
(2015) 10 KAR CK 0234

In the Karnataka High Court

Case No : Criminal Petition No. 11 of 2015

Anand Shivanagouda Gudisagar and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 09-10-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Hindu Marriage Act, 1955 — Section 13B
Penal Code, 1860 (IPC) — Section 34, 498A, 506

Citation : (2015) 10 KAR CK 0234

Hon'ble Judges : Rathnakala, J

Bench : Single Bench

Advocate : Ashok R. Kalyanashetty, for the Appellant; B. Visweswaraiah, HCGP, Advocates for the Respondent

Final Decision : Allowed

Judgement

Rathnakala, J—The petitioners are charge sheeted for the offences punishable under Sections 498A, 506 r/w. 34 of IPC and Sections 3 and 4 of D.P. Act on the complaint of second respondent. The first petitioner is the husband and second and third petitioners are the sister and brother-in-law of the first petitioner.

2. The allegation of the prosecution is:

The first petitioner and the complainant married each other on 13.12.2009 as per customs and on the demand of the bridegroom side, dowry in cash and kind was given. The bride was also given gold ornaments and the marriage was celebrated at the expenses of the bride family. Subsequent to the marriage, the wife joined the husband in the matrimonial home. Four months after the marriage the husband's sister and brother-in-law who were frequenting visiting the house, insisted and coerced the complainant for additional dowry, they assaulted and tortured her physically and mentally. The sister used to incite complainant's husband over phone to demand dowry from America. The first petitioner used to

come home drunk and threaten the wife that if she does not get dowry for establishing a pharmacy shop and one site for him, he will marry some other person who will fetch more dowry and would finish her off etc.

3. Sri Ashok R. Kalyanashetty, learned Counsel for the petitioners submits that the parties lived together under the same roof for four months only. Petitioner Nos. 2 and 3 are from Tuminakatte of Ranebennur Taluk. As charge sheet papers would demonstrate, the complainant in her complaint refers to an incident of fire mischief alleged to have been committed by the first petitioner on 29.08.2011 during night hours in the house of the complainant. In that regard, a separate complaint was registered and the criminal proceeding is pending. On the date of the complaint, the complainant was residing in her parental home only. The complaint allegations are false, vague and does not disclose any material as to the torture and harassment inflicted. The complaint lacks the specific details of the amount demanded and the physical harassment inflicted on the complainant.

4. Learned Counsel further adds that subsequently there was a development in the life of the first petitioner and the complainant. They both resolved their dispute and filed a joint petition under Section 13B of the Hindu Marriage Act, before the Family Court and their marriage is dissolved by the decree in M.C. No. 3794/2011 on the file of the Second Additional Family Court, Bangalore. The very fact that the complainant though served has not appeared before this Court to have her say in the matter by itself indicates that she has no objection to allow the petition.

5. Learned Counsel continues his submission that, the Investigating Officer during the investigation has recorded the statements on the family members of the complainant who are interested persons and statements of other witnesses is of hear say evidence. The mahazar is conducted by the Investigating Officer at the residence of the parents of the complainant and no incriminating material is collected from the possession of the petitioners. There is no medical evidence to the effect that the complainant was inflicted with physical cruelty which would attract the offence punishable under Section 498A of IPC. With regard to the allegation under Section 506 of IPC, there are no independent witnesses. The evidence being sketchy with regard to the allegation under Sections 3 and 4 of the D.P. Act, no case is made out against the petitioners for any of the offences alleged. Under the circumstances, there is no case against these petitioners. It is the submission for the learned Counsel for the petitioners that they initially challenged the registration of the FIR against them and since the charge sheet was filed they withdrew the petition and filed the present petition.

6. Learned High Court Government Pleader for the first respondent submits that since some incriminating material is collected by the Investigating Officer in corroboration to the complaint allegations, merely because the marriage between the first petitioner and the complainant is dissolved, is not a ground to quash the proceedings. The trial shall proceed and reach logical conclusion and it is not a case which would qualify for quashing the proceedings under Section 482 of

Cr.P.C.

7. Second respondent though served is not represented.

8. On the perusal of the complaint, the allegations in the first part is, the marriage was performed at the instance of the father of the complainant by giving gold ornaments to the bride and the bridegroom at the instance of the bride side. Further allegation is, the complainant was harassed for additional dowry to purchase a site and was fisted and harassed physically and mentally. On a perusal of the Section 161 Cr.P.C. statement of witnesses, it is obvious that all the statements sound alike with common construction of sentence. It does not admit to common sense that the witnesses would give synchronous statements. Neither the complainant nor any of the witnesses would cite any definite untoward incident alleged to have been committed by the petitioners. More over, on the showing of the complainant itself, the petitioner Nos. 2 and 3/married sister and brother-in-law are residents of Tuminakatte of Ranebennur. In the complaint, the complainant alleged that the sister of the first petitioner is residing in U.S., used to instigate the first petitioner/husband over phone for additional dowry, she is shown as absconding accused in the charge sheet. With regard to the allegation of fire mischief, which is the only incident which was cited with date, time and place, separate criminal proceedings is alleged to have taken place. As per the pleadings of the parties, in the matrimonial case, they are separated from each other from 01.04.2010. The present complaint is filed on 04.09.2011 after their separation. It is the submission at the Bar that the main intention of the complainant was to budge the first petitioner for divorce on mutual consent she has lodged the complaint. Taking the entire complaint allegations as a whole, it does not disclose commission of offences punishable under Sections 3 and 4 of D.P. Act and neither there is any material to infer that there was any violence inflicted by the petitioners, to attract offence under Section 498A of IPC, resulting in "causing grave injury or danger to life, limb or health (whether mental or physical) of the woman or harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand". Proceedings with the criminal case with such sketchy material would be a waste exercise.

9. The Apex Court in judgment of Swapnil and Others Vs. State of Madhya Pradesh, (2014) AIRSCW 6056 : (2014) 6 SCALE 590 , on fact, having found that the complainant was living separately for a year before filing of the complaint expressed doubt as to whether there was still a demand for dowry coupled with criminal intimidation and quashed the proceedings and discharged the accused persons. I am convinced that the present petition is also one like that. The complaint having been filed after a long separation of one year, to achieve some other motive in continuation of the criminal proceedings would be a empty formality and also abuse of process of law.

10. Hence, the petition is allowed.

The charge sheet in C.C. No. 7188/2013 pending on the file of the V A.C.M.M., Bangalore City is quashed and the petitioners are discharged from the charges leveled against them.