
(2011) 12 AP CK 0117

In the Andhra Pradesh High Court

Case No : Criminal P. No. 7700 of 2008

Mrs. Ateyka Fatima Khatoon

APPELLANT

Vs

The State and others

RESPONDENT

Date of Decision : 26-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 154(2), 156, 156(3), 157
Dowry Prohibition Act, 1961 — Section 4, 6
Penal Code, 1860 (IPC) — Section 326, 498A

Citation : (2012) 2 ALT(Cri) 58

Hon'ble Judges : G. Krishna Mohan Reddy, J

Bench : Single Bench

Judgement

G. Krishna Mohan Reddy, J.—This petition is filed u/s 482 Cr.P.C. with the following prayer:

To direct the Station House Officer, Nampally Police Station to investigate in Crime No. 33 of 2008 dated 12.2.2008 properly by recording the statements of petitioner/complainant's father, mother, brothers etc. or alternatively to direct the City Women Protection Cell to investigate into the matter by recording the statements of petitioner/complainant's father, mother, brothers etc., and file proper charge sheet and direct the investigating officer to seize the visa and passport of the petitioner's husband Mr. Mohammed Abdul Moid Khan immediately as he is likely to leave India at any time and to direct the Investigating Officer to arrest all the accused as they committed cognizable and non-bailable offences as there is possibility of tampering evidence.

2. The petitioner is the defacto complainant and the respondents 2 to 4 are the accused in the above crime. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the crime.

3. The complainant lodged complaint against the accused for harassing her physically and mentally and demanding additional dowry, which was registered as F.I.R.No. 33 of 2008 dated 12.2.2008 under Sections 498-A and 326 IPC and

under Sections 4 and 6 of the Dowry Prohibition Act. Subsequently, the Station House Officer filed final report to the effect that he examined the father of the complainant namely Laiq Ali Khan and brothers of the complainant namely, Asad Ali Khan and Mudasar Ali Khan apart from examining and recording the statement of the complainant and those statements would prove that the case of the complainant was false with a plea to close the matter.

4. It is contended on behalf of the complainant that without giving any notice to the complainant, the final report was accepted by the learned Magistrate and in fact no statements of her father, mother, brothers and herself were recorded by the SHO and a false statement was given by the SHO and therefore the final report and also taking cognizance of it by the learned Magistrate are not tenable and hence the matter is to be reopened. It is also contended by him that by virtue of Section 173(8) Cr.P.C., the learned Magistrate got every right to order for the re-investigation of the case and in the circumstances of the case, the complainant got no belief in the investigating agency which filed the final report and therefore requested to order fresh investigation of the case through Women Protection Cell, Hyderabad. In support of his contention, the learned counsel has relied upon the decision in Bhagwant Singh Vs. Commissioner of Police and Another,

5. The learned Additional Public Prosecutor has contended that necessary orders may be passed basing upon the record available.

6. The point for consideration is whether the plea is acceptable or not.

7. Section 154 Cr.P.C. deals with the question of giving information to the police in cognizable cases. Section 156 Cr.P.C. deals with the powers of police officers to investigate cognizable cases without the order of Magistrate or upon the complaint forwarded by a competent Magistrate to conduct necessary investigation of the case, Section 157 Cr.P.C. deals with the procedure for the investigation of the case by the police. Section 173 Cr.P.C. deals with the question of filing final report after the completion of the investigation of the case. Sub-clause (2) of clause (2) of Section 173 contemplates that the officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

8. In BHAGWANT SINGH v. COMMISSIONER OF POLICE (supra), it was observed as under:

In a case where the Magistrate to whom a report is forwarded under sub-section (2) of Section 173 decides not to take cognizance of the offence and to drop the proceedings or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. However, either from the provisions of the Criminal P.C. or from the principles of natural justice, no

obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased for providing such person an opportunity to be heard at the time of consideration of the report can be spelt out, unless such person is the informant who has lodged the F.I.R. But even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report."

It was further observed as under:

If the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognized by the provisions contained in sub-section (2) of Section 154 sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173 in that the officer of the police station has u/s 157(2) to notify the fact to the first informant that he is not going to investigate the case or cause it to be investigated and u/s 173(2)(ii), the said officer is obligated to communicate to the informant the action taken by him and the report forwarded by him to the Magistrate, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process.

9. Therefore, there is no provision which obligates the learned Magistrate to issue such notice to the complainant and that obligation is fastened to the investigating officer u/s 173(2) Cr.P.C. The decision cited mandates the learned Magistrate to do so, by reason of which he cannot avoid the responsibility. The police may not carry out their legitimate duties owing to several reasons, which prompts to take necessary measures to hear the complainant before taking the final action in the matter. If the police records are sufficient to take cognizance of the case, the final report need not be accepted and it continues to be a police case.

10. It is quite emphatical that the complainant is alleging that without recording the statements of her parents and brothers, the SHO sent the final report claiming that the case of the complainant happened to be nothing but false. When such a claim is made, it is necessary to ascertain as to whether that fact is

true or not. When the complainant filed the complaint before the Magistrate and it was forwarded to the SHO u/s 156(3) for necessary investigation and report and subsequently the SHO filed the final report, the learned Magistrate should have given a notice to the complainant and also given her an opportunity of being heard before accepting the final report. There is no record to the effect that in fact the learned Magistrate complied with the same procedure or the provision of law in that behalf. Therefore, in my opinion the learned Magistrate committed error in doing so under such circumstances.

11. Further, it is also very significant that the complainant is apprehending that the same SHO would not conduct fair investigation of the case. Hence it is necessary to see that justice is done to both the accused and also accuser taking all necessary measures.

12. It is also contended on behalf of the complainant that in the facts and circumstances of the case, the Magistrate may be directed to order for the re-investigation of the case or investigation through Women Protection Cell, Hyderabad.

13. For the reasons discussed above, the order of the learned Magistrate accepting the final report is set aside and the learned Magistrate is directed to give notice to the complainant and to hear both the parties and pass appropriate orders taking into consideration the representation made by the learned counsel for the complainant for conducting necessary investigation through the Women Protection Cell, Hyderabad. The Magistrate has to act judiciously for the purpose of doing justice to the complainant and also the accused.

The criminal petition is accordingly disposed of.