

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.9517 of 2017

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioners/ Accused Nos.2 and 4 seek to quash the proceedings in C.C.No.623 of 2013 on the file of VIII Additional Chief Metropolitan Magistrate, Hyderabad registered against them for the offences under Sections 324, 420, 468, 471, 506, 509 r/w 34 IPC.

2a) The brief allegations of the private complaint are that complainant's marriage was mediated through accused—A1 to A6 who belong to Mehdi community and they paid an amount of Rs.7 lakhs through them in her house in the presence of her father—Mohd. Habeeb Mehdi and other relatives. While so, on the following day after Jahez, she came to know from the neighbours of the locality that her husband—Syed Khundmeer Iqbal Pasha has not passed Graduation course and only produced false Xerox documents as if he studied from distance education. The further allegations are that the accused persons assured her providing job at USA; made threatening calls over cell phone in unparliamentarily language; pelted stones on her house, knocked the doors in late nights and disappeared in dark and thus cheated her.

b) Basing on the said complaint, the police of Chaderghat PS registered a case in Cr.No.356 of 2012 and the same was taken cognizance by VIII Additional Chief Metropolitan Magistrate, Hyderabad and registered as

C.C.No.623 of 2013. The police after investigation filed final report dated 20.12.2012 referring the case as “Lack of Evidence”. Aggrieved, the complainant filed protest petition vide SR No.2471 of 2013 wherein the learned Magistrate passed an order dated 14.08.2013 dismissing the complaint under Section 203 Cr.P.C in respect of other offence but took cognizance for the offence under Section 323 IPC. Aggrieved, the complainant filed CrI.R.P.No.348 of 2013 and learned Special Judge for Economic Offences-cum-VIII Additional Metropolitan Sessions Judge, Hyderabad, by his order dated 27.01.2014 partly allowed the revision petition directing the trial Judge to take cognizance for the offence under Section 506 IPC against the accused by affirming the dismissal of complaint regarding other offences.

Hence, the instant Criminal Petition.

- 3) The 2nd respondent/complainant appeared in person and filed counter opposing the petition.
- 4) Heard both sides.
- 5) The petitioners/A2 and A4 seek to quash the proceedings mainly on the ground that the offences under Sections 323 and 506 IPC, which were taken cognizance against them by the trial Court, were barred by limitation. Their argument is that marriage of the complainant took place on 31.12.1996 whereas she filed the private complaint on 21.10.2012 i.e. about 16 years after her marriage making allegations against petitioners as if they

acted as mediators for the marriage and created forged degree certificates of her husband and performed their marriage and later when she came to know about their duplicity and questioned their attitude, the accused pelted stones on her house and also threatened her with dire consequences. Learned counsel for petitioners would submit that Section 323 IPC is punishable with a term which may extend to one year whereas Section 506 IPC is punishable with two years. Hence, as per Section 468(c) Cr.P.C. the complaint has to be lodged within three years from the date of offence. However, the complainant did not mention in her complaint about the date and time of the offences covered by Sections 323 and 506 IPC allegedly committed by the accused against her. In the light of such an ambiguity as to the date of commission of offences, the offences can be said to have been committed within short period after the marriage. Since the marriage was held in the year 1996 and complaint was lodged only in 2012, cognizance of both the offences under Sections 323 and 506 IPC was woefully barred by limitation. He thus prayed to allow the petition and quash the proceedings.

6) The 2nd respondent and learned Additional Public Prosecutor opposed the petition arguing that the complaint and cognizance are well within time and petition is liable to be dismissed.

7) The point for determination is:

“Whether there are merits in the Criminal Petition to allow?”

8) **POINT**: The record shows that the trial Court took cognizance of the offence under Section 323 r/w 34 IPC against the accused and after allowing Cr.R.P.No.348 of 2013 in part, it took cognizance for the offence under Section 506 IPC. It is the contention of the petitioners that cognizance of both the aforesaid offences was barred by limitation for, the marriage of the complainant took place on 31.12.1996 and complaint was lodged on 20.12.2012.

9) It is true that the offence under Section 323 IPC is punishable with one year whereas the offence under Section 506 IPC is punishable with two years and therefore under Section 468 Cr.P.C., complaint has to be lodged within three years from the date of offence. A Full Bench of Honourable Apex Court in *Mrs. Sarah Mathew vs. The Institute of Cardio Vascular Diseases by is Director Dr.K.M.Cherian and others*¹ held thus:

“Para-41: In view of the above, we hold that for the purpose of computing the period of limitation under Section 468 of the Code of Criminal procedure the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance...”

10) In the instant case, the date of filing complaint is 20.12.2012. However, neither in the complaint nor in the charge sheet, date and time of the offences covered by Sections 323 and 506 IPC were mentioned to decide the limitation aspect. In that view of the matter, whether the complaint is barred by limitation or not can be decided only after full-

¹ AIR 2014 SC 448

fledged trial basing on the date of offences covered by Sections 323 and 506 IPC. The petitioners are given liberty to raise the issue of limitation before the trial Court in which case it has to give its finding on merits.

11) With the above observation, the Criminal Petition is disposed of.

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

Date: 19.06.2018
Murthy

U. DURGA PRASAD RAO, J

