
(2001) 09 KAR CK 0023

In the Karnataka High Court

Case No : Writ Petition No"s. 28650 to 28655 of 2001

Naresh Babu and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 07-09-2001

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 498A

Citation : (2001) CriLJ 4435 : (2003) 1 DMC 416 : (2002) ILR (Kar) 228 :
(2002) 1 KarLJ 218 : (2002) 3 KCCR 235 SN

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Madhumitha Bagchi, for the Appellant;

Final Decision : Dismissed

Judgement

R. Gururajan, J.—The petitioners are before this Court seeking for an order to quash the F.I.R. lodged u/s 498-A of the Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act, 1961 in response to a complaint made by the 3rd respondent in Vijayanagar Police Station, dated 22-7-2001 and prevent the 1st respondent going to the petitioners houses and their working places and harassing.

2. The petitioners are none other than the relatives of the husband, Sri K. Naresh Babu, who is the husband of the 3rd respondent. According to the petition averments, the first petitioner is married to the 3rd respondent in the year 1992. They are staying separately at Tiptur. The 3rd petitioner is the sister-in-law of the 3rd respondent. According to the petition averments, the husband of the 3rd respondent suffered an accident and instead of taking good care of the 1st petitioner, the 3rd respondent was negligent to her husband and she has taken a decision to be away from her husband stating that her husband is no longer capable of taking care of the family. Repeated efforts were made to get back the 3rd respondent to the residence of the first petitioner. But the 3rd respondent,

according to the petition averments, refused all the requests best known to her. She has filed a Matrimonial Case No. 84 of 2001 before the Family Court in Bangalore.

3. The petitioners 1 to 4 filed a petition in Miscellaneous No. 1403 of 2001 seeking for an anticipatory bail. The 3rd respondent filed a complaint in terms of Annexure-A and the same was treated as F.I.R. by the authorities. The Police Constables visited the petitioner on 7-7-2001. According to the petitioner, the F.I.R. is unjustified. It is a mala fide complaint. The allegations made in the petition are utter falsehoods and vague and filed with a motive intention. The petitioner says that criminal laws cannot be set in motion as a matter of course and the further investigation by the respondents is unsustainable. The petitioners want this Court to quash the F.I.R. registered by the Vijayanagar Police Station in the case on hand.

4. Heard Smt. Madhumitha Bagchi, Counsel for the petitioners at great length. She states that there is no harassment as such committed by any one of the petitioners. She also says that there is an enormous delay in the matter. She further says that the facts do not warrant any proceedings in terms of Section 498-A of the Indian Penal Code. The Counsel for the petitioners refers to the following judgments in support of her case:

1. Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, ;
2. State of West Bengal and Others Vs. Swapan Kumar Guha and Others, , :
3. R.P. Kapur Vs. The State of Punjab, ;
4. Ramanlal Bhogilal Shah and Another Vs. D.K. Guha and Others, ;
5. M.V. Joshi Vs. M.U. Shimpi and Another, ;
6. W.H. King Vs. Republic of India and Another, ;
7. Smt. Sarla Prabhakar Waghmare Vs. State of Maharashtra and others, .

5. After hearing the Counsel at great length, I have perused the material placed before this Court.

6. It is an admitted fact that the 3rd respondent is married to the first petitioner. It is also an admitted fact that the petitioners 2 to 5 are related to the 1st petitioner, who is none other than the husband of the 3rd respondent. The 3rd respondent has filed a complaint before the Police authorities. In the complaint, she has alleged mental and physical torture to her by the petitioners. She has also stated that she was given in marriage to the 1st petitioner in the year 1992 on the assurance that the 1st petitioner was to get a Government job after marriage. Even after marriage, he had no employment, whatsoever. They have to depend upon the other family members for their day-to-day living. She has alleged of frequent quarrel by her mother-in-law and she has also complained that her mother-in-law used to hit her and scold her. She has stated that at the

instance of her mother-in-law, her husband used to hit her with iron bar. Her sister-in-law, Smt. K. Padmini used to scold her in a bad taste. Her mother-in-law wants a sum of Rs. 50,000/- in the matter. She has further stated that on 20-7-2001, when she had gone to Vijayanagar bus stop, her husband threatened her not to go to the Police Station and to bring a sum of Rs. 25,000/-, otherwise he would kill her. In the light of this complaint, the respondents have initiated proceedings in terms of Section 498-A of the Indian Penal Code read with Sections 3 and 4 of the Dowry Prohibition Act, 1961. The petitioners want these proceedings to be quashed in a writ petition. It is a well-settled principle of law that a writ Court is to be very careful in the matter of quashing of the proceedings at the threshold at the instance of the parties. Here is a case where the 3rd respondent-wife is complaining about the members of her husband's family. The allegations, prime facie indicate some omissions and commissions on the part of the accused. The same requires to be investigated. No exception can be taken for initiation of the proceedings in terms of the complaint. It is a well-settled law that the wheels of criminal justice has to be moved at the instance of an aggrieved party. The investigating agencies cannot shut their eyes and keep the petition pending. If the argument of the petitioner is accepted, no case can be initiated at the instance of a wife before lower Courts. Moreover, these are the matters that require evidence of facts. The cases cannot be decided by mere affidavits. The petitioners have all the opportunities to place their objections/evidence before the appropriate Forums. The Counsel for the petitioners is unable to show that the investigating agency has no jurisdiction or power in the matter. In these circumstances, I am not inclined to accede to the request of the petitioners.

