

APHC010100702023



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3369]

FRIDAY, THE THIRD DAY OF MAY
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE T MALLIKARJUNA RAO

CRIMINAL REVISION CASE NO: 165/2023

Between:

M.sreenivasulu and Others

...PETITIONER(S)

AND

The State Of Andhra Pradesh and Others

...RESPONDENT(S)

Counsel for the Petitioner(S):

1.CHALLA GUNARANJAN

Counsel for the Respondent(S):

1.

The Court made the following ORDER:

1. This Criminal Revision, under Sections 397 and 401 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C. '), has been filed by the Revision Petitioners/A.1 to A.3, seeking to set aside the discharge petition order, dated 18.11.2022 in CrI.M.P.No.146 of 2020 in C.C.No.450 of 2016 on the file of I Additional Chief Metropolitan Magistrate, Visakhapatnam, (for short, "the trial Court").

2. The parties will hereinafter be referred to as arrayed in this Criminal Revision Case.

3. In the proceedings before the trial court, the Revision Petitioners/A.1 to A.3 herein, submitted a petition in CrI.M.P.No.146 of 2020 within C.C.No.450 of 2016, invoking section 239 of the Cr.P.C., with the aim of securing their discharge from the case registered under C.C.No.450 of 2016.

4. The crux of the case at hand revolves around the allegations of procedural irregularities attributed to the investigating officer. It is contended that, devoid of conducting comprehensive counselling or inquiry, the investigating officer swiftly proceeded to register FIR No.98 of 2015, solely relying on the report furnished by the 2nd Respondent. Subsequently, upon the filing of an anticipatory application by the Petitioners, bail was granted by the VII Additional District Court-cum-Mahila Court. A condition of this anticipatory bail was the issuance of a notice under section 41A of the Cr.P.C., by the Sessions Judge, instructing police officials to serve the notice without executing an arrest. It is submitted that, in blatant disregard of these directives, the investigating officer proceeded to arrest the Petitioners without adhering to the Sessions Judge's orders. It is alleged that the case registered under C.C.No.450 of 2016 seemingly stems from the improper issuance of the FIR, grounded in what is alleged to be a false report, evidently aimed at harassing the Petitioners and besmirching their reputation within society.

5. The learned counsel representing the Petitioners asserts that the learned Magistrate erred in disregarding the decree passed in F.C.O.P.No.1275 of 2015 by the Family Court, Ranga Reddy District, which declared the marriage between the 1st Petitioner/A.1 and the 2nd Respondent/

Defacto Complainant null and void. This decree, although obtained under Order XII Rule VI based on the express admission of 2nd Respondent and not through contestation, unequivocally renders the marriage legally nonexistent, thus negating the foundation for any charges against the accused. The learned Magistrate's failure to grasp the essence and purpose of Section 239 of the Cr.P.C., is highlighted, underscoring that in the absence of a valid marriage, the proposed charges under Section 498A of the IPC and Sections 3 and 4 of the D.P. Act lack legal merit. Furthermore, it is contended that the complaint, charge sheet, or statements of witnesses fail to substantiate any case against the Petitioners. The investigating officer's role is portrayed as merely translating the vernacular complaint into formal court language, creating an illusion of investigative depth. Upon scrutiny, both the vague nature of the complaint and the charge sheet, which appears to be a mere replication of the complaint, fail to establish any prima facie offence against the Petitioners, even when assuming all allegations to be true and accurate.

6. I have heard Sri Shaik Md. Umar Abdulla, learned counsel for the Petitioners and learned Assistant Public Prosecutor representing the 1st Respondent.

7. In the case of ***State of T.N. V. N. Suresh Rajan***¹, the Hon'ble Apex Court had an occasion to consider in detail the scope of the proceedings at the stage of framing of the charge Under Section 227/228 Code of Criminal

¹ MANU/SC/0011/2014

Procedure. After considering earlier decisions of this Court on the point thereafter in paragraph 29 to 31, this Court has observed and held as under:

29 . We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the Accused has been made out. To put it differently, if the court thinks that the Accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the Accused has committed the offence. The law does not permit a mini trial at this stage.

