

(2015) 01 KAR CK 0090
In the Karnataka High Court
Case No : Criminal Petition No. 100222/2014

Vivek Kawari

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 482, 498A, 504, 506

Citation : (2015) 01 KAR CK 0090

Hon'ble Judges : Rathnakala, J.

Bench : Single Bench

Advocate : Amar Correa, Advocate, for the Appellant; K.S. Patil, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

Rathnakala, J.—This petition is filed under Section 482 Cr.P.C. to quash the order dated 23.11.2013 passed by the trial Court in C.C. No. 1006/2013 in taking cognizance and issuing summons to the accused in respect of the offences punishable under Sections 498A , 323 , 504 , 506 of IPC and Sections 3 and 4 of D.P. Act, 1961.

2. The facts in brief:

"The petitioner and the second respondent are husband and wife, having married on 04.05.2003 as per Hindu rites and customs. They are blessed with a male child. Now, their child is a juvenile diabetic. Due to their strained relationship the parties were litigating before the matrimonial Court. While the husband sought for a divorce, the wife sought for a decree for restitution of conjugal rights. However, the matter was settled before this Court with an understanding on 04.07.2011 that henceforth, the parties would live together. Subsequently on 25.06.2013, the wife lodged a complaint against the husband with certain allegations. The Investigating Officer after investigation has filed charge sheet in

respect of the offences punishable under Sections 498A , 323 , 504 and 506 of IPC and Sections 3 and 4 of the D.P. Act."

3. Sri Amar Correa, learned counsel for the petitioner submits that the learned Magistrate has erroneously taken cognizance in respect of the above mentioned offences, despite there being no incriminating material against the petitioner for commission of the offences. While emphasizing on the allegation of offence under Section 498A of IPC, it is his further submission that, during the compromise entered into between the parties before this Court, the wife had undertaken to co-operate in the matrimonial life happily and will not cause any harassment either to her husband or for herself in future, if any medical attention is required for the wife, it was agreed that the husband would provide the same and wife will avail the same. This Court had issued a direction to both the parties to abide by the terms of compromise petition. Accordingly, wife was obliged to cooperate and take treatment for the Schizophrenia/mental illness she is suffering. There is evidence in this regard by the expert doctor in the matrimonial case also. Above all will indicate that it was the wife who was the troubleshooter, though she had undertaken before this Court to lead a happy married life. Another complaint lodged by her is for the offences punishable under the Protection of Women from Domestic Violence Act, 2005, which is pending. The statement of the witnesses is inconsistent with each other. A reading of Section 498A of IPC in juxtaposition with the complaint would not disclose ingredients of Section 498A of I.P.C. in the complaint. More particularly, the first proviso to Section 498A is not attracted. Admittedly, there is no physical torture on her which would have been hazardous, endangering her life, limb or health. Assuming for a while, the husband had not provided food for herself and the child for a day, it is a stray incident and would not fall within the category of offence under Section 498A of IPC.

4. Learned Counsel further placing his reliance on several judgments of the Apex Court, submits that proceeding with the case on such a sketchy allegation is itself nothing but abuse of process of law and the proceedings initiated on the complaint of the wife may be quashed by invoking the jurisdiction of this Court under Section 498A of Cr.P.C.

5. As regards the allegation under the provisions of Dowry Prohibition Act, his submission is that the parties were married for 12 years and till the present complaint was filed, there was no such allegation against the husband. Assuming for a while that there was some saucy incident, then also it is in the usual course of wear and tear of matrimonial life. There is no material to infer the offences punishable under Sections 504 and 506 of IPC except self serving allegation made by the complainant. Then what remains is, Section 323 of IPC which is a non-cognisable offence and Investigating Officer could not have taken the investigation without prior permission of the Magistrate under Section 155(2) of Cr.P.C. The very investigation without prior permission of the Magistrate has vitiated the entire proceedings.

