

(2006) 07 KAR CK 0078

In the Karnataka High Court

Case No : Criminal Petition No. 2028 of 2006

S. Gopal Achar and N. Rajalakshmi

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 01-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319, 319 (1)
Penal Code, 1860 (IPC) — Section 498A

Citation : (2007) CriLJ 484 : (2006) 6 KarLJ 263

Hon'ble Judges : Ajit J. Gunjal, J

Bench : Single Bench

Advocate : S.P. Kulkarni, for the Appellant; H.C. Siddagangaiah, HCGP, for the Respondent

Judgement

Ajit J. Gunjal, J.—The petitioners are Accused No. 5 and Accused No. 6. They have questioned the order passed by the learned Trial Judge allowing the application of the prosecution u/s 319 of the Cr.PC.

2. The matter arises in the following manner:

One Kalavathi wife of accused No. 1 Y.N. Sridhar Murthy has lodged a complaint on 14.3.2000 before the Jeevan Bheemanagar Police Station stating that she was married to A-1 on 14.5.1981. During marriage, her father had given one set of gold bangles, one set of ear rings and Mati with other gold ornaments including necklace weighing 30 grams. A-1, her husband was also given a dowry of Rs. 50,000/-. In the wedlock, she has given birth to two children one daughter and one son who are aged 18 years and 16 years respectively. The complainant would state that all the accused persons demanded additional dowry of Rs. 1,00,000/- and were giving pinpricks but however, her father-in-law Narayanachari used to mediate but however after his death on 5.3.1996, the said demand for dowry continued and they also threatened her that if the said demand is not met, A-1 would marry again. In the circumstances, the complaint was filed. On the basis of the said complaint, a case has been registered by the

Jeevan Bheemanagar Police for the offence punishable u/s 498-A IPC. Investigation was taken up. During the course of investigation, material evidence was collected and on the basis of the material evidence, it was found that a case has been made out as against A-1 to A-3. But however, in so far as A-4, A-5 and A-6 are concerned, it was stated that no case has been made out and consequently, they were not sent for trial and they were given up. The case was registered in CC No. 22846/00 and is pending on the file of the X Addl. CMM, Bangalore. During the course of the cross examination of the complainant, a suggestion was made that A-5 and A-6 were not harassing the complainant but however, the suggestion was denied. On the basis of the said denial, an application was moved by the State u/s 319 of the Cr.PC to implead them in the said proceedings. The learned Trial Judge has allowed the said application and the order of arraying them as A-5 and A-6 is questioned in this petition.

3. Mr. Kulkarni, learned Counsel appearing for the petitioner submits that the marriage of the complainant with A-1 took place some time in the year 1981 at Thirupathi. They have children who have attained majority and at this point of time, the question of initiating proceedings u/s 498-A is not at all warranted. In so far as A-5 and A-6 being impleaded, he would submit that there is no material to implead them in as much as during the course of investigation no material was found to implicate them. Hence, they were given up and they were not sent for trial. He would also submit that A-5 and A-6 are staying away from the family of A-1. In the circumstances, he submits that the question of petitioners being impleaded as A-5 and A-6 does not arise.

4. I have given anxious consideration to the submissions made by the learned Counsel appearing for the petitioners.

5. Section 319 of the Cr.PC would deal with the Power to proceed against other persons appearing to be guilty of offence -The question is when this power should be exercised? It is to be noticed that the Court must have reasonable satisfaction from the evidence already collected while invoking power u/s 319 of the Cr.PC to proceed against the other persons appearing to be guilty of offence. The first and foremost is, there must be evidence to show that the other person has committed an offence to invoke Section 319 of Cr.PC and to be tried along with who are already arrayed as accused but then the discretion is always with the court as the words used in Section 319 Cr.PC is that the court may proceed against such person. The discretionary power should be exercised to achieve criminal justice. Before exercising the powers, the court, acting within its powers u/s 319(1) has to judicially satisfy itself on the material collected and then decide to proceed against a person not being an accused in the case, on the ground that he was involved in the offence. Undoubtedly, the proceedings in the case on hand will have to be restarted afresh and the witnesses will have to be re-examined and virtually a de novo trial will have to commence in the case on hand. It is to be noticed that substantial progress had been made in the trial. Another reason as to why the learned Trial judge could not have entertained this application is

that initially when the complaint was lodged indeed, the petitioners were arrayed as A-5 and A-6.

After investigation, the investigating agency found that there is no material as against A-5 and A-6 and they were deleted from the array of accused and not sent for trial. In the circumstances, the learned Trial Judge could not have entertained the application u/s 319 of Cr.PC to implead A-5 and A-6. The Apex Court in the case of Krishnappa Vs. State of Karnataka, has observed in para - 6 thus:

It has been repeatedly held that the power to summon an accused is an extraordinary power conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken.

5. In the case on hand, it is to be noticed that prima facie evidence is not forthcoming to implicate the petitioners herein. More so, when they were given up during the course of investigation and not sent up for trial, to say mind, the possibility of their conviction in the present set of circumstances is remote. Having perused the material on record, I am of the view that the learned Trial Judge was clearly in error in exercising his discretionary power and allowing the said application.

Accordingly, the criminal petition stands allowed. The impugned order passed by the X Addl. CMM, Bangalore in CC No. 22846/2000 on the appellant filed u/s 319 of Cr.PC in so far as the petitioners A-5 and A-6 are concerned is set aside. The proceedings as against the accused 5 & 6 stands terminated.

Criminal Petition stands disposed of accordingly.