

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.1137 OF 2018

(RAMRAO SHRIRAM IDHOLE & OTH...VS.. STATE OF MAH. THR. PSO PS WASHIM.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.V.Sirpurkar, Advocate for Applicants.
Shri Sagar Ashirgade, A.P.P. for Non-applicant/ State.

CORAM : Z.A.HAQ, J.

DATED : JANUARY 30, 2019.

Heard.

The case of the prosecution is:

The applicant No.1-Ramrao married Varsha on 17th June, 2007. After marriage Varsha came to know that Ramrao had earlier married Supriya on 23rd May 2007. Father of Varsha lodged report with police. The police had undertaken investigation and filed charge-sheet against the applicants for the offences punishable under Sections 406, 420, 468, 471 and 494 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961. The learned Magistrate framed charges for the above referred offences. The trial progressed, evidence came to be recorded and statement of accused under Section 313 of the Code of Criminal Procedure also came to be recorded. At the stage of arguments, a submission was made on behalf of the prosecution that the facts on record makes out commission of the offence under Section 495 of the Indian Penal Code also. By the impugned order the learned Chief Judicial Magistrate

recorded that the material and evidence on record makes out commission of the offence under Section 495 read with Section 34 of the Indian Penal Code, and accordingly directed addition of the charge for that offence. This order of the trial Court was challenged before the learned Sessions Judge by filing revision. The learned Sessions Judge, initially on 4th April 2016 stayed the proceedings before the Magistrate, however, subsequently dismissed the revision by order dated 15th September 2018. Being aggrieved by this order, the applicants/ accused have filed this application under Section 482 of the Code of Criminal Procedure.

The impugned order is challenged on the following grounds:

- i) That the trial Court has committed an error by taking cognizance of the offence punishable under Section 495 of the Indian Penal Code without there being a complaint by the aggrieved person about commission of that offence, as mandated by Section 198 of the Code of Criminal Procedure.
- ii) The addition of charge for the offence punishable under Section 495 of the Indian Penal Code at the fag end of the trial and after recording statement of the accused under Section 313 of the Code of Criminal Procedure causes serious prejudice to the defence.

On the first point, submission on behalf of the applicants/ accused is that Section 198(1)(c) of the Code of Criminal Procedure creates a bar for taking cognizance of the offence punishable under Section 495 of the Indian Penal

Code, unless there is a complaint about it by the aggrieved person.

The learned advocate for the applicants/ accused relied on the judgment given in the case of *Hiraben Ganesh Choudhari Vs. State of Maharashtra*, reported in **2015 ALL MR (Cri) 2380** and the judgment given in the case of *Maroti Kashinath Kaharade Vs. State of Maharashtra*, reported in **1994 ALL MR ONLINE 1424** to support his submission.

The learned Additional Public Prosecutor has supported the impugned order, relying on the judgment given in the case of *Ushaben vs. Kishorbhai Chunilal Talpada*, reported in **2012 ALL MR (Cri) 2088 (S.C.)** and the judgment given in the case of *State of Orissa Vs. Sharat Chandra Sahu & another*, reported in **1996 AIR SCW 4147**.

In my view, the reliance on the provisions of Section 198 of the Code of Criminal Procedure, in the facts of the present case, is misdirected. It is not a case of taking of cognizance by the Court of the offence punishable under Section 495 of the Indian Penal Code, without there being a complaint as contemplated by Section 198 of the Code of Criminal Procedure. Father of Varsha lodged report with Police and after investigation, charge-sheet came to be filed. The learned Chief Judicial Magistrate has relied on the same report/charge-sheet submitted by the investigating agency as per Section 173 of the Code of Criminal Procedure. The trial is conducted and after recording of the evidence, the learned Chief Judicial Magistrate has opined that the material/ evidence on record shows that charge for the offence

punishable under Section 495 of the Indian Penal Code is required to be added.

In these facts, it cannot be said that the learned Chief Judicial Magistrate is taking cognizance of the offence punishable under Section 495 of the Indian Penal Code without there being complaint as contemplated by Section 198 of the Code of Criminal Procedure.

In none of the cases relied upon by the learned advocate for the applicants/ accused, this point was raised or considered.

As far as point No.2 is concerned, except for making a general submission that addition of charge for the offence punishable under Section 495 of the Indian Penal Code at this stage would cause prejudice to the defence, the applicant/accused has not been able to point out as to what prejudice would be caused to them. Section 216 of the Code of Criminal Procedure enables the Court to alter or add any charge at any time before judgment is pronounced. Sub-section (4) of Section 216 of the Code of Criminal Procedure takes care of the situation where the accused or the prosecutor complains of the prejudice because of alteration or addition of the charge at a belated stage. It lays down that if the Court finds that the alteration or addition of the charge at belated stage would cause prejudice to the accused or the prosecutor, it may direct a new trial or adjourn the trial for such period as may be necessary. Considering the provisions of Section 216 of the Code of Criminal Procedure, in my view, it would not be proper to examine the issue of prejudice to the accused. The applicants/accused will get an opportunity

before the trial Court to point out prejudice, if any, and it is pointed out, the learned Sessions Judge will be examining this aspect.

After considering the matter, I find that the learned Sessions Judge has not committed any illegality or error of jurisdiction which necessitates exercise of powers under Section 482 of the Code of Criminal Procedure.

The Criminal Application is **dismissed**.

JUDGE

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