

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 28 of 2006

- Smt. Kavita Sandhu D/o PV.K. Naidu, R/o “Shiv Sadan”, Pension Bada Raipur (C.G.)

---- Petitioner

Versus

1. P. Venkat Raman Murthy, Age - 40 Years, S/o Shri P. Raja. Rao, R/o Phase 6, Plot - 12 Maitri Nagar, Post – Risali, Bhilai, District Durg (C.G.)
2. P. Raja, Age 64 Years, S/o Late Shri P.G. Rajulu, R/o Phase 6, Plot - 12 Maitri Nagar, Post – Risali, Bhilai, District Durg (C.G.)
3. State of C.G., Through District Magistrate, Raipur

----Respondents

For Petitioner – Shri Ratnesh Kumar Agrawal, Advocate.
For Respondents No.1 and 2 – Shri Arvind Kumar Dubey, Advocate.
For State/Respondent No.3 – Shri Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

13-03-2020

Heard.

1. This petition filed under Section 482 of the Cr.P.C. has been brought praying to quash the impugned order dated 20-04-2006 passed by the revisionsl Court, the Court of 11th Additional Sessions Judge, FTC, Raipur, Chhattisgarh in Criminal Revision No.37/06 by which the order dated 13-12-2005 of the trial Court discharging respondents No.1 and 2 was upheld.
2. The petitioner had filed a complaint against the respondents No.1 & 2 that when the petitioner was married to the respondent No.1 her parents and relatives given her gifts, jeweleries of gold and silver and also other things which was her personal property as Streedhan, the petitioner had to leave her matrimonial home because of the cruel treatment of respondents No.1 and 2. After lodging of the FIR against respondents No.1 and 2 the petitioner made demand of her Streedhan which was found misappropriated by these respondents. Therefore, a criminal complaint was filed. The learned trial Court

after preliminary enquiry took cognizance against respondents No.1 and 2 in offence under Section 406 of the IPC on 13-12-1999. That order was challenged before the High Court by filing application under Section 482 of the Cr.P.C., MCRC No.3657/2000, which was disposed off on 30-04-2004 and the order taking cognizance by the trial Court was upheld. Subsequent to that, the trial Court has proceeded with recording of evidence before charge and the order dated 13-12-2005 was passed in which the respondents No.1 and 2 were discharged by the trial Court. The revision filed has also been dismissed upholding the order of the trial Court. Hence, this case.

3. It is submitted by learned counsel for the petitioner that the order of the trial court as well as the revisional Court both are erroneous which suffer from infirmity and illegality. At the stage of framing charge, the Court cannot evaluate and appreciate the evidence and come to conclusion that any of the evidence given is not believable. The learned trial Court has in the last paragraph of the order held that on the basis of the appreciation made of the evidence brought by the complainant side the Court has not found proved the allegation made against the respondents. It is submitted that at the stage of framing the charge, there is no requirement of a Court to appreciate the evidence and come to conclusion regarding truth or falsity of the evidence given by any witness. Clearly Section 244 of the Evidence Act does not provide that any opportunity to the defence to cross-examine the witness of the prosecution side in a complaint case in the evidence before charge, therefore, if any such cross-examination has been made of the witness that cannot be looked into at the stage of framing charge. Hence, the appreciation made by the trial Court of the evidence of the witnesses given in examination-in-chief and also the cross-examination was totally erroneous and illegal, which was not at all sustainable and similarly the revisional Court has also committed error in confirming the same order passed by the trial Court. Hence, the impugned order and the

order of the trial Court both are liable to be set aside.

4. Learned counsel for respondents No.1 and 2 submits that all the articles that were given to the complainant as Streedhan were seized by the police in the investigation, that was made on her complaint under Section 498A of the IPC. The complainant has also received all the articles that were seized by the police in Supurdnama. Therefore, the petitioner is making false claim against respondents No.1 and 2 to extort money from them. Therefore, the trial Court as well as the revisional Court have not committed any error in coming to conclusion that no charge can be framed against these respondents. Hence, there is no requirement for this Court to exercise the jurisdiction under Section 482 of the Cr.P.C..

5. On perusal of the record of the trial Court in the complaint case, it is found that in the evidence before charge, the statement that has been recorded by the trial Court opportunity has been given to the respondents-accused persons to cross-examine at length.

The procedure as it is provided under Section 244 of the Cr.P.C., when in any warrant case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution. This provision does not speak of any opportunity given to the defence side, therefore, this hearing under Section 244 is meant only for prosecution. Then after this recording of evidence under Section 244 of the Cr.P.C. the Court can consider for discharge under Section 245 of the Cr.P.C. and if not discharged then charges will be framed against the accused person.

6. On perusal of the order of the trial Court dated 13-12-2005, it is clearly reflected that the trial Court has appreciated the evidence of the witnesses on the strength of the statement given by them in their cross-examination, which is not at all permissible and therefore the order has been passed beyond the

authority in law, that the Court had. The only requirement at the stage of framing charge was to consider whether prima facie case is made out against respondents or not and that consideration could have been made only on the basis of the evidence of the witnesses that they made in examination-in-chief alone. Hence, because of this legal proposition and non-compliance of the provisions of the Cr.P.C. made by the Court below, I am of this view that this is a fit case for interference in the impugned order. Therefore, this petition filed under Section 482 of the Cr.P.C. by the petitioner is allowed and the impugned order dated 20-04-2006 and order of the trial Court dated 13-12-2005 both are quashed.

6. The parties are directed to give their appearance before the trial Court on 27th of April, 2020.

Sd/-
(Rajendra Chandra Singh Samant)
Judge