
(2010) 04 KAR CK 0217
In the Karnataka High Court
Case No : Criminal Appeal No. 464 of 2007

State of Karnataka

APPELLANT

Vs

Sri Boraiah and Smt. Chukkamma

RESPONDENT

Date of Decision : 12-04-2010

Acts Referred:

Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 498A, 506

Citation : (2010) 04 KAR CK 0217

Hon'ble Judges : K.N. Keshava Narayana, J

Bench : Single Bench

Advocate : B. Balakrishna, HCGP, for the Appellant; L. Raja, for the Respondent

Final Decision : Allowed

Judgement

K.N. Keshava Narayana, J.—Heard the learned Additional Government pleader appearing for the appellant-State and Sri L. Raja, appearing for respondents. Perused grounds urged in the appeal memo.

2. Regard being had to the ground urged in the appeal, the appeal is admitted for hearing.

3. As the records have been secured and since a short question is involved in the appeal, it is heard on merits by consent of both sides.

4. The legality and correctness of the judgment and order dated 6.10.2006 passed by the J.M.F.C., Mandya, in C.C. No. 73/2006, acquitting the respondents-accused for the charges punishable u/s 498(A) and 506 of IPC and Section 4 of the Dowry Prohibition Act, is questioned in this appeal by the State.

5. The main grievance of the appellant in this appeal is that the procedure adopted by the learned Magistrate, in disposing of the matter is perverse, erroneous and contrary to the law and proper opportunity has not been afforded to the prosecution to place the evidence on record, as such it is violative of the

principles of natural justice.

6. Respondent No. 1 is the son of respondent No. 2 and husband of the complainant CW. 1 Smt. Gowramma. The respondents were charged for the above offence on the basis of the charge sheet filed by the Mandya rural police. The criminal law was set motion by CW. 1 Smt. Gowramma by way of written complaint as per Ex. P1 lodged by her to the police alleging demand of dowry by her husband and mother-in-law and subjecting her to cruelty and harassment since she failed to comply with their illegal demands. She also alleged that the respondents-accused threatened her with injury to her life. It was alleged in the complaint that respondent No. 1 has stealthily married one Bhavya on 23.3.2003. The police, after investigation filed the charge sheet.

7. Upon service of summons, the respondents-accused appeared before the learned Magistrate, and pleaded not guilty for the charges levelled against them and claimed to be tried.

8. The learned Magistrate; after recording plea of the accused on 15.6.2006, fixed the case for trial. On 4.7.2006, CWs. 1 to 3 were present while other witnesses were not present. However, the learned Magistrate, did not record the evidence of the witnesses who were present on that day and adjourned the case to 24.7.2006 by directing CWs 1 to 3 who were present to bound over. On 24.7.2006, once again though CWs. 1 to 3 were present, on that day also the learned Magistrate, did not record the evidence of the witnesses and adjourned the matter to 21.8.2006, However, on 21.8.2006, none of the witnesses were present, therefore, the learned Magistrate directed issue of summons to all the witnesses. As the summons issued were returned unserved, bailable warrants were directed to be issued. The warrants issued also appears to have not been executed on the witnesses. Ultimately, the learned Magistrate, by recording the evidence of the Investigating Officer, and by rejecting the prayer of the learned Assistant Public Prosecutor to examine the other witnesses, by the judgment under appeal acquitted the accused, on the ground that the prosecution has not placed any evidence to bring home the guilt of the accused persons.

9. Sri. B. Balakrishna, learned Additional Government Pleader, vehemently contended that the procedures adopted by the learned Magistrate in not recording the evidence of material witnesses when they preserved themselves before the Court was contrary to law and the subsequent rejection of the prayer of the prosecution for issue of coercive process for securing the presence of witnesses, has resulted in denial of fair opportunity to the prosecution as such, it is violative of principles of natural justice.

10. On the other hand, Sri. L. Raja, learned Counsel for the respondents, contended that in spite of issue of summons and warrants, the witnesses did not turn up therefore, the learned Magistrate, is justified in acquitting the accused for want of evidence.

