

THE HON'BLE SRI JUSTICE P. KESHA RAO
CRIMINAL REVISION CASE NOS.3146 AND 3324 OF
2017

COMMON ORDER:

Heard both the learned counsel appearing for the petitioners, learned counsel appearing for the unofficial respondent and the learned Public Prosecutor.

2. Both the Criminal Revision Cases are filed against the order passed in CrI.M.P.No.462 of 2017 in Cr.No.17 of 2015 dated 12.7.2017 on the file of the Court of the Judicial Magistrate of First Class, Sirpur, taking cognizance of the offences punishable Under Sections 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act against the Accused Nos.2 to 6 also in Cr.No.17 of 2015.

3. The facts of the case are that originally, the unofficial respondent herein lodged a complaint against the Accused No.1 in Cr.No.17 of 2015 and the petitioners herein for the offences Under Sections 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act. Pursuant to the said complaint, a crime was registered vide FIR.No.17 of 2015 for the offences Under Sections 498-A and Sections 3 and 4 of Dowry Prohibition Act. After investigation, a charge sheet was laid only against the Accused No.1 deleting the names of other accused from the

array of accused. Acting on the said charge sheet, the Court below has taken cognizance of the offence against the Accused No.1 and numbered the case as C.C.No.346 of 2015. It is stated that thereafter the unofficial respondent who is the complainant, filed a protest petition Under Section 190 Cr.P.C. on 8.2.2017 vide CrI.M.P.No.462 of 2017. On 12.7.2017, learned Judicial Magistrate of First Class, Sirpur, passed orders in CrI.M.P.No.462 of 2017 taking cognizance against the Accused Nos.2 to 6 also. Aggrieved by the said orders, the present two Criminal Revision Cases are filed.

4. Learned counsel appearing in both the Criminal Revision Cases contended that when once the Court below has taken cognizance of the offence against the Accused No.1 and the matter has already crossed the stage of Section 190 Cr.P.C, it is not open to the Court below to take cognizance against the other accused on the very same material.

5. Per contra, learned Public Prosecutor appearing for the respondent State submitted that Court has got every power to take cognizance against the accused whose names were deleted on an earlier occasion.

6. Learned counsel appearing for the unofficial respondent/complainant supported the arguments of the

learned Public Prosecutor and contended that there is no irregularity or illegality in the orders passed by the Court below.

7. Having regard to the arguments submitted by all the counsel and a perusal of the material on record would disclose that the petitioners herein along with Accused Nos.1, 6, 7 and 8 were originally charged for the offence Under Sections 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act vide FIR No.17 of 2015. However, after investigation, in the charge sheet filed, the petitioners herein i.e., Accused Nos.2 to 5 and Accused Nos.6 to 8 were deleted from the array of accused and charge sheet was laid only against the Accused No.1.

8. Learned judicial Magistrate of First Class, Sirpur, acting on the charge sheet, took cognizance of the offence against the Accused No.1 and numbered the case as CC.No.346 of 2015. However, on a protest petition filed by the defacto complainant, without recording any evidence of the defacto complainant or any of the witnesses, the Court below, straightaway took cognizance of the offence against the petitioners herein.

9. In the above circumstances, the question that crops up for consideration in the present two Criminal Revision Cases is whether the Court below acted legally in taking cognizance of the offences Under Sections 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act against the petitioners herein without

there being any fresh material, more so, in the form of recording of the evidence of witnesses along with the evidence of defacto complainant.

10. In fact, this issue was considered by this Court in Crl. R.C.No. 20 of 1990, wherein this Court held as follows:

“39. For the foregoing reasons, the impleading of petitioners Nos.2 and 3 as accused by the Magistrate after crossing the stage u/S.190 and before adducing any evidence, by examining any witness or marking any document as an exhibit, is bad in law and not sustainable. The revision case is accordingly allowed by setting aside the order under revision.”

11. In the case on hand, there was no fresh material in the form of statements of witnesses or any other material for the Court below to take cognizance against the petitioners herein who were deleted by the investigating agency while filing the charge sheet and the Court below has not taken cognizance of the offences against these petitioners at the first instance. If that being so, in the absence of any fresh material, the Court is precluded from taking cognizance of the offence against the petitioners when once the matter has crossed the stage Under Section 190 Cr.P.C. except after invoking the power Under Section 319 of Cr.P.C. The only course left open to the Court

below to array the petitioners herein as Accused is only after adducing evidence of the prosecution.

11. Therefore, this Court is of the opinion that the impugned order in both the Criminal Revision Cases is unsustainable and is liable to be set aside.

12. Accordingly, both the Criminal Revision Cases are allowed by setting aside the orders passed in CrI.M.P.No.462 of 2017 dated 12.7.2017. However, this order will not preclude the Court below to initiate proceedings to array the petitioners herein as accused if after adducing evidence any case is made out against them.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

Date: 4.7.2018

KPM

P. KESHA RAO,J