

(2021) 11 TEL CK 0009
In the Telangana High Court
Case No : Criminal Petition No. 4338 Of 2018

Nanda Srinivas A4 And Another

APPELLANT

Vs

State Of Telangana And 2 Others

RESPONDENT

Date of Decision : 02-11-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 155(2), 156(i), 482
Indian Penal Code, 1860 — Section 498A, 506
Dowry Prohibition Act, 1961 — Section 3, 4
Protection Of Women from Domestic Violence Act, 2005 — Section 12

Citation : (2021) 11 TEL CK 0009

Hon'ble Judges : N. Tukaramji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This Petition is filed under Section 482 of Criminal Procedure Code, 1973 (Cr.P.C.) to quash the charge-sheet dt.31.07.2017 in C.C.No.362 of 2017 on the file of II Additional Judicial Magistrate of First Class, Mancheri, Mancheri District.

2. The petitioners herein are accused Nos.4 and 5 for the alleged offences under Sections 498-A, 506 of Indian Penal Code (I.P.C.), Sections 3 and 4 of Dowry Prohibition Act, 1961 (D.P. Act).

3. The case of the prosecution in brief is that basing on the report of 3rd respondent / de facto complainant, a case in Crime No.24 of 2017 dt.10.07.2017, and a charge-sheet was filed on 31.07.2017. The Court has taken cognizance and numbered the case as C.C.No.362 of 2017 and commenced trial.

4. The brief facts of the case :

(i) The 3rd respondent / de facto complainant case is that, she was married to 1st Accused. In the marriage, Rs.12 lakhs as cash, Gold ring, Gold chain, 1 ½ tolas of Gold and house-hold articles worth Rs.1 lakh were presented. Thereafter,

the 3rd respondent joined matrimonial home at her in-law's house.

(ii) Later, as her husband / 1st accused got a private employment, shifted the family to Hyderabad and there he started harassing her by suspecting fidelity, and while going out he used to lock her in a room. However, after a period of one month, they returned to in-law's house.

(iii) There, all the accused including the petitioner herein started harassment by commenting that she is idle and even used to beat her. In addition, on instigation, her husband harassed her both mentally and physically for additional dowry. They even used to neck her out from the house in the midnights and allowed her on obsecrations.

(iv) Further, her parents got conducted panchayat in the presence of elders, but there was no change in the attitude of the accused.

(v) In 2016, when she gave birth to a female child and on 15.06.2016, and her husband, in-laws / Accused nos.1 to 3 and the brothers in law / petitioners, attended a function and demanded additional dowry of Rs.5,00,000/- and picked up quarrel by stating that if the additional dowry is not paid they will not name the child and will perform another marriage to her husband and threatened with dire consequences.

5. Therefore, she lodged police report. Basing on it, case in Crime No.24 of 2017 under Section 498-A, 506 of IPC and Sections 3 and 4 of D.P. Act was registered. After due investigation, the charge-sheet was filed.

6. (i) The counsel for petitioner vehemently contested that the allegations narrated in the complaint or the charge-sheet is not referring to any involvement of petitioners / accused nos.3 and 4 in the offence, much less any prima facie case for penal action. On this count alone, the present petition shall be allowed.

(ii) He further pleaded that petitioners are married and due to their occupations, they are living separately at different places. Therefore, the question of harassment by them shall not arise.

(iii) In addition, the complaint filed by the 3rd respondent / de facto complainant vide DVC.No.13 of 2017 on the file of II Additional Judicial Magistrate of I Class, Mancherla, was dismissed against the petitioners / 3rd and 4th accused, and after analyzing the material on record, the Court categorically held that they are not living in shared house-hold, as such the question of harassment by them is incorrect.

(iv) Furthermore, as the averments in the police report are of self-same facts to that of the complaint under DVC Act, and the learned Magistrate after enquiry concluded that the petitioner / accused nos.3 and 4 are not residing together and not liable, the charge-sheet shall be quashed against them.

7. (i) In contrast, the learned counsel for the de facto complainant / 3rd respondent and the learned Public Prosecutor submitted that in the police report

there is specific mention about the presence of the petitioners and their overt acts in demanding additional dowry. The police, after investigation, also filed charge-sheet against all the accused including the petitioners.

