to newly added charges.

11) In view of above discussion, I find no merits in Crl.R.C. and same is accordingly dismissed.

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

U.DURGA PRASAD RAO, J

Date: 16-11-2018
Murthy