

HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL PETITION No.860 of 2015

ORDER:

This petition is filed seeking quashment of charge sheet against A2 to A5 in C.C.No.187 of 2014 on the file of XIV Metropolitan Magistrate, cyberabad at L.B. Nagar.

2. The facts in brief as per the charge sheet are that the wedding of the de-facto complainant was performed with A1 on 20.11.2009. At the time of marriage, the family of the de-facto complainant has given Rs.5 lakhs as dowry and 10 tulas of gold ornaments on the demand made by her husband/A1 and mother-in-law/A2. After marriage, they have taken care of the de-facto complainant for a period of one month and thereafter they started harassing the de-facto complainant demanding to bring Rs.2 lakhs as additional dowry from her parents. They also stated that the de-facto complainant can work and earn Rs.2 lakhs or get the said amount from her parents' house. A5, the elder brother of A1, who is residing close to their house, used to visit the house of the de-facto complainant and A1 and

used to make comments that the de-facto complainant did not bring proper dowry and used to subject the de-facto complainant for mental harassment. Similarly, the sisters of her husband, who are A3 and A4, also used to join her brother, who is the husband of the de-facto complainant, in harassing the de-facto complainant.

3. On 26.04.2013 at 9.00 a.m., the de-facto complainant filed a written complaint before the Women Police Station, Cyberabad, basing on which a case in crime No.73 of 2013 has been registered. During the course of investigation, the statement of the victim, her parents and close relatives have been recorded. On completion of investigation, charge sheet was filed only against A1 deleting the names of the petitioners/A2 to A5 mentioning specifically that investigation did not reveal any harassment by the petitioners/A2 to A5. However, the learned Magistrate has taken cognizance for the offence under Section 498-A and 506 IPC against A1 to A5, including the petitioners, whose names were deleted in the charge sheet.

4. Aggrieved by the same, the present petition is filed on the following grounds:

The investigating officer after examining the witnesses found that the petitioners have not subjected the de-facto complainant to any physical and mental harassment and deleted their names as the evidence collected during the investigation has not established any of the offences against the petitioners and as such their names were deleted from the charge sheet. Though the names of the petitioners were deleted in the charge sheet, the learned Magistrate has erroneously taken cognizance of the case against them, which is illegal and unlawful and that the trial Court has exceeded its jurisdiction in taking cognizance of the alleged offences against them. Issuance of summons by the trial Court is in abuse of powers vested in it and therefore, prayed the Court to allow the petition.

5. Heard both sides and perused the record.

6. Now, the point for determination is whether the charge sheet against the petitioners can be quashed?

7. Mr. Ramana Rao, learned Additional Public Prosecutor, has submitted that the statements of the witnesses, including that of the de-facto complainant, clearly go to show the harassment meted out by the petitioners and therefore the trial Court has rightly taken cognizance of the offences and hence, the case against the petitioners cannot be quashed.

8. On the other hand, learned counsel for the petitioners has submitted vehemently that the police themselves have not convinced about the material placed against the petitioners and therefore, they have rightly deleted the names of the petitioners/A2 to A5 and the trial Court without there being any material has taken cognizance against all the accused and therefore sought for quashing of the same.

9. Para 3 of page 2 of the charge sheet and last paragraph of the charge sheet at page 3 clearly go to show that the investigation by the police has not established any offence against A2 to A5 and therefore, their names have been deleted. The copy of the charge sheet also go to show

that the concerned officer of the Court has put up a note before the learned Magistrate specifically mentioning that the names of the petitioners/A2 to A5 were deleted in the charge sheet. However, the endorsement of the learned Magistrate would clearly go to show that cognizance was taken for the offence under Section 498-A and 506 IPC against all the accused i.e., A1 to A5.

10. Now, the question therefore would be whether the learned Magistrate is bound by the investigation done by the police and also the office note placed before the learned Magistrate that there is no case against A2 to A5 can be accepted and thereby taking cognizance against the petitioners/A2 to A5 can be set aside?