(ii) Further pleaded that the scope of enquiry under Section 12 of the DVC Act is distinct to that of the alleged offences in the criminal case. In the DVC case, the learned Magistrate considered the aspect of shared house-hold but not any factor of offence as alleged in the criminal case, as such, those observations cannot be taken for concluding any fact in the present case. Howsoever, for meting out harassment, the offender need not reside together and even on occasional visits may commit acts of harassment. The mere fact of separate residence cannot be conclusive, and at any rate, the observations in DVC cannot be a ground to quash the proceedings. The alleged acts of offence shall be ascertained during trial. Thus, prayed for dismissal of the criminal petition.

8. Now the point arises for determination is "whether the petitioners could make out tenable grounds for quashing the criminal proceedings as prayed for?".

9. Insofar as the question to be considered for the purpose of quashment of criminal proceedings either under writ or inherent jurisdiction, the guiding beacon is the dictum of the Hon'ble Supreme Court in State of Haryana and others vs. Ch. Bhajan Lal and others AIR 1992 SC 604 wherein the factors are enlisted for consideration in quashing of criminal proceedings.

10. For better appreciation, they are extracted hereunder, viz.,

(i) where the allegations made in the FIR or the complaint, even if they are taken at their face value, accepted in their entirety, do not prima facie constitute any offence or made out case against the accused;

(ii) where the allegations in the FIR and other materials, if any, accompanying do not disclose cognizable offence and under Section 15(6)(i) of the Code except an order of an magistrate within the purview of Section 155(2) of the Code;

(iii) where uncontroverted allegations made in the FIR are complained and the evidence collected in respect of the same do not disclose the commission of any offence and make out the case against the accused;

(iv) where the allegations in the FIR do not constitute a cognizable offence to constitute only a non-cognizable offence, on investigation, is permitted by a police officer without an order of a magistrate as contemplated under Section 155(2) of the code;

(v) where the allegations made in the FIR or complaint are inherently on the basis of which no prudent person can ever reach the just conclusion that there is sufficient grounds for proceedings against the accused;

(vi) where there is express legal bar engrafted in the Code or the concerned Act under which the criminal proceedings are instituted much to the institution and continuance of the proceedings and / or where there is a specific provision in the

code or the concerned Act, if any efficacious redress for the grievance of the third-party;

(vii) where the criminal proceedings is manifestly attended with malafide and / or where the proceedings is maliciously instituted with ulterior motive for wrecking vengeance on the accused and with a view to smite him due to private and personal grudge.

11. In the light of the above legal principles, when the facts on hand are considered the 2nd respondent / de facto complainant, in the report, named the petitioners / 3rd and 4th accused and referred to certain instances and overt acts. The police after due investigation filed final report supporting the version given in the police report. The Court has accepted the final report and taken cognizance, proceeded by framing charges and trial, which means the Trial Court had found prima facie material on file even against the petitioners.

12. Further, the claim of petitioners / 3rd and 4th accused that the accusations are vague and not sufficient to prove the case against them is found to be incorrect as there are instances particularly referred against the petitioners. In addition, this Court at this stage, shall not meticulously examine the evidence placed on record to arrive at conclusions. That apart, not being in shared household ipso facto does not lead to any conclusion that the non-resident person cannot commit an act of harassment. As such, these pleas are misconceived and misplaced.

13. Therefore, I am of the opinion that the circumstances noted above are making out a case for trial to find out the truth or otherwise of the accusations and, in effect, the trial would serve the ends of justice.

14. In the circumstances, it can be concluded that the material relied on by the petitioners is not sufficient to reject factual assertions contained in the complaint and charge-sheet.

15. Consequently, it shall be held that petitioners / 3rd and 4th accused could not make out any tenable ground for quashing the charge-sheet and the criminal proceedings. Accordingly the Criminal Petition is liable to be dismissed.

16. In the result, the Criminal Petition is dismissed. No costs.

17. As a sequel, miscellaneous petitions pending if any in this petition, shall stand closed.