

(2010) 06 KAR CK 0103

In the Karnataka High Court

Case No : Criminal Revision Petition No. 578 of 2010

Puttaraju M., M. Ramaiah @ Ramanna, M. Shanthamma and
M. Suresh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-06-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, 143, 149, 305, 498A

Citation : (2010) 06 KAR CK 0103

Hon'ble Judges : Arali Nagaraj, J

Bench : Single Bench

Advocate : G. Jairaj and Associates, for the Appellant; Vijayakumar Majage, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Arali Nagaraj, J.—Petitioner Nos. 1 to 4 herein who are respectively accused Nos. 2 to 5 in S.C. No. 294/2009 pending on the file of the learned Presiding Officer, Fast Track Court-III, Bangalore Rural District, Bangalore, (hereinafter referred to as the "Trial Court" for short) have challenged the correctness of the order dated 08.04.2010 passed in the said case rejecting their application filed u/s 227 of Cr.P.C. seeking an order discharging them of the offences under Sections 498A, 143, 114, 305 r/w Section 149 of IPC for which they have been chargesheeted by the police of Hosakote P.S. Bangalore Rural District.

2. Though this matter is listed for admission, having regard to the nature of the impugned order and the offences alleged against these petitioners-accused and also the facts and circumstances of the case, it is taken for final disposal and the arguments of Sri H. Rajanna, the learned Counsel for the revision petitioners and Sri Vijaykumar Majage, the learned HCGP are heard. Perused the impugned order and the copies of the complaint, FIR, statements of the witnesses and other documents placed on record by the petitioners.

3. The complainant H.M. Basavaraj, the father of the deceased Smt. Rashmi, who was the wife of accused No. 1 in the said case of whom petitioner Nos. 1 to 4 are relatives, filed his complaint dated 15.06.2009 before the SHO of Hosakor P.S. On the basis of the said complaint, a case in Crime No. 278/2009 of the said P.S. came to be registered against all these four petitioners-accused and also the said Chandran, the husband of the deceased and one Gopal. After completion of the investigation, the said police submitted chargesheet against these petitioners respectively as accused Nos. 2 to 5 and Chandran, the husband of the deceased as accused No. 1. However, Gopal who was shown as accused No. 6 in the FIR has not been sent up for trial.

4. On the said chargesheet, Sessions Case No. 294/2009 came to be registered. At the stage of hearing the arguments of both the sides on the question of charge, the petitioner Nos. 1 to 4 herein filed their application u/s 227 Cr.P.C. seeking their discharge from all the said offences. The Trial Court, by its impugned order, rejected the said application and framed charge against all the accused Nos. 1 to 5 including the petitioner Nos. 1 to 4 herein (who are respectively accused Nos. 2 to 5) for the offences under Sections 143, 498A read with Section 149, Section 114 r/w Sections 306 and 149 IPC and also u/s 306 r/w Section 149 of IPC. The said order is challenged in this revision.

5. Stated in brief the case of the prosecution as alleged in the complaint dated 15.06.2009 filed by the complainant H.M. Basavaraj, the father of the deceased Smt. Rashmi is as under:

a) Eldest daughter of the complainant, namely the deceased Rashmi, was given in marriage to accused No. 1 Chandran and her marriage with him was performed about nine years ago. After the said marriage, the accused No. 1, Chandran started ill-treating the deceased physically and mentally in respect of dowry. The deceased was telling before the complainant that her husband was ill-treating her under the influence of liquor coercing her to bring a sum of Rs. 2,00,000/- and the elder brothers of her husband viz., Puttaraju (A2), Ramanna (A3), his elder sister Shantamma (A4) and his younger brother Suresh (A5) were instigating him in that regard.

b) There was a panchayat in respect of the said ill-treatment in the presence of 4-6 elderly persons. About 10 days prior to the date of the said complaint, the husband of the deceased (A1) ill-treated her by beating, coercing her to bring a sum of Rs. 1,00,000/- for getting admission of his son to the School. This fact was informed to the complainant by the deceased. The accused No. 1 also telephoned to the complainant and threatened that if he were not to give him Rs. 1,00,000/- he would not leave the deceased alive. The complainant recorded the conversation between his deceased daughter and himself in the mobile phone.

c) On 15.06.2009 at about 1.23 a.m. the accused No. 1 telephoned to the complainant from his mobile phone and informed that the deceased Smt. Rashmi committed suicide by hanging herself to the fan in his residence. Therefore, the

complainant filed the said complaint suspecting that accused Nos. 1 to 5 respectively Chandran, the husband of the deceased, Puttaraju and Ramanna brothers of Chandran, Smt. Shantamma, the elder sister of Chandran and also Suresh, the younger brother of Chandran together committed murder of the deceased by hanging her to the fan in their residence.

