

(2016) 01 KAR CK 0117
In the Karnataka High Court
Case No : Criminal Petition No. 11260 of 2013

Manjunath Yolabavi and Others

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Dowry Prohibition Act, 1961 — Section 4

Penal Code, 1860 (IPC) — Section 34, Section 498A, Section 498-A, Section 506

Citation : (2016) 01 KAR CK 0117

Hon'ble Judges : S.N. Satyanarayana, J.

Bench : Single Bench

Advocate : J. Basavaraj, Advocate, for the Appellant; Raja Raghavendra Naik, Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

S.N. Satyanarayana, J.—1. Accused 1 to 3 in C.C. No.715 of 2013 on the file of the JMFC, Bellary, have come up in this petition seeking quashing of the aforesaid proceedings which is initiated for the offences punishable under Sections 498-A and 506 read with Section 34 of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act.

2. Brief facts leading to this petition under Section 482 of the Code of Criminal Procedure are as under:

"The 1st petitioner and 2nd respondent-complainant are the husband and wife. Their marriage was solemnized on 24/06/2010. The said marriage was arranged by the elders of both the families through negotiations of their common relatives and friends. It is stated that at the time of marriage, 1st petitioner a software engineer was working in United Kingdom and his permanent place of residence was at Bellary. His family, at the time of marriage, consisted of himself, his aged mother who is 2nd petitioner and his elder brother, who is 3rd petitioner herein. Besides this, it is also stated that the 1st and 3rd petitioner had one sister by

name Manjula who was married as on that date and was residing in her matrimonial house."

3. The case of the complainant in C.C. No.715 of 2013 is to the effect that after the marriage which took place on 24/06/2010, she lived happily with her husband in the matrimonial house up to 07/08/2010. Thereafter, her husband went back to England where he was working as an engineer. During the period when she lived with her husband in the matrimonial home the relationship between herself, her husband and other members of the family was cordial. It is stated that thereafter she was ill-treated by her mother-in-law and brother-in-law who are 2nd and 3rd petitioner herein. According to her, they treated ill-treated her by abusing physically and mentally by demanding dowry. It is also stated that when she informed this to her husband, he advised her to heed to the demand of his mother and brother and to secure dowry. There is further accusation by the 2nd respondent that at the time of her marriage her studies for MBA was discontinued. Hence, she sought for financial assistance which was rejected on the ground that her parents have not given dowry. Therefore, her husband was not in a position to pay for her education. With these allegations, a complaint was filed by the 2nd respondent on 26/01/2013.

4. It is seen that the said complaint is registered in Crime No. 7 of 2013 and on conducting investigation, the police have filed charge sheet on 03/07/2013 which is registered in C.C. No.715 of 2013 on the file of the I Additional Civil Judge and JMFC, Bellary for the offences punishable under Section 498-A and 506 read with Section 34 of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act. When the matter stood thus, accused 1 to 3 in the said proceedings have come up in this present petition.

5. During the course of argument, it is also stated that, the 2nd respondent-wife has initiated proceedings for restitution of conjugal rights and also for maintenance against her husband under the Prevention of Women from Domestic Violence Act 2005. In the said proceedings, though summons are duly served on her husband, he remained unrepresented. It is further seen that, besides this, she has also approached media in respect of the complaint against her husband, mother-in-law and brother-in-law on the aforesaid accusations. The accused in the proceedings in C.C. No.715 of 2013 have sought for quashing of the proceedings on the following grounds:

6. That when the marriage was negotiated between the parties prior to January 2010, there was no demand for dowry. At the time of bethrotal itself, they had given gift to the complainant. Thereafter also, they have gifted jewels to the complainant at the time of marriage with the 1st petitioner herein. It is contended that from 07/08/2010, the first petitioner was not in India till January 2013. That the 3rd petitioner is permanent employee of Pharma Chemicals Private Limited, Hyderabad, having his residence there. He has been permanently residing there along with his family and at no point of time, he resided in the house at Bellary along with his mother. According to petitioners,

after 07/08/2010, 2nd respondent was residing in the family house at Bellary along with the 2nd petitioner, aged lady having physical infirmities. She is not maintaining good health, is not in a position either to ill-treat or abuse the 2nd respondent. At no point of time, the 2nd respondent was either abused or subjected to demand of dowry by the petitioners. The second respondent not willing stay with her mother-in-law at Bellary, hence she has gone back to her parental house and is staying there and making false allegations against the petitioners.

