

HONOURABLE SRI JUSTICE N. BALAYOGI

Criminal Revision Case No. 1827 of 2018.

ORDER:

1. This Criminal Revision Case is preferred by the de facto complainant as party-in-person aggrieved by the order dated 23.05.2018 passed in CrI.M.P.No.2536 of 2018 in CC.No.3586 of 2013 on the file of the learned XIX Metropolitan Magistrate, Kukatpally, Hyderabad.

2. In view of challenge made to the very order in CrI.M.P.No.2536 of 2018 dated 23.05.2018 rejecting the request of the petitioner to conduct the trial in C.C.No. 3586 of 2013 in-camera with audio video electronic means, it is felt more desirable to hear the main case itself and dispose of the same on merits and in accordance with law.

3. The contention of the petitioner is that as a part of full fledged fair trial, proceedings can be conducted in the modern scientific electric means with audio video coverage in-camera on account of the fact that the accused may induce an element of extreme fear and put the victim/de facto-complainant and witnesses in a state of shock and put questions in the cross-examination purposely designing to embarrass or confuse the victim or the witnesses. It is her further contention that the trial Court without considering the spirit and object of Section 22 of the Family Courts Act dismissed the application.

Whereas it is the case of the respondents that in-camera proceedings can be allowed in a different set of circumstances wherein there is a likelihood of issues of privacy or issues of any bodily examination to protect the dignity of the witnesses or the accused, as the case may be, in the cases involving rape and other bodily offences against women, but not in the present case since offences alleged herein are punishable under Sections 498-A I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act, which do not require in-camera proceedings.

4. The undisputed facts are that basing on the complaint lodged by the petitioner, a case in Crime No.344 of 2011 was registered for the offences punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act against the accused/Respondents 2 to 7 herein. After thorough investigation, the police not charge sheeted Respondents 2, 3, 6 and 7 herein. The learned Magistrate, after filing the charge sheet, took the cognizance and numbered the case as CC.No.3586 of 2013.

5. While so, the petitioner herein filed CrI.M.P.No.2536 of 2018 in CC.No.3586 of 2013 under Sections 273 and 275 CrI.P.C. r/w Section 327(1) CrI.P.C. seeking to conduct the trial in CC.No.3586 of 2013 in camera with audio video electronic means. However, the trial Court dismissed the same.

6. In the case of ***R.SRIDHAR Vs. R. SUKANYA*** (2004 Law Suit (Mad) 1327), the Madras High Court held that the Family Courts Act is only a procedural law and the substantive law relating to family matters may vary from person to person depending on the religion and the respective personal laws. When a Family Court deals with the matrimonial disputes of Hindu, it has to only enforce the provisions of the Hindu Marriage Act and Section 22 of the said Act in this regard is mandatory. The section confers a discretion on the Judge and also grants a right to the parties to have the proceedings held in camera. In fact Section 11 of the Act confers a special right on the party to demand in camera proceedings and there is no discretion vested with the Court when such a request is made by either party to the dispute.

7. In similar circumstances, the Apex Court in ***NARESH SHRIDHAR MIRAJKAR Vs. STATE OF MAHARASTRA AND ANOTHER*** (AIR 1967 SC 1) held that a Court of justice is a public forum. It is through publicity that the citizens are convinced that the Court renders even-handed justice, and it is, therefore, necessary that the trial should be open to the public and there should be no restraint on the publication of the report of the Court proceedings. The publicity generates public confidence in the administration of justice. In rare and exceptional cases only, the Court may hold the trial behind closed doors, or may forbid the publication of the report of its proceedings during the pendency of the litigation. It is further held therein that if the High Court thus had inherent power to hold the trial

of a case in camera, provided, of course, it was satisfied that the ends of justice required such a course to be adopted, it would not be difficult to accept the argument urged by the learned counsel that the power to hold a trial in camera must include the power to hold a part of the trial in camera, or to prohibit excessive publication of a part of the proceedings at such trial. What would meet the ends of justice will always depend upon the facts of each case and the requirements of justice. It is further observed that from the recitals in Section 14 of the Indian Official Secrets Act, 1923 that ‘without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings’ it is not right to assume that Courts possess a general or inherent power of dispensing with open and public trials. This recital is necessary to be stated lest it may be thought that unless the prosecution applies to have the public excluded for reasons arising under the Official Secrets Act, other power derivable from any other source such as Section 352 of the Code of Criminal Procedure cannot be exercised.

8. The facts of the present case are different to the facts of the case relied on by the petitioner. In the instant case, the petitioner, as party in person, filed the case. The petitioner herein gave a complaint to the S.H.O., Chandnagar P.S., Cyberabad, against the respondents 2 to 7 for the offences punishable under Section 498-A I.P.C. and Sections 3 and 4 of Dowry Prohibition Act. The Investigating Officer, after thorough investigation, filed the charge-

sheet against the said R4 and R5 only. The allegations are that at the time of petitioner's marriage, they presented 28 tulas of gold and Rs.15 lakhs cash, including marriage expenditure to her in-laws as per the demand before the mediators. Since the period of their engagement, her father-in-law Kovuri Surender Rao, mother-in-law Ahalya and brother-in-law Gopikrishna started harassing for want of additional dowry of Rs.20 lakhs. After her marriage, her husband Vamsi Krishna went to Phoenix, USA for the purpose of his job on 21.4.2010 and as such she stayed in her parents house up to 29.4.2010 and by spending Rs.70,000/-, she went to USA and stayed with her husband at USA. But, she was not spent conjugal life with him.

