
(2010) 10 MAD CK 0358
In the Madras High Court
Case No : Criminal R.C. No. 393 of 2010

H.A. Hurul Firdhouse

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 216, 397
Dowry Prohibition Act, 1961 — Section 4, 6
Penal Code, 1860 (IPC) — Section 34, 406, 420, 498A

Citation : (2011) 2 RCR(Criminal) 16 : (2011) 2 RCR(Criminal) 16

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : A. Kumaraguru, for the Appellant; I. Paul Nobel Devakumar and B. Kumar for B. Satish Samdar, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—The de facto complainant in C.C. No. 10889 of 2008 pending on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai is the Petitioner in the criminal revision case. The first Respondent is the State represented by police. Respondents 2 to 4 are accused in the said case.

2. The above said case came to be taken on file, on the basis of the final report of the Investigating Officer in Crime No. 3 of 2008, a case registered on the file of W22, All Women Police Station, Mylapore, Chennai. Final report was submitted alleging commission of offence punishable u/s 406 IPC alone. In the middle of the trial, namely after examination of P.Ws. 1 and 2 in chief examination alone (cross examination deferred), the de facto complainant, who also figured as P.W. 1, chose to file a petition purporting to be one u/s 216 of Code of Criminal Procedure praying for framing of additional charges for offences punishable under Sections 420 and 498A IPC and also for offences under Sections 4 and 6 of Dowry Prohibition Act. The said petition was numbered as M.P. No. 10337 of 2008 on the file of the above said trial Court. The learned trial Judge after

hearing, passed the order which is sought to be impugned in the present revision. The said order was passed on 9.2.2010. In the said order, the learned XVIII Metropolitan Magistrate has expressed an opinion that the question of framing additional charges would not arise at that stage of the proceeding when P.Ws. 1 and 2 alone had been partly examined and several other witnesses were to be examined then and in consonance with the opinion, dismissed the said miscellaneous petition by the impugned order dated 9.2.2010.

3. Mr. A. Kumaraguru, learned Counsel for the Petitioner would contend that the Court below, without properly appreciating the materials available in the case record, erroneously rejected the prayer for framing of additional charges and that hence the defect in the finding of the Court below as to the question of framing of additional charge has got to be rectified and corrected by this Court in exercise of its re-visional power.

4. Per contra, Mr. B. Kumar, learned senior Counsel representing the Respondents 2 to 4 (accused) submits that there is nothing illegal or impropriety in the order passed by the trial Court; that the order passed by the trial Court cannot be termed either a final order of an intermediary order, in short not an interlocutory order so as to make a revision against the order maintainable and that the present revision petition should be dismissed.

5. In the light of the facts and circumstances under which the present revision came to be filed, it is not necessary to traverse the facts in detail. The present revision case can be disposed of purely on legal grounds. The first and foremost question that arises for consideration is "whether framing a charge for a particular offence, omission to frame a particular charge, refusing to frame an additional charge or framing an additional charge, can be termed not an interlocutory order so that a revision against such order will lie?" The second question that arises for consideration is "At what stage the question of framing of additional charge can be raised by the prosecution or by the de facto complainant, who figures as a witness for the prosecution?" Resolution of these two questions will be enough for the disposal of the present revision case.

6. Admittedly, based on the complaint of the Petitioner herein/defacto complainant, the police registered "a case in Crime No. 3 of 2008 on the file of W22, All Women Police Station, Mylapore, Chennai for an offence u/s 406 IPC alone. To hold all the accused responsible for the said offence Section 34 IPC was also mentioned. The Petitioner was not aggrieved by the registration of the case for the offence u/s 406 IPC alone. If at all the Petitioner did have the grievance against it, she could have taken appropriate steps to seek a direction to the police to register the case for the other offences also or else the Petitioner could have even, filed a private complaint specifying the penal provision under which the acts allegedly committed by the accused are made punishable. Without doing it, the Petitioner allowed the investigation to proceed and result in the submission of a final report which was taken on file by the learned trial Magistrate as C.C. No. 10889 of 2008. The final report was filed alleging

commission of an offence u/s 406 read with 34, IPC alone. If at all the Petitioner had any grievance against the submission of such a final report, she could have taken steps to see that necessary directions are issued for further investigation or reinvestigation which the Petitioner did not chose to do.

7. The Court below framed a charge for the offence u/s 406 read with 34 alone based on the material submitted by the Investigating Officer along with the final report. If at all the Petitioner had grievance against the manner in which the charges were framed, the remedy available to the Petitioner was to in Yoke the inherent powers of the High Court and seek appropriate remedy. Such a course of action was also not pursued by the Petitioner. On the other hand, the Petitioner chose to extend cooperation for the progress of the prosecution by allowing her to be examined as P.W. 1 and another person as P.W. 2. It is pertinent to note that both P.Ws. 1 and 2 were examined in part; i.e., in chief alone. As many as 7 witnesses have been cited by the prosecution in the list of witnesses annexed to the charge sheet. Without waiting for the examination of the other witnesses and without even waiting for sufficient evidence attracting the other penal provisions to be brought on record in the form of evidence, the Petitioner seems to have filed an application u/s 216 Code of Criminal Procedure praying for the alteration of the charge by adding four more charges under the penal provision cited supra.

8. Section 216 Code of Criminal Procedure does not contemplate any application being filed either by the prosecution or by any witness including the de facto complainant. It simply states the power of the Court to alter the charge or add any charge to the charge already framed. The stage at which such alteration or addition to charge can be made is also indicated therein. Such an alteration or addition can be made at any time before judgment is pronounced. The Section also provides for the follow up action to be taken in case the alteration or addition to the charges is made after considerable progress in the trial of the case.

9. In the light of the said provision we have to consider the order passed by the learned trial Magistrate. A reading of the order of the learned trial Magistrate will show that, on a proper understanding of the context of the said provision, the learned trial Magistrate has passed the impugned order. The learned trial Magistrate has expressed a clear opinion that the petition itself was premature as none of the witness for prosecution was cross examined and five more witnesses were to be examined and that the question of framing an additional charge could be considered at a later stage in the light of the evidence to be adduced during the course of the trial. The said opinion is in tune with the intention of the legislature in enacting the said provision. Therefore, as rightly contended by the learned senior Counsel for the Respondent, there is no defect or infirmity in the order passed by the trial Court warranting interference by this Court.

10. In addition to the above, this Court also is convinced with the substance in the contention raised by the learned senior counsel for the Respondent that the

order sought to be impugned in this revision cannot be termed "not an interlocutory order" so as to exclude the bar provided in Sub-clause 2 of Section 397 Code of Criminal Procedure. As rightly contended by the learned senior Counsel for the Respondent no final opinion or finding is rendered deciding a right or obligation of any of the parties to the petition. The present order refusing to frame an additional charge does not preclude the trial Court to frame an additional charge at a later stage of the proceedings, if it may be warranted. In other words, the power conferred on the Court under 216 is not barred by the dismissal of the present petition filed by the de facto complainant before the trial Court. At any time before the pronouncement of judgment, such a power can be exercised. If the order of the lower Court is considered in the light of the said explanation, the contention raised on behalf of the Respondent that the impugned order cannot be stated, to be "not an interlocutory" order has got to be countenanced.

11. For all the reasons stated above, this Court comes to the conclusion that there is no merit in the revision and the same deserves to be dismissed.