7. To substantiate that, they have relied upon the complaint which is lodged by the 2nd respondent with police on 26/01/2013 and further statement which is recorded by the police on the next day i.e. on 27/01/2013. On going through the same, it is clearly seen that there is admission on the part of the complainant that at the time of negotiations of marriage on 21/01/2010, the petitioners had clearly stated that they do not seek any dowry from the complainant's family except that they should perform the marriage. In the very said complaint there is reference to the petitioners giving saree, necklace, earring and ankle chain at the time of bethrotal which has taken place on 23/06/2010 i.e. a day prior to the date of wedding. In the said statement she also admits that she was living happily with her husband and other members of the family till 07/08/2010. During the said period, she has gone to Hubli on few occasions when she was not keeping good health thereby indicating that she had some health related problems at that time. Apart from this, there is no other statement indicating any discomfort to her in the matrimonial house.

8. However, it is stated that there was demand for dowry subsequently. She does not state what was the demand with reference to the dowry whether in the form of cash or in the form of immovable property or jewelry. Nothing of that is specifically mentioned except stating that there is demand for dowry. It is also stated that the passport which was issued in her name is detained by the petitioners 2 and 3 preventing her to go to England and in addition to that she has stated she was ill-treated. The nature of ill-treatment is also not properly explained. In the first complaint she has stated that she was physically and mentally abused. Though such a statement is made in the complaint, in further statement there is no reference to physical abuse in any place. On the whole, when the entire complaint and further statement is seen, there is no particulars regarding physical abuse and as well as ill-treatment with reference to the dates and events and also the nature of ill-treatment said to have meted to her.

9. In entirety, if the material available on record is seen except making general statement that she was abused physically and mentally, no particulars are stated with reference to that. Therefore, in this background when the accusations are assessed with reference to the material on record, it is difficult to accept that the 3rd petitioner, who is gainfully employed in Hyderabad, would be staying along with his mother in Bellary between 07/08/2010 to February 2012 for the purpose of harassing this lady. Assuming for a moment, if she has been subjected to

mental and physical torture between 07/08/2010 to February 2012 which is a long period of one year 6 months, she could have furnished the particulars in detail with reference to the nature of physical abuse or mental torture that was meted out to her with reference to the date and time and also the nature of physical abuse and accusation causing mental torture. However, in the complaint and further statement said particulars are not forthcoming in detail.

10. When the aforesaid accusations are seen with reference to the statement made by her before the Officer of the Child Development Project, Bellary city where she had appeared along with her husband 1st petitioner on 16/07/2013. The proceedings which has taken place in the said office is recorded and certified copy of that is furnished to both the parties. A copy of which furnished to 1st petitioner is produced along with the present petition. The said document would clearly indicate that in the proceedings before the Child Development Project Officer, the complainant herself has admitted that there was no demand by the petitioners for dowry and that she has voluntarily stated that the complainant's family has not provided any dowry to the petitioner. She has also admitted that she has committed a mistake in ill-treating her mother-in-law who is 2nd petitioner herein for which she has repented and branded herself. All these would clearly indicate that there is total contradiction in the averments made in the complaint and as well as the statement made before the Child Development Project officer, Bellary.

11. With these what is seen is the discard between the complainant and members of her husband's family is blown beyond proportion and the same is sought to be projected as dowry harassment. In that behalf, the present complaint is lodged by her before the Bellary police. When the statement of the petitioner herself is seen before the Child Development Project Officer, the falsity in the complaint is clearly seen. Therefore, this Court feel with the aforesaid material available on record, question of subjecting petitioners herein to undergo prosecution for a false complaint should not be entertained and the same is required to be dealt accordingly.