7. The Counsel for the petitioners strongly relies on various judgments in support of the case.

8. The first judgment is in M/s. Pepsi Foods Limited's case, supra. That was a case in which the Court has considered the powers of the High Court u/s 482 of the Indian Penal Code, vis-a-vis the jurisdiction under Article 226 of the Constitution of India. The facts of the case, if read carefully, would show that, the case stands on entirely different footing. In fact, in this case, the Court has noticed that Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate Courts. That was a case in which the Magistrate initiated proceedings by summoning the accused. The Court noticed that the complaint does not make out any case against the petitioner. That case is clearly distinguishable on facts.

9. The 2nd case is in Swapan Kumar Guha, supra. That was a case dealing with Prize Chits and Money Circulation Schemes Act, 1978. That was a case in which the Court was considering with regard to a scheme under the Act. The Court noticing F.I.R. in that case has ruled that the F.I.R. does not allege, directly or indirectly, that the firm was promoting or conducting a scheme for the making of quick or easy money, dependent on any event or contingency, relative or

applicable to the enrolment of members into the scheme. In the case on hand, no such interpretation is called for. Therefore, the said judgment is equally not applicable to the facts of this case.

10. The 3rd judgment relied on by the Counsel is R.P. Kapur's case, *supra*. In this case, the Supreme Court has noticed in para 6 that the inherent powers of the High Court u/s 561-A cannot be exercised in regard to the matters specifically covered by the other provisions of the Code. The inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily, Criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. In the case on hand, no acceptable grounds are pointed out to the Court except complaining about the attitude of the wife in the case on hand.

11. Similarly, the judgment in Ramanlal Bhogilal Shah's case, *supra*, is with regard to an F.I.R. lodged alleging offences *inter alia* under Foreign Exchange Regulation Act. The facts of the case would not comply to the case on hand.

12. The judgment of the Supreme Court in W.H. King's case, *supra*, is absolutely no application to the facts of this case. It was a case in which the Court was considering Hotels and Lodging Houses Rates (Control) Act.

13. The last judgment relied on by the Counsel is Smt Sarla Prabhakar Waghmare's case, *supra*. That was a case of Section 498-A of the Act. In fact, a careful reading of this judgment would show that a criminal revision petition was filed against the order of a learned Magistrate regarding a finding that an offence u/s 498-A is not made out. It was a case of an acquittal. It was not a case where F.I.R. is set aside at the instance of a party as in the present case. In fact, in the said case, the Court noticed in para 3 "After going through her evidence, it does not appear that she has conclusively established that the beating and harassment was with a view to force her to commit suicide or to fulfill the illegal demands of the non-applicants". In the case on hand, the petitioner even without evidence wants this Court to come to the rescue with regard to an offence u/s 498-A of the Act.

14. As mentioned earlier, each case has to be weighed on the material facts with regard to a prayer to quash the proceedings. In the case on hand, no such exceptional circumstances regarding jurisdiction is shown to me.

15. On the other hand, it is relevant to notice three leading judgments with regard to quashing of proceedings in a petition by the High Court.

16. In Sewakram Sobhani Vs. R.K. Karanjia Chief Editor, Weekly Blitz and Others, the Supreme Court has ruled that "the order recorded by the High Court

quashing the prosecution u/s 482 of the Code is wholly perverse and has resulted in manifest miscarriage of justice. The High Court has prejudged the whole issue without a trial of the accused persons. The matter was at the stage of recording the plea of the accused persons u/s 251 of the Code. The requirements of Section 251 are still to be complied with".

17. Again in *Shatrughna Prasad Sinha v. Rajbhau Surajmal Rathi*, the Supreme Court has ruled that "as regards the allegations made against the appellant in the complaint filed in the Court of Judicial Magistrate, I Class, at Nasik, on a reading of the complaint we do not think that we will be justified at this stage to quash that complaint. It is not the province of this Court to appreciate at this stage, the evidence or scope of and meaning of the statement. Certain allegations came to be made but whether these allegations do constitute defamation of the Marwari community as a business class and whether the appellant had intention to cite as an instance of general feeling among the community and whether the context in which the said statement came to be made, as is sought to be argued by the learned Senior Counsel for the appellant, are all matters to be considered by the learned Magistrate at a later stage. At this stage, we cannot embark upon weighing the evidence and come to any conclusion to hold, whether or not the allegations made in the complaint constitute an offence punishable u/s 500".

18. Recently, the Supreme Court, in the latest case in *M.N. Damani Vs. S.K. Sinha and Others*, , ruled in paras 7 and 10 that:

"Questions whether imputations were made in good faith, in what circumstances, with what intention etc., are to be examined on basis of evidence in the trial hence, trial must go on" .

The Supreme Court reversed the judgment of this Court in quashing the complaint as not proper. In the light of the latest law on the subject, this case has to follow the dictum in *M.N. Damani's* case, *supra*. Therefore, at present, the F.I.R. cannot be quashed on the same analogy as in this case (*M.N. Damani's* case, *supra*).

19. In the result, these petitions stand rejected.

20. However, it is clarified that the observations made in this order shall not be construed to be any findings on merits of the matter.