

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL REVISION CASE No. 1538 of 2017

ORDER:

This Criminal Revision Case is filed by the petitioners/accused Nos.2 to 11 aggrieved by the docket order dated 08.04.2017 in C.C.No.200 of 2017 on the file of the X Metropolitan Magistrate, Cyberabad at Malkajgiri in taking cognizance of the offence and issuing Non-Bailable Warrants against them.

2. The case of the prosecution in brief was that on 8-12-2016 at 6:30 PM, the defacto complainant lodged a report before Malkajgiri Police stating that her marriage was performed with Mohammad Afsar (accused No.1) on 11-07-2007 before Qazath Officer, Hyderabad as per Muslim rites and customs and it was a love marriage. After the marriage both side parents accepted the marriage and performed reception. As per the demand of her husband and in-laws, her parents presented 10 tulas of gold, 20 tulas of silver articles and standard jahez articles including electronic items. Later she joined accused No.1 at her in laws house and stayed in the joint family. Within few days after her marriage, her husband, her sisters-

in-law, brothers-in-law, cousin brothers-in-law and cousin mother started harassing her by stating that the jahez articles were of substandard and they took control over her jahez articles and gold jewellery within one week of their marriage. Her husband and in-laws forced her to do entire household work and also forced her to give massage to accused No.1 and to his mother till late night. Later due to their pressure, she started working in a Hospital as a receptionist and accused No.1 and his family used to snatch her entire salary. Thereafter, they shifted to a rented house, but accused No.1 did not change his attitude and increased his harassment at the instigation of his family members. Her sisters-in-law and brothers-in-law were residing separately but they used to regularly visit their house and instigate her husband against her demanding to bring additional dowry. On the other hand, she came to know that her husband was already married and his first wife had filed a dowry harassment case and suppressing the said fact, he got married her. When she questioned him, he threatened her with dire consequences. Accused No.1 was having all vices. She gave birth to a son during her wedlock. Her husband totally neglected her and her minor son and started demanding her to arrange an amount of Rs.1,50,000/- as his brother was going to mortgage his portion of house

and he was unable to pay the rents. Due to continuous harassment of accused No.1, her parents arranged the said amount. After shifting the house to Moulali also, accused No.1 harassed her and used to drop her at her parents' house on a number of occasions beating her demanding additional dowry. Her family members expressed their inability and sent her back to her in-laws house. On 16.08.2016, her husband and in-laws picked up quarrel with her demanding additional dowry, beaten her and necked her out of the marital home along with her minor son.

3. Basing on the said report, Malkajgiri police registered a case against accused Nos.1 to 11 *vide* Crime No.771 of 2016 under Section 498-A of IPC and Sections 3 and 4 of Dowry Prohibition Act.

4. After investigation, police filed charge sheet only against accused No.1 stating that no sufficient evidence was found against accused Nos.2 to 11 and whenever sufficient evidence was found, a separate charge sheet would be filed against them.

5. The learned X Metropolitan Magistrate, Cyberabad at Malkajgiri took cognizance of the offence under Section 498-A of IPC and Sections 3

and 4 of Dowry Prohibition Act and issued Non-Bailable Warrants against all the accused.

6. Aggrieved by such order of taking cognizance against them and issuing Non-Bailable Warrants, accused Nos. 2 to 11 preferred this revision contending that the Magistrate was entitled to take cognizance based on the material available on record. The statements under Section 161 of Cr.P.C. would not disclose the commission of the offence by the petitioners. The police also stated in the charge sheet that no material was available against the petitioners and therefore, a separate charge would be filed against them after securing the material. But the court below without any material and without recording any reasons straight away took cognizance against all the accused. The court erroneously did not look into the accused column in the charge sheet and even though the petitioners were not shown as accused, the court had taken cognizance against them and prayed to set aside the said order of taking cognizance and issuing Non-Bailable Warrants against them.

7. Heard the learned counsel for revision petitioners and the learned Additional Public Prosecutor.

8. As seen from the record, the case was registered against several accused persons A1 to A11, but the charge sheet was filed only against A1, and the names of A2 to A11 were shown in column No.10 as "accused not charged." The learned X Metropolitan Magistrate, Cyberabad at Malkajgiri, knowingly or unknowingly had taken cognizance against all the accused persons A1 to A11 for the offences under Section 498-A of IPC and Sections 3 and 4 of Dowry Prohibition Act and issued Non-Bailable Warrants against them. No reasons were recorded, if the court had taken cognizance against the petitioners with full knowledge, who were not charged. In the charge sheet, it was mentioned that as per the investigation by the police, there was no sufficient evidence found against accused Nos.2 to 11 and that a separate charge sheet would be filed against them. The office note would also disclose mentioning the same. There should be some material on record to take cognizance against the accused. What was the material considered by the court is not known from the stamped order wherein the blanks were only filled up.

9. A fair investigation requires the police to thoroughly examine all the evidence and to find out whether a prima facie case is made out against

the accused. If a case is made out, then they shall carry on with investigation and assist the court in a trial. It is the duty of the learned Magistrate to find out whether there is any material on record to proceed against the accused. If no such material is found against the accused, then there is no point in taking cognizance of offence and proceeding further, as the prosecution becomes futile. Therefore, fair investigation and trial are crucial to the accused persons to protect them from unwarranted prosecution against them. As the order of the Magistrate would not disclose basing on what material cognizance was taken against accused Nos.2 to 11, even though no charge sheet was filed against them, it is considered fit to set aside the said order.

10. In the result, the Criminal Revision Case is allowed by setting aside the docket order dated 08.04.2017 in C.C.No.200 of 2017 on the file of the X Metropolitan Magistrate, Cyberabad at Malkajgiri.

Miscellaneous petitions pending, if any, shall stand closed.

February 08, 2023
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Dr. G. RADHA RANI, J

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