11. As noticed above, material witnesses were present before the learned

Magistrate on 4.7.2006 and 24.7.2006, on which date they were directed to appear before the court to give evidence. However, the learned Magistrate, without assigning any reasons postponed recording their evidence on those days and sent them back. Section 242 of Cr.P.C. sets out the manner in which the evidence of prosecution should be recorded by the Magistrate while trying a warrant cases instituted on a police report. According to sub-Section (1) of Section 242 of Cr.P.C. if the accused refuses to plead or does not plead or claims to be tried or the Magistrate does not convict the accused u/s 241 of Cr.P.C., he shall fix a date for examination of the witnesses. According to sub Section (2), the teamed Magistrate may, on the application of the prosecution, issue summons to any of its witnesses directing him to attend or to produce any document or other thing. According to sub Section (3), on the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution. Rule 3(1) of chapter VII of The Karnataka Criminal Rules of Practice 1968, directs that a Magistrate taking up a case for trial should ordinarily proceed with trial from day-to-day until it is complete and no witness shall as a rule be sent back without examination except for unavoidable reasons to be recorded in writing. In the case on hand on 15.5.2006, upon appearance of both the accused, the learned Magistrate, read over the charges and both the accused pleaded not guilty for the charges learned against them and claimed to be tried. Therefore, in accordance with sub Section (2) and Section 242, the learned Magistrate, fixed the date for trial on 4.7.2006 and directed issue of summons to CWs. 1 to 5 for their appearance to give evidence. Upon service of summons and in obedience of the direction of the learned Magistrate, CWs. 1 to 3 appeared before the learned Magistrate on 4.7.2006. It may be noted here that though three witnesses have appeared before the learned Magistrate, as could be seen from, one signature and two LTM's in the order sheet, the learned Magistrate only noticed that CW. 1 and 3 were present in person. CWs. 2 and 3 are none other than the parents of the CW. 1. Though three witnesses appeared before the learned Magistrate, on 4.7.2006 pursuant to the summons staved on them the learned Magistrate did not proceed to record the evidence of those witnesses as required by sub-Section (3) Section 242 of Cr.P.C. and Rule 3(1) of chapter VII of Criminal Rules of Practice. On the other hand, even without disclosing the reasons for not taking the evidence of those witnesses on 4.7.2006, the learned Magistrate, adjourned the case to 24.7.2006 by directing the witnesses to bound over. Even on 24.7.2006, as could be seen from the order sheet, three witnesses presumably CWs. 1 to 3 were present before the learned Magistrate. Both the accused were also present However, even on that day the learned Magistrate without recording any reasons, merely adjourned the case to 21.8.2006 without taking the evidence of those witnesses toy directing the witnesses to bound over. On 21.08.2006, as noted by the learned Magistrate, none of the witnesses were present before the Court. However, the procedure adopted by the learned Magistrate in not taking the evidence of those witnesses on 4.7,2006 and on 24.7.2006, is contrary to Section 242(3) of Cr.P.C. Therefore, the learned Magistrate was not justified in refusing the prayer of the prosecution an

opportunity to keep the witnesses present. It is also noticed that though subsequently fresh summons and bailable warrant were directed to be issued, they were returned for non-availability of the witnesses. The report submitted by the concerned police in this regard is not convincing. The learned magistrate has not exercised powers vested in him u/s 87 of Cr.P.C. by directing issue of non-bailable warrants to secure the presence of material witnesses in the case.

12. However, the learned Magistrate mechanically appears to have accepted the report of the police, refused to give further opportunity to the prosecution and acquitted the respondent/accused. The procedure adopted by the learned Magistrate, did not amount to dispensation of justice but it has resulted in dispensing with justice. Therefore, the judgment of the learned Magistrate acquitting the respondent/accused is erroneous and the procedure adopted by the learned Magistrate during the trial of the case is contrary to the law. As such the judgment under appeal is liable to be set aside and the matter is required to be remanded to the learned Magistrate for fresh disposal after affording reasonable opportunity to the prosecution as well as the accused to lead the evidence.

13. Accordingly, the appeal is allowed. The judgment and order dated 06.10.2006 passed by the JMFC, Mandya, in C.C. No. 73/2006, acquitting the respondents/accused is hereby set aside. The matter is remanded to the learned Magistrate for fresh disposal in accordance with law after affording reasonable opportunity to both sides.