
(1997) 01 AP CK 0046

In the Andhra Pradesh High Court

Case No : Criminal R.C. No. 946 of 1996

S. Basheer Ahmed and Others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 24-01-1997

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4, 6
Penal Code, 1860 (IPC) — Section 498A

Citation : (1997) 1 ALD(Cri) 816 : (1997) 2 ALT(Cri) 66 : (1997) 2 DMC 456

Hon'ble Judges : B.S. Raikote, J

Bench : Single Bench

Advocate : E.S. Ramachandra Murthy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Raikote, J.—This Criminal Revision Case is filed by accused Nos. 1,2 and 3 against the order of the I Additional District Munsif, Cuddapah, dated 4.11.1996 passed on his file in CrI. M.P. No. 1153 of 1996 in C.C. No. 164 of 1996. The Court below has rejected the said CrI. M.P. No. 1153/96 filed by the petitioners. It is to be noted at this stage itself that the petitioners were charge-sheeted for the offences Under Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961 and u/s 498(A) of I.P.C. The petitioners filed the said Cr.M.P. for discharging and acquitting them of the alleged offences in view of the judgment of the Hon'ble Supreme Court in a decision in "Common Cause A Registered Society v. Union of India" 1996 CrI.LJ 2380, but by the impugned order the Court below has rejected that CrI. M.P. Hence, the petitioners have preferred this present Criminal Revision Case.

2. The learned Counsel appearing for the petitioners strenuously contended that the impugned order is illegal and contrary to the judgment of the Supreme Court supra and the subsequent judgment of the Supreme Court dated 28.11.1996 in "Common Cause A Registered Society v. Union of India", 1 (1997) CCR248(SC).

WP (C) No. 1128 of 1986, SC, dated 28.11.1996, on the basis of which the Hon'ble Supreme Court has issued a Circular dated 23.12.199 in Roc. No. 976/96/O.P. Cell-E-II.

3. I have given very anxious consideration to the case. It is not in dispute in this case that on the basis of the complaint filed by Sahira Banu, the wife of the accused No. 1, alleging that A-I and his parents A-2 and A-3 were harassing her and demanding her to bring more dowry, police have registered the case in Crime No. 33/91 and later filed a charge-sheet on 21.8.1991 and the Court below took cognizance of the offence on 5.9.1991 and thereafter the case was posted on 27.9.1991 for appearance of the accused petitioners. Meanwhile petitioners preferred a Criminal Petition before this Court for quashing the proceedings in Criminal P. No. 734/93, there was an interim order granted by the High Court by staying the proceedings on 10.3.1993 and later the said interim order of stay was vacated on 27.4.1994. Thereafter, the petitioners again filed Criminal Petition No. 325/95 for not discharging them. In that case also the Hon'ble High Court granted stay on 13.6.1995 and the same was subsequently vacated on 25.7.1995. These facts are not disputed in the case. But the contention of the learned Counsel for the petitioners is that a case is pending for the last 5 years and the trial has not commenced and as per the guidelines issued by the Hon'ble Supreme Court in supra particularly under para (f) of the directions the petitioners are entitled to be discharged of the offences under Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961 which are punishable with an imprisonment for not more than two years. The learned Counsel for the petitioner further submitted that the Court below has erred in holding that the delay in the disposal of the case was due to non-cooperation of the accused persons. He further submitted that in fact the delay in the disposal of the case cannot be attributable to the accused. The petitioners no doubt obtained stay in Crl. M.P. No. 734/93 on 10.3.1993 but the same was vacated on 27.4.1994. Even the stay granted in favour of the petitioners in Crl. P. No. 325 of 1995 on 13.6.1995 was vacated on 25.7.1995. Thus, the total delay on account of the petitioners obtaining stay was not more than one year and three months in all and in fact the petitioners were examined u/s 239 of Cr. P.C. on 3.1.1992 and charge was also framed in the month of January, 1992 and absolutely there was no explanation on the part of the prosecution for the delay in the disposal of the case. Therefore, the petitioners are entitled to be discharged and acquitted of the offences. I am afraid, this contention of the learned Counsel for the petitioners cannot be accepted for more than one reason. The Hon'ble Supreme Court vide judgment and order dated 28.11.1996 in W.P. Civil No. 1128 of 1986 has clarified the earlier judgment of the Supreme Court in (1) supra. By the earlier judgment the Supreme Court made it clear in paragraph No. 4 of its earlier judgment that the directions contained under Clauses 1 and 2 shall not apply to cases of offences involving :

"(a) corruption, misappropriation of public funds, cheating, whether under the Indian Penal Code, Prevention of Corruption Act or any other statute, (b)

smuggling, foreign exchange violation and offences under the Narcotics Drugs and Psychotropic Substances Act, (c) Essential Commodities Act, Food Adulteration Act, Acts dealing with Environment or any other economic offences, (d) offences under Arms Act, Explosive Substances Act, Terrorists and Disruptive Activities Act, (e) offences relating to the Army, Navy and Air Force, (f) offences against public tranquility; (g) offences relating to public servants, (h) offences relating to coins and Government stamps, (i) offences relating to elections, (j) offences relating to giving false evidence and offences against public justice, (k) any other type of offences against the State, (l) offences under the taxing enactment and (m) offences of defamation as defined in Section 499 of IPC."