6. In reply, learned Government Pleader submits that the jurisdiction of this

Court under Section 482 of Cr.P.C. can only be invoked, in the event there is no other alternative remedy for the petitioner under the Code. Without exhausting his remedy before the trial Court, he has directly approached this Court, which is not permissible. Since the Investigating Officer has collected evidence for the offences punishable under Sections 498A , 323 , 504 and 506 of IPC and Sections 3 and 4 of D.P. Act, against the petitioner, he has filed charge sheet. No case is made out to quash the proceedings by invoking extraordinary jurisdiction of this Court under Section 482 of Cr.P.C. and the petition is liable to be rejected.

7. Sri S.S. Yadrami, learned Counsel appearing for the complainant/wife/second respondent submits that a perusal of the complaint and the statements of witnesses prima facie make out the offences for which the accused person is charge sheeted. It is not a stray incidence which occurred abruptly in the life of the couple. It is the husband who had deserted his wife but subsequently, took her to the marital home by representing that he would take proper care of her. There is allegation about the physical and mental cruelty inflicted on her, not on a single day but a perpetuated infliction over time. A plain reading of the complaint is sufficient to make out a case of cruelty as contemplated in the explanation, clause (a) of Section 498A of Cr.P.C and as regards the other submission about the offences punishable under Sections 504 and 506 of IPC and Sections 3 and 4 of D.P. Act is concerned, whatever submission is made before this Court, same may be raised by the petitioner as his defence during the trial and the petition is liable to be rejected.

8. Having heard the learned Counsel for the parties, following point arise for consideration:

"Whether the complaint allegation fail to make out the offences punishable under Section 498A , 323 , 504 and 506 of IPC and Sections 3 and 4 of D.P. Act?"

9. I have gone through the complaint allegations. The wife in her complaint alleges that after she joined her husband in the matrimonial home during the month of July 2011, she was one way or the other harassed physically and mentally; she was abused filthily, assaulted and compelled for physical contact at his whims and fancies; she was threatened for money or to get the house transferred from her parental home and he was not paying whenever she demanded to meet her expenses, out of the amount given during her marriage; he harassed her to get some more money from her parents; on 25.06.2013, at 5.30 p.m., she demanded Rs. 1,000/- for grocery but he denied and fisted blows on her; her in-laws did not respond to her when contacted over phone; her effort to contact them over phone went in vain; she is not allowed to watch television, her Mangalya Sutra is snatched by him; her Almerah is damaged by him; he had caused injury to her thumb, due to which she had to take rest for about one month. All the above facts are narrated in the FIR at Kumuta Police Station. He consumes alcohol in the presence of their son. He watches television alone. He has 8 to 10 mobile phones and a Scorpio vehicle and is leading a luxurious life. He did not provide medical treatment in time to their diabetic son. He dominates

in everything. While leaving the house he locks the door. She was bearing with his torture till the day of complaint. She is made to suffer for want of necessary items to the family. She also apprehends that when she returns home, possibly he would have gone out by locking the doors etc.

10. Whether in the absence of direct allegation of dowry demand, the above allegations would attract Section 498A of IPC?" is the question posed by the learned Counsel for the petitioner.

11. The judgments cited by the learned Counsel for the petitioner is quoted below with relevant paras:

The Apex Court in the case of Satish Mehra Vs. State of N.C.T. of Delhi and Another, , wherein a general guideline as to in what circumstances the High Court may exercise its extreme power under Section 482 of Cr.P.C. is elaborated. Para No. 21 of the said judgment wherein it is held as under:

"21. A criminal trial cannot be allowed to assume the character of a fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, prima facie, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused. We are, therefore, of the view that the criminal proceeding in the present form and on the allegations levelled is clearly not maintainable against either of the accused-accused G.K. Bhat and R.K. Arora."

The Apex Court in the case of State of U.P. Vs. Pawan Kumar Divedi, , has reiterated the lines from its own judgment in the State of West Bengal Vs. Orilal Jaiswal and another, .

The Apex Court in the case of Dalip Kaur and Others Vs. Jagnar Singh and Another, , at para Nos. 11 and 12 has held as under:

"13. There cannot furthermore be any doubt that the High Court would exercise its inherent jurisdiction only when one or the other propositions of law, as laid down in R. Kalyani Vs. Janak C. Mehta and Others, is attracted, which are as under:

"(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

12. Yet again, in *Hira Lal and Others Vs. State of U.P. and Others*, , this Court held:

"12. The parameters of interference with a criminal proceeding by the High Court in exercise of its jurisdiction under Section 482 of the Code are well known. One of the grounds on which such interference is permissible is that the allegations contained in the complaint petition even if given face value and taken to be correct in their entirety, commission of an offence is not disclosed. The High Court may also interfere where the action on the part of the complainant is mala fide."