6. Learned Counsel for the petitioners-accused strongly contends that the averments in the complaint, even if taken at their face value and in their entirety do not constitute any of the offences under Sections 498A, 143, 114, 306 r/w Section 149 IPC, and therefore the impugned order rejecting the application of these petitioners seeking their discharge and framing of the charge against all these petitioners-accused for the said offences deserves to be set aside.

7. Per contra, Sri Vijaya kumar Majage, the learned HCGP contends that further statement of the complainant, the statement of Rakshith, who is none other than eight year old son of the accused No. 1 and the deceased, and also the statements of other witnesses recorded u/s 161 of Cr.P.C by the I.O. during investigation clearly establish a prima facie case against all these petitioners - accused for the offences under Sections 498A and 306 both r/w Section 109 of IPC and therefore these petitioners accused cannot be discharged of all the said offences. However, he fairly concedes that framing of charge against all the accused Nos. 3 to 5 in the said case for the offences under Sections 143, 498A r/w Section 149, Section 114 r/w Sections 306 and 149 of IPC and also for the offence u/s 306 r/w Section 149 is not correct. While submitting so, he further contends that the Trial Court ought to have framed charge against accused No. 1 for the offences under Sections 498A and 306 IPC and against accused Nos. 2 to 5 for the offences under Sections 498A r/w Section 109.

8. The averments in the complaint extracted supra clearly disclose that accused No. 1, being husband of the deceased, was ill-treating her in connection with his demand for money under the instigation of accused Nos. 2 to 5 who are all his close relatives. It also discloses that as a result of the ill-treatment given to her by accused No. 1, she might have committed suicide or pursuant to the said ill-treatment the accused No. 1 and his relatives might have murdered her by hanging her to the fan in their residence. However, charge sheet is not filed for the offence u/s 302, against any of the accused nor is it the finding recorded by the Trial Court that there is any material against any of the accused for the offence u/s 302 IPC. Therefore, it is clear that the deceased committed suicide.

9. On careful reading of the statement of Rakshith the eight year old son of the deceased, it could be seen that he has stated in clear terms that his. father viz., accused No. 1 Chandran used to take him to the house of his (A1's) elder brother Puttaraju (A2) to which house the other accused viz., Ramanna (A3), Shantamma (A4) and Suresh (A5) used to come and they all used to have liquor and instigate Ai Chandran saying that he should coerce his wife (deceased) to bring money from her parents and in case of her failure to do so, he should beat and expel her from his house. This boy has further stated that as a result of the

said instigation by A2 to A5, A1 Chandran used to ill-treat his deceased wife every night by beating. This boy has also stated in his statement that about 10 days prior to the death of his deceased mother, she was ill-treated by her husband in connection with his demand for Rs. 1,00,000/-.

10. Thus, the statement of the said boy prima facie constitutes as against accused Nos. 2 to 5 (petitioners herein) an offence of abetment of ill treatment, by the accused against the deceased. The offence u/s 306 of IPC itself is abetment to suicide. Therefore there cannot be abetment to this offence. Hence, as rightly submitted by the learned Counsel for the petitioners-accused, the Trial Court committed serious error in framing charge against all the accused Nos. 1 to 5 therein for the offences u/s 114 r/w Sections 306 and 149 and Section 306 r/w Section 149 of IPC. There is no dispute that the Trial Court was not justified in framing charge against all the accused Nos. 1 to 5 for the offences u/s 143 of IPC and also Section 498A r/w Section 149 of IPC.

For the reasons aforesaid, the present revision petition is allowed in part. The impugned order insofar as it relates to rejection of the application of these petitioners 1 to 4 (respectively accused Nos. 2 to 5 before the Trial Court) is hereby set aside. The said application is allowed in part. Charge framed against all the accused Nos. 1 to 5 therein for the offences under Sections 143, 498A r/w Section 149 IPC, Section 114 r/w Sections 306 and 149 IPC and for the offence u/s 306 r/w Section 143 IPC is hereby set aside. The Trial Court shall frame charge against accused No. 1 Chandran for the offences under Sections 498A and 306 of IPC and against accused Nos. 2 to 5 therein for the offence u/s 498A r/w Section 109 of IPC and proceed with the trial of the case.