9. It is further alleged that since she went to USA, her father-in-law, mother-in-law and brother-in-law harassed her for want of additional dowry of Rs.20 lakhs. During the month of February, 2011, her husband suffered from pneumonia. Her husband was shown to a Doctor and he took treatment. Her father-in-law, mother-in-law and brother-in-law daily used to harass her physically and mentally for want of additional dowry and even in front of her parents also, they used to quarrel. Due to their unbearable harassment, she decided to commit suicide.

10. The allegations in the complaint as well as findings of the Investigating Officer, after thorough enquiry are that it is only dowry harassment committed by her in-laws and brother-in-law and further her husband is suffering from pneumonia for which he took treatment.

11. Section 22 of the Hindu Marriage Act, 1955 prescribes that proceeding under this Act shall be conducted in camera and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgment of the High Court or of the Supreme Court printed or published with the previous permission of the Court. It means that the proceedings in matrimonial cases should not be printed or published except the judgment of the High Court or Supreme Court, that too with the permission of the court. The section confers a discretion on the Judge and also grants a right to the parties to have the proceedings held in camera. It is true that Family Courts' Act, 1984 is a later Act, whereas the Hindu Marriage Act is of the year 1955. The Family Courts Act, 1984 would reveal that the Act is intended for establishment of Special Courts under Family Courts in every city or town with population exceeding 1 million, only with a view to speedy settlement of family disputes. On the representation of several associations of women and other organizations and individuals, the need was felt in the public interest for establishment of family courts for speedy settlement of family disputes.

12. In fact, under Section 11 of Family Courts Act in every suit or proceedings to which this Act applies, the proceedings may be held in-camera, if the Family Court so desires and shall be so held if either party so desires. In every suit or proceedings to which this Act applies, the proceedings may be held in-camera, if the Family Court

so desires and shall be so held if either party so desires. Hence, under this provision discretionary power is vested with the Court to hold in-camera proceedings, according to the demand of the situation.

13. The right to privacy has been recognized by the Indian Courts that any right to privacy must encompass and protect the personal intimacies of the home, the family marriage, motherhood, procreation and child rearing.

14. As far as the present case is concerned, it is a case of harassment demanding additional dowry between the petitioner and her in-laws and brother-in-law. Her husband is an employee in USA. The accused are residents of Rajendranagar, Ranga Reddy District. The trial Court, having considered all these facts when the prosecution relied on a decision in **State of Maharashtra v. Dr. Praful B. Desai** ((2003) 4 SCC 601) which deals with recoding of the evidence of a witness on commission, whose presence cannot be secured before the Court, through video conferencing, observed that the relief sought in the petition is entirely different. The prosecution in the said petition seeking the Court to audio video record of the trial proceedings, apart from conducting the trial in-camera. Hence, the decision relied on by the prosecution cannot be applied to the present case. Section 327 Cr.P.C. contemplates that proceedings shall be in open court, but Sub-Section (2) thereof says that notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under section 376, section 376A, section 376B, section 376C

or section 376D of the Indian Penal Code shall be conducted in camera. The present case does not fall under any of the said offences.

15. The trial Court also observed that if during conducting of trial, the prosecution feels that there is any part of the trial which cannot be openly conducted, it can make a request at that stage to conduct in-camera proceedings. The said request as rightly contended by respondents, at this stage, is premature one. Further, rightly find that so far as audio video recording of the proceedings is concerned, it is not the case of the prosecution that the presence of the witnesses cannot be secured before the Court. It intends to examine the witnesses before the Court, but it seeks the court to record the trial proceedings by means of audio and video technology. The courts in the jurisdiction of the High Court at Hyderabad are not equipped with such electronic apparatus to record audio and video of the trial proceedings. The trial will be conducted in the presence of the prosecutor, victim, accused and their respective counsel. The evidence of the witnesses would be recorded on computer/type writer and it would be available in the form of a typed deposition. Accordingly, the trial Court finds that there need not be any apprehension for the prosecution regarding the authenticity of the trial. Therefore, the trial Court held that the request of the prosecution for conducting of in-camera trial and audio video recording of the evidence process, for the reasons given above, cannot be accepted. Accordingly, the trial court dismissed the application.

16. In view of the above facts and circumstances, I am of the considered view that the order of the trial court is legal, valid and strictly in accordance with the Section 22 of the Hindu Marriage Act, 1955 and Section 11 of Family Courts Act and it does not require any interference as it does not suffer from any legal infirmities warranting interference.

17. In the result, the Criminal Revision Case is dismissed.

18. Consequently, miscellaneous petitions pending, if any, shall stand closed.

October, 2018

Msnr/Skmr

JUSTICE N.BALAYOGI