By the latter judgment in (2) (supra) it has added other offences to which also the directions contained in paragraphs No. 1 and 2 of the earlier judgment would not apply and they are as follows :

"(n) matrimonial offences under Indian Penal Code including Section 498-A or under any other law for the time being in force; (o) offences under the Negotiable Instruments Act including offences u/s 138 thereof; (p) offences relating to criminal mis-appropriation of property of the complainant as well as offences relating to criminal breach of trust under I.P.C. or under any other law for the time being in force; (q) offences u/s 304-A of the I.P.C. or any offence pertaining to rash and negligent acts which are made punishable under any other law for the time being in force; (r) offences affecting the public health, safety, convenience, decency and morals as listed in Chapter XIV of the Indian Penal Code or such offences under any other law for the time being in force.

From the latter clarificatory order and the notification issued by the Supreme Court dated 23.12.1996 it is clear that the directions contained in paras (1) and (2) in the judgment (1) (supra) would not apply to the matrimonial offences under I.P.C. including Section 498-A, or under any other law for the time being in force. From this it follows that the said directions do not apply to the offences u/s 498-A of I.P.C. and also for the offences under Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961. The offences provided Under Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961 are also matrimonial offences prohibiting giving and taking of dowry at the time of the marriage. Under clause "under any other law for the time being in force" covers the matrimonial offences under Dowry Prohibition Act, 1961 also. In the instant case, the petitioners are charged for the offences under Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961 and u/s 498-A of I.P.C. Therefore, the petitioners are not entitled for the discharge and acquittal of those offences in terms of the judgment of the Supreme Court in (1) supra .Moreover from the judgment of the Court below it is clear that the delay in disposal of the case was due to number of adjournments on behalf of the petitioners and also due to the interim order of stay obtained by them at the hands of the High Court in CrI. P. No. 734/93 and CrI. P. No. 325/95. In fact, the Court below in its judgment has observed that the delay was not due to any fault on the part of the prosecution and the relevant part of the judgment is extracted

as under:

"So as per the above docket order it clearly shows that DWs 1 and 2 were continuously attending the Court for each and every adjournment and the matter under went several adjournments and it clearly shows that there is no fault on the prosecution and on one way or the other the matter is being adjourned from time to time at the instance of the accused only. The guidelines of Clause 2(f) are not applicable to the present case since the offences alleged against the accused are punishable with imprisonment for more than 5 years and when the trial is not yet commenced the accused are entitled for discharge but as per the above docket the witnesses are attending the Court regularly for each and every adjournment."

From going through the entire judgment with reference to different dates on which the petitioners have sought adjournment and also the period during which they got stayed the proceedings pending before the Criminal Court, I find that the delay was not due to the fault on the part of the prosecution. Moreover the offences u/s 498-A of I.P.C. is also punishable with imprisonment for more than five years. In these circumstances, I do not find any illegality or irregularity in the impugned order. However, the learned Counsel for the petitioners submitted that the petitioners could be discharged under Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961, though the case could continue u/s 498-A of I.P.C. This contention also cannot be accepted because the charges under Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961 and the charge under Section 498-A of I.P.C, cannot be bifurcated at this stage. Even otherwise offence u/s 3 of the Dowry Prohibition Act, 1961 is punishable with an imprisonment for a period not less than five years and with a fine not less than Rs. 15,000/-. Moreover, as per both the judgments of the Hon''ble Supreme Court, the benefit, if any, conferred by the said judgment does not apply to all the matrimonial offences whether under I.P.C. or under any other enactment as I have already noted above.

4. Lastly the learned Counsel for the petitioners contended that the learned 1st Additional Munsif Magistrate has passed the impugned order on 4.11.1996 and as on that day the Hon''ble Supreme Court had not yet passed the clarificatory order excluding matrimonial offences from the directions under Clauses 1 and 2 of (1) supra, since the same is passed only on 28.11.1996; therefore, the learned 1st Additional Munsif Magistrate should have discharged the accused as per the law declared by the Supreme Court earlier. I am afraid, even this contention also cannot be accepted because the later order of the Hon''ble Supreme Court provides that in case, if any, accused has been discharged and acquitted as per the earlier order, the Magistrate may suo motu start the proceedings on the basis of the latter clarificatory order by restoring the criminal cases against the accused. Since in the instant case the petitioners were not discharged or acquitted as per the earlier order of the Hon''ble Supreme Court such an exercise has now become unnecessary. Moreover, as I have already pointed out even the offence u/s 3 of the Dowry Prohibition Act, 1961, is

punishable with an imprisonment of not less than five years and a fine not less than Rs. 15,000/- and the accused could not have been discharged or acquitted for the offences are under the Dowry Prohibition Act, 1961, as per para I(b) the earlier judgment of the Supreme Court itself. Moreover, as on today both the orders of the Hon"ble Supreme Court operate and having regard to these circumstances, I do not find any illegality in the order of the Court below.

5. For the above reasons, I do not find any merits in this Criminal Revision Case and accordingly the same is dismissed.