
(2011) 03 KAR CK 0301

In the Karnataka High Court

Case No : Criminal Petition No. 5619 of 2010 and Miscellaneous Criminal No. 4964 of 2010 in Criminal Petition No. 5619 of 2010

Smt Usha @ Usharani

APPELLANT

Vs

State of Karnataka and Ms. N. Kalpana

RESPONDENT

Date of Decision : 29-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155 (2), 156 (3), 200, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Hindu Marriage Act, 1955 — Section 13 (1) (ia)
Penal Code, 1860 (IPC) — Section 323, 498A, 506

Citation : (2011) 03 KAR CK 0301

Hon'ble Judges : K.N. Keshavanarayana, J

Bench : Single Bench

Advocate : K.B.K. Swamy, for the Appellant;

Final Decision : Dismissed

Judgement

K.N. Keshavanarayana, J.—In this petition filed u/s 482 Cr P C is by the Petitioner, who has been arrayed as fourth accused in CC No 544 of 2009, on the file of Addl Civil Judge (Jr Dn) & JMFC, Tiptur, has sought for quashing of the prosecution launched against her.

2. Second Respondent herein is the wife of the elder brother of Petitioner herein. Second Respondent filed a private complaint u/s 200 Code of Criminal Procedure before the Addl Civil Judge (Jr Dn) & JMFC, Tiptur, in PCR No 99 of 2009 against her husband, father-in-law, mother-in-law, sister-in-law and brother-in-law, alleging the offences punishable under Sections 498-A, 323 and 506 IPC read with Sections 3 and 4 of the Dowry Prohibition Act, 1961.

3. On presentation of the complaint, the leaned magistrate referred the same u/s 156(3) of Code of Criminal Procedure to the jurisdictional police for investigation and to submit a report. Based on the said reference, police registered a case in Crime No 64 of 2009 and took up investigation. After competing the

investigation, the investigating officer has filed the charge sheet against the Petitioner and other accused persons for the aforesaid offences. The learned magistrate after taking cognizance of the offences, has ordered issue of summons to the accused persons. On the coming to know of the same, the Petitioner has presented the present petition on the ground that the allegations made in the complaint as well as the materials collected during the investigation and produced before the learned magistrate along with the charge sheet, does not, prima facie, make out any case against, the Petitioner and that the prosecution launched against her is frivolous and vexatious and that it is initiated as a counter-blast to the petition filed by the husband of the complainant for divorce u/s 13(1)(ia) of the Hindu Marriage Act. 1955, therefore the prosecution launched against her is liable to be quashed.

4. I have heard the learned Counsel for the Petitioner and perused the records.

5. The Apex Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, has set out the circumstances under which High Courts, in exercise of power u/s 482 Code of Criminal Procedure, could quash criminal prosecution. The principles laid down by the Apex Court in the said decision are as under:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused:

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1), Code of Criminal Procedure except under an order of a Magistrate within the purview of Section 155(2), Code of Criminal Procedure;

(3) Where the uncontroversial allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code;

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party and

(7) Where a criminal proceeding is manifestly attended with mala fides and/or

where the proceeding is maliciously instituted, with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

6. Perusal of the allegations made in the complaint as well as the evidence collected by the investigating officer during investigation and produced before the learned magistrate along with the charge sheet, prima facie, make out a case against the Petitioner for the offences alleged. There is absolutely no force in the contention of the learned Counsel for the Petitioner that the material on record does not indicate specific overt acts on the part of the Petitioner. A perusal of the statements of various witnesses recorded during the course of investigation would, prima facie, indicate the overt acts committed by the Petitioner herein. The grounds on which prosecution is sought to be quashed are all in the nature of defences, that may be taken up by the Petitioner during the trial. On such grounds, this Court, in exercise of power u/s 482 Code of Criminal Procedure cannot quash the prosecution launched. Therefore, I find no ground to quash the prosecution launched against the Petitioner.

7. Learned Counsel for the Petitioner has relied on the decision of Andhra Pradesh High Court in the case of Shaik Kaleemullah Shaik Asadullah and Ors. v. State of A.P and Ors. 2011 Cri. LJ 89 . The principle laid down in this decision is not general principle. What has been stated in this decision is an allegation of cruelty and demand of dowry against the Petitioners, who were sisters of the husband of the complainant wife, being general and omnibus allegations and the sisters being residents of different localities away from the place of complainant and her husband, registration of criminal case against them would be an abuse of the process of the court. Each case will have to be considered on the basis of the material available on record of that case. Having regard to the materials available in the present case, it cannot be said that the prosecution launched against the Petitioner is an abuse of the process of court. Therefore, no sustenance can be drawn from the said decision.

8. In this view of the matter, I find no ground to quash the prosecution launched against the Petitioner. Accordingly this criminal petition is dismissed.

9. In view of dismissal of the main petition itself, Misc. Crl. No 4964 of 2010 for stay does not survive for consideration and it is accordingly dismissed.