Even in the case of *Neelu Chopra and Another Vs. Bharti*, , the Apex Court at para No. 9 has held as under:

"9. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence."

12. The general principles reigning the field of Section 482 of Cr.P.C. in the above cases will be of relevance, if it is shown that complaint fails to disclose an offence for which it is charge sheeted. Generally, in legal parlance there is no gainsaying to the proposition, to constitute "cruelty" under Section 498A of IPC, there must be such a conduct on the part of the husband or relatives of the husband which should drive the woman to commit suicide or cause grave injury or danger to life, limb or health, whether mental or physical of the woman.

13. The word "health" which relates to "physical or mental in reference to the woman" is not necessarily be in continuation of a demand of dowry. It suffices that acts alleged are able to cause grave injury or danger either to her physical health or mental health de-horse harassment for dowry demand. Coming back to the complaint allegation there is allegation of persistent harassment over a period after the wife joined the husband. Having a diabetic son, when the husband refuses to pay for the household expenses what could be the situation? If the husband snatches the Mangala Sutra though it does not affect her physical health would it not injure her psychologically. What could be the state of mind of a wife with a minor diabetic child who has no money to meet day to day requirement of the family? Is not an injury both to the body and mind of the victim? Intentional omission in depriving the wife of dire necessities is one form

of cruelty, both physical or mental.

14. In the case of *Shakson Belthissor Vs. State of Kerala and Another*, , the Apex Court dealt with the expression "cruelty" appearing in Section 498A of IPC at para No. 28, which reads as under:

"28. The said section contains an Explanation, which defines "cruelty" as understood under Section 498A of IPC. In order to understand the meaning of the expression "cruelty" as envisaged under Section 498A , there must be such a conduct on the part of the husband or relatives of the husband of woman which is of such a nature as to cause the woman to commit suicide or to cause grave injury or danger to life, limb or health whether mental or physical of the woman."

The Apex Court in the case of *Bhaskar Lal Sharma and Another Vs. Monica and Others*, , elaborated the term "cruelty" as inclusive of "mental cruelty". Para No. 10 of the said judgment reads thus:

"10....."Cruelty" as defined in the Explanation to Section 498A of the Penal Code has a twofold meaning. The contentions of Shri Sharan do not deal with the Explanation (a) and is exclusively confined to the meaning dealt with by Explanation (b). Under Explanation (a) conduct which is likely to cause injury or danger to life, limb or health (mental or physical) would come within the meaning of the expression "cruelty". While instances of physical torture would be plainly evident from the pleadings, conduct which has caused or is likely to cause mental injury would be far more subtle. Having given our anxious consideration to the averments made in the complaint petition, we are of the view that the statements made in the relevant paragraphs of the complaint can be understood as containing allegations of mental cruelty to the complainant. The complaint, therefore, cannot be rejected at the threshold."

That being the wide spectrum of the term "cruelty", I am convinced that in the present case there is sufficient averment in the complaint against the petitioner husband for causing or subjecting his wife to cruelty. A sketchy reference about dowry demand with a prayer to take action against the husband for dowry demand is made in the complaint. But it is for the trial Court to frame charges by applying its mind on the material available on record.

15. With this observation, I hold that the prayer of the petitioner to invoke the extraordinary jurisdiction of this Court under Section 482 of Cr.P.C. fails. That apart, it is the established procedure and practice when a remedy is available under the Criminal Procedure Code, the High Court usually refrains from invoking its extraordinary jurisdiction under Section 482 Cr.P.C. The petitioner without exhausting his remedy has directly come before this Court for his relief, for which there is no good ground to entertain.

Accordingly, the petition is dismissed.

However, it is made clear that whatever observation is made in the body of this order is only in reference to the complaint allegations and it shall not have any

bearing on the final result of the case.