

(2002) 06 KAR CK 0057
In the Karnataka High Court
Case No : Criminal Petition No. 1305 of 2002

Ivan Anand D" Souza and Another

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 06-06-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 157, 161 (3), 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 307, 420

Citation : (2002) 3 KCCR 1906

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : S.G. Bhagavan, for the Appellant; S.G. Rajendra Reddy, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedhar Rao, J.—The petition filed u/s 482 Code of Criminal Procedure for quashing of the proceedings in C.C. No. 440 of 2001 on the file of Principal Civil Judge (Junior Division), Chikkaballapur. The petitioners are the accused against whom the police have laid a charge sheet for committing offences punishable under Sections 307 and 420 Indian Penal Code read with Sections 3 and 4 of Dowry Prohibition Act. The prosecution case reveals that the accused No. 1 fell in love with one Mary Shaila Fereira when the lady was studying in Karkala. The first Petitioner is the native and resident of Karkala. The parents of the Petitioners and as well Miss Marie Shaila and her parents agreed for a marriage between them according to the customary rights. Pursuant to which on 29.12.2001 a betrothal ceremony took place at Chikkaballapur, where the mother of Mari Shaila Fereira was staying on account of her employment and it was also agreed that the marriage has to be performed at Imaculate Heart Church, Nakre in Karkala. It is said that sometime after the function, the Petitioners demanded dowry of Rs. 5,00,000/- failing which they threatened that the proposed marriage would not come through. It is said that the girls side all the

preparations had taken place and their relatives were all informed about the proposed marriage. On 4.1.2001 Marie Shaila Fereira informed her mother that the Petitioners are demanding dowry and that they refused to marry unless dowry is paid. It was also told to her that on 9.1.2001 Marie Shaila Fereira had given a complaint to Karkala police with the help of a lawyer and that the police have not taken any action against the Respondent in respect of the said complaint. The mother of Marie Shaila Fereira submitted a complaint to the P.S.I. Chikkaballapur on 4.2.2001. The police registered a crime and took up investigation and on completion of the investigation filed the charge sheet against the Petitioners.

2. In this petition it is contended that the FIR evidently lodged at Karkala by Marie Shaila Fereira on 9.1.2001. Therefore, a complaint submitted by her mother to Chikkaballapur Police would be hit by 162(3) Code of Criminal Procedure and it cannot be construed as FIR by the police to conduct the investigation on the said complain. It is also contended when the complaint given by Marie Shaila Fereira was not acted upon, there was remedy open to the party to approach the higher authorities to pursue further proceedings in respect of the complaint given by Marie Shaila Fereira. It is also contended that a Court at Chikkaballapur has not jurisdiction and it is only the Court at Karkala has the jurisdiction to try the offence.

3. After hearing the Counsel for the Petitioner and the Government Advocate, on going through the contents of para 3 of the complaint submitted by the complainant Rosybai mother of Marie Shaila Fereira there is a categorical averment made that on 29.12.2000 Betrothal ceremony took place at Chikkaballapur at her residence and it was attended by their friends and relatives. It was also agreed that on 26.1.2001 the marriage has to be performed at Imaculate Heart Church Nakkere, at Karkala. It is also to be noticed that demand of dowry according to the complaint of Marie Shaila Fereira takes place within the jurisdiction of Karkala police. Therefore, from the material averments it discloses that the material aspects of the crime transactions has taken place both at Chikkaballapur and as well at Karkala. Betrothal ceremony which took place at Chikkaballapur is a foundational basis for the case that creates legal obligations between the parties for the performance of the marriage of Marie Shaila Fereira with the first Petitioner. The demand of dowry is said to have been made at Karkala within the jurisdiction of Karkala. Therefore, prima facie an offence under Sections 3 and 4 of the Dowry Prohibition Act is indicated from the averments in the complaints of both Marie Shaila Fereira and her mother Rosabai.

4. It is stated that the police at Karkala have remained indifferent to the complaint and not taken any action. May be it was open to the parties u/s 157 Code of Criminal Procedure, to pursue the matter to its logical end. It is an optional choice. However, mother of Marie Shaila Fereira at later date lodged a complaint before the Chikkaballapur Police alleging same set of facts a part of the transaction viz., betrothal function involved in the offence taken place at

Chikkaballapur. It cannot be said that the Court at Chikkaballapur has no jurisdiction to try the case.

5. It is also not the case where two parallel proceedings pending one at Karkala and another at Chikkaballapur. Complaint given to the police at Karkala is not followed by any significant legal developments. Therefore it cannot be said that the prosecution launched at Chikkaballapur has to fail because earlier complaint was submitted to Karkala police. It is also to be noted that the subject matter of the complaint at Chikkaballapur and Karkala may be one and the same. But however, the informants are different. Therefore, the question of construing the complaint submitted at Chikkaballapur as hit by Section 161(3) read with Section 156 Code of Criminal Procedure does not arise. Hypothetically even assuming that there are parallel proceedings in respect of the same subject matter in different Courts, the law has a solution in Code of Criminal Procedure by providing transfer of cases to one jurisdictional Court to avoid multiplicity of proceedings and conflict of decisions. However, that condition is not posed, in this case as there are no parallel proceedings in the Court at Karkala nor any significant legal development has taken place in respect of the investigation of the complaint submitted by Marie Shaila Fereira to Karkala Police. In that view of the matter, I find that the registration of the complaint and investigation conducted by Chikkaballapur Police cannot be assailed as illegal.

Accordingly the petition is dismissed.