12. At this juncture, learned counsel for the petitioner in order to substantiate his contention relied upon the judgment rendered by the Supreme Court in the matter of PREETI GUPTA AND ANOTHER V. STATE OF JHARKHAND AND ANOTHER reported in , AIR 2010 SUPREME COURT 3363 to demonstrate that there should be an endeavor on part of the advocates to see that the difference between husband and wife should not be blown out of proportion. There should be an endeavor to ensure that social fiber, peace and tranquillity of the society is maintained. To demonstrate that the complainant without realizing the implication and consequences of making a false complaint, the same would result in insurmountable harassment, agony and pain to the petitioners and their family.

13. Per contra, learned counsel for the second respondent would rely upon the judgment rendered in the matter of BHASKAR LAL SHARMA AND ANOTHER v. MONICA AND OTHERS reported in , (2014) 3 supreme court cases 383 to

demonstrate that in the instant case, the allegations made in the complaint itself is a sufficient material to demonstrate that the second respondent-complainant was subjected to mental cruelty at the hands of petitioners herein and therefore the complaint which is filed by her should see the logical end, in the petitioners being tried for the offences punishable under Sections 498A and 506 read with Section 34 of IPC and as well as under Section 4 of the DP Act.

14. After hearing the learned counsel for the parties and on going through the said judgment, it is clearly seen that no law is laid down in either of the judgments with reference to filing of the complaint and the manner in which discharge is to be dealt with. All that could be seen is based on the facts with reference to the dispute between the parties in the said proceedings, the Apex Court has expressed its opinion in each of the case and has decided the said proceedings and the finding therein does not amount to precedent which is required to be followed in the present case when the fact situation being different and unique.

15. As discussed supra, in the instant case, the complainant at the first instance has made serious allegations of physical and mental cruelty against her mother-in-law, brother-in-law and husband and also accusation of harassment for dowry and threat to her life. With this background when the material available on record is looked into, neither in the complaint dated 26/01/2013 nor in the further statement dated 27/01/2013 there is any whisper with reference to the threat to her life. The accusation regarding demand for dowry and mental cruelty is not supported in any manner. On the contrary, the statement of the very same complainant before the Child Development Project Officer, Bellary, where she was summoned pursuant to the complaint lodged by herself, she appeared before the said officer where the first petitioner who is the first accused in C.C. No.715 of 2013 was also present, in the presence of the first accused in the aforesaid proceedings, the complainant has clearly accepted that at no point of time there was demand for dowry by accused Nos. 1 to 3 in C.C. No.715 of 2013 and she has also stated that no dowry was paid by her family to the petitioners herein thereby indicating that her accusation in the complaint with reference to Section 498-A is without any basis and false.

16. It is further seen that so far as the allegation of threat to her life is concerned, there is no such averment in the entire complaint or in the further statement. On the contrary before the Child Development Project Officer she herself has admitted that she has repented for herself using bad language against her mother-in-law and she has voluntarily stated before the said officer that she has subjected herself to punishment of branding herself and though serious allegations are made by her against her brother-in-law who is 3rd accused in the Court below with reference to his involvement of causing mental and physical abuse to her continuously, it is seen that the said person is permanently residing at Hyderabad and working in a Private company. Therefore, the presumption that he would be available on all week ends to harass this lady

is also without any basis. On the basis of the admission before the CDO, Bellary, it is seen that the accusation against him is also incorrect.

17. In that view of the matter this Court feel that when there is no sufficient material to substantiate the allegations made against petitioners 1 to 3 herein subjecting them to undergo the torture of facing the prosecution is nothing but a futile exercise when they have already undergone trial before the media coming before all general public and subjecting them to humiliation in the presence of their family, friends and relatives. Therefore, this Court feel that in the fact circumstances, permitting the complainant to continue the false complaint lodged by her against petitioners 1 to 3 which has resulted in a criminal complaint being filed in 715 of 2013 on the file of JMFC, Bellary, would be an exercise in futile. Hence, the same is required to be quashed. Accordingly, by allowing this petition the aforesaid proceedings in C.C. No.715 of 2013 on the file of the JMFC, Bellary, is hereby quashed.