11. The police in their wisdom have completed the investigation and filed charge sheet only against A1, even though the FIR typically disclose the names of all the accused. The statements of the witnesses are also in consonance with the contents of the complaint. However, police have only filed charge sheet against A1. No explanation is offered as to how the names of A2 to A5 were

deleted even though the statements of the witnesses are to the effect that A1 to A5 have committed offence. The learned Magistrate is not really bound by the finding of the investigation done by the police, which is to say that there is no case against A2 to A5. What really matters for the Court is to at the time of taking cognizance is expected to go through the material on record and come to the conclusion as to against whom the cognizance has to be taken.

12. In the case on hand, the learned Magistrate has taken cognizance of both the offences i.e., Sections 498-A and 506 IPC against all the accused, including A2 to A5, against whom no charge sheet is filed. Therefore, simply on the basis of the fact that since the police have not mentioned anything about A2 to A5, it cannot be said that cognizance taken by the learned Magistrate is bad. Therefore, on this count the complaint cannot be quashed.

13. In order to consider as to whether there is material against the petitioners the only document that can be seen is the charge sheet which contains the copy of the

complaint and also the statements of the witnesses recorded under Section 161 Cr.P.C. The statement of the victim, which was recorded by the police on 26.04.2013 would disclose that at the time of marriage, her husband and mother-in-law i.e., petitioner No.1/A2 have demanded Rs.5 lakhs and 10 tulas of gold which they have handed over to them. It is also stated that after one month of joining her in-laws place, her husband/A1 and mother-in-law i.e., petitioner No.1/A2 started demanding the de-facto complainant to bring additional dowry of Rs.2 lakhs from her parents' house. It is also stated that her husband's elder brother, who has been residing by the side of her house, used to come every day and harass the de-facto complainant by saying that she brought very less money as dowry. It is also stated that her husband's sisters, Jhanaki and Bhagya, who are petitioner Nos.2 and 3/A3 and A4 have also used to harass her. The statements of other witnesses are similar to that of the statement of PW.1.

14. Therefore, on analyzing the material available before the Court, it is clear that of the four witnesses, petitioner

No.1/A2 is the mother-in-law, whereas petitioner No.4/A5 is the elder brother of the de-facto complainant's husband. The statement of the victim and others clearly go to show that not only her husband but also her mother-in-law and her husband's elder brother i.e., A5 also used to harass her mentally and physically.

15. In respect of A2 i.e., mother of A1 the allegations are very crystal clear that petitioner No.1/A2 along with A1 has demanded Rs.5 lakhs and 10 tulas of gold as dowry prior to marriage and at the time of marriage the de-facto complainant has given gold and Rs.5 lakhs. Therefore, where there is direct evidence in the form of statements against A1 and A2, the police could not have come to the conclusion that there is no case against A2 to A5. However, it is to be noted that petitioner No.2 and 3/A3 and A4, who are the sisters of the husband of the de-facto complainant, even though their names are included in the complaint, there are no specific overt acts against them. A3 and A4 have been residing separately along with their respective husbands, whereas petitioner No.1/A2 was

residing in the same house where A1 was residing and petitioner No.4/A5 used to reside separately but by the side of the house of A1.

16. Therefore, considering the fact that petitioner Nos.2 and 3/A3 and A4, who are the sisters of A1, have been residing elsewhere and since there are no specific overt acts against A3 and A4 in respect of the alleged harassment against the de-facto complainant and also the fact that there are specific overt acts against A2 and A5, the petition can be allowed in part.

17. Learned counsel for the petitioners has cited an authority in **Nuthalapati Satyavathi @ Satyavedavathi vs. State of Andhra Pradesh**¹.

18. Considering the above authority, it is clear that miscarriage of justice will be done in case if the charge sheet against petitioner Nos.2 and 3/A3 and A4 cannot be quashed.

¹ (2017) 2 AICLR 515

19. Accordingly, the criminal petition is allowed in part and the proceedings in C.C.No.187 of 2014 against petitioner Nos.2 and 3/A3 and A4 are hereby quashed and so far as the proceedings in C.C.No.187 of 2014 against petitioner Nos.1 and 4/A2 and A5 are concerned, the same are dismissed.

20. Miscellaneous applications, if any, shall stand closed.

DR. D.NAGARJUN, J

Date: 18.01.2023
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