

(2010) 04 KAR CK 0159

In the Karnataka High Court

Case No : Criminal Revision Petition No. 205 of 2010

Sathish Shetty and Smt. Indira Shetty

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 324, 420, 498A, 504

Citation : (2010) 04 KAR CK 0159

Hon'ble Judges : A.S. Pachhapure, J

Bench : Single Bench

Advocate : P.P. Hegde, for the Appellant; Raja Subramanya Bhat, HCGP, for the Respondent

Final Decision : Allowed

Judgement

A.S. Pachhapure, J.—Though the matter is posted today for the admission, with the consent of the Counsel for the petitioners and the High Court Government Pleader, the matter is taken up for final hearing.

2. The petitioners have challenged the order dated 05.12.2009 framing charge for the offences punishable under Sections 498(A), 323, 504 read with Section 34 of IPC.

3. The facts reveal that one Sri. Vinutha Shetty filed a complaint against the petitioner for the offence punishable under Sections 498(A), 324, 323, 504, 506, 420 of IPC and Sections 3 and 4 of Dowry Prohibition Act. The complaint was referred for investigation and ultimately the chargesheet was filed against the petitioners for the offence punishable under Sections 498(A), 323, 504 read with Section 34 of IPC. The learned Magistrate posted the matter on 13.11.2009 and the copies of the chargesheet were supplied to the petitioners and the matter was adjourned to 18.11.2009. On that day the accused was present, but the matter came to be adjourned to 26.11.2009 for framing of charge and on the next day accused was absent Hence, it was finally adjourned to 05.12.2009 and

on that accused No. 1 and 2 were present, then charge for the offence punishable under Sections 498(A), 323, 504 read with Section 34 of IPC were framed. The petitioners pleaded not guilty and claimed to be tried. This order of the learned Magistrate has been challenged in this revision.

4. I have heard the learned Counsel for the petitioners and also learned High Court Government Pleader for the respondent

5. The point that arises for my consideration is:

Whether the trial Court committed an error and illegality in framing the charge against the petitioners for the above said offences without giving an opportunity of hearing to the petitioners?

6. Perusal of the order sheet does not reveal of posting the case for hearing before charge, at any time. This case was adjourned after serving the copy of the charge sheet, for hearing before charge.

Section 239 of Cr.P.C. reads as under:

If, upon considering the police report and the documents sent with it u/s 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

7. As could seen from these provision whenever a report is submitted by police u/s 173 Cr.P.C. if the Magistrate intends to discharge the accused, he shall be given opportunity of hearing likewise u/s 240 Cr.P.C. if he intends to frame the charge, he is bound to give an opportunity of hearing to the accused and if he is of the opinion that there are grounds to presume that the accused has committed the offence, he has to frame charge in writing against the accused. So the provisions under Sections 239 and 240 require that an opportunity should be given either for passing an order of discharge or framing the charge. No such opportunity has been given by the trial Court to the petitioners and in such circumstances order framing of the charge without an opportunity is illegal and perverse. Hence, the impugned order has to be set aside.

In the result the petition is allowed. The order framing the charge against the petitioners is set aside. The matter is remitted back to the trial Court with a direction to give an opportunity of hearing to the petitioners before framing the charges. If the petitioners are absent for any sufficient cause on the date of hearing before the charge, they may submit an application and the learned Magistrate who shall consider the case and pass orders in accordance with law.