8. Reference in this connection can also be made to a decision of the Hon'ble Apex Court in **Sheoraj Singh Ahlawat V. State of U.P.**², in which, after analysing various decisions on the point, the Hon'ble Apex Court

² (2013) 11 SCC 476

endorsed the following view taken in ***Onkar Nath Mishra V. State (NCT of Delhi)***³:

15. '11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the Accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the Accused in respect of the commission of that offence.'

9. In ***State of Tamil Nadu V. N Suresh Rajan***, (cited supra), the Hon'ble Apex Court was observed notwithstanding the difference in language of Sections 227 and 239, CrPC, the approach of the Court concerned is to be common under both provisions. The principles holding the field under Sections 227 and 228, CrPC are well-settled, courtesy, inter alia, ***State of Bihar V Ramesh Singh***⁴; ***Union of India v Prafulla K Samal***⁵....., it was laid down as under:

'10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh

³ (2008) 2 SCC 561

⁴ (1977) 4 SCC 39

⁵ (1979) 3 SCC 4

the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.'

10. The foremost consideration during the framing of charges is to ascertain the presence of a prima facie case. It's worth noting that, at this juncture, there's no requirement to delve into the probative value of the materials on record.

11. As evident from the record, the Revision Petitioners have submitted a copy of the charge sheet in C.C.No.450 of 2016, concerning Crime No.98 of 2015 of Women Police Station, Visakhapatnam. The accusations against the Petitioners/A.1 to A.3 assert that A.1, allegedly acting at the instigation of A.2 and A.3, subjected the Defacto Complainant (2nd Respondent herein), A.1's wife, to cruelty, encompassing both mental and physical harassment; they demanded an additional dowry amount from her parents.

12. The grounds asserted by the Revision Petitioners/A.1 to A.3 are that they placed reliance on the certified copy of the decree and order in F.C.O.P.No.1275 of 2015 on the file of the Judge, Family Court, Ranga Reddy District. This evidentiary material reveals that the 1st Petitioner, referred to as the husband, instituted legal proceedings against his wife i.e., 2nd Respondent herein, under F.C.O.P.No.1275 of 2015, seeking a decree of divorce by dissolving their marriage as null and void. Perusal of the order dated 12.04.2017 evinces the conspicuous absence of the 1st Petitioner, with no representation being advanced. Conversely, the Respondent, the wife, was present and affirmatively acknowledged the submission of a counter. Notably, she raised no objection to the relief sought by the Petitioner for the annulment of the marriage, while seeking leave to contest the remaining allegations.

13. The learned Judge of the Family Court, after careful consideration of the admissions made by the 2nd Respondent herein, has observed that the relief requested by the 1st Petitioner to nullify the marriage between himself and his wife is permissible. Consequently, the Judge, Family Court allowed the petition and declared the marriage that was officiated between the parties on 15.03.2015 is null and void.

14. The impugned Order indicates that despite the Petitioners furnishing a copy of the decree and order in F.C.O.P.No.1275 of 2015, the trial Court proceeded to dismiss the discharge petition filed by the Revision Petitioners/A.1 to A.3 without due consideration of the aforementioned order and decree.

15. The learned counsel for the Petitioners asserts that the marriage between the parties has been adjudicated as null and void by the judgment of the Family Court. Accordingly, in light of the aforementioned judgment, it is contended that the Petitioners/A.1 to A.3 are entitled to be discharged. In support of their contention, the Petitioners have placed reliance on the judgment of the Hon'ble Apex Court in ***Shivcharan Lal Verma and another V. State of M.P.***,⁶. It is a case where, the appeal is filed by the two appellants /accused, who have been convicted under sections 306 and 498A of IPC by the learned Sessions Judge, wherein the Hon'ble Apex Court considered whether the prosecution under section 498A of IPC can at all be attracted since the marriage was null and void. By taking into consideration of the submissions made, the Hon'ble Apex Court held that there may be considerable force in the argument of the learned counsel for the appellants so far as conviction under section 498A of IPC is concerned, in as much as the alleged marriage with Mohini during the subsistence of a valid marriage with Kalindi is null and void and therefore, the Hon'ble Apex Court set aside the conviction and sentence under section 498A of IPC.

16. Learned counsel for the Petitioners contends that even upon conducting the trial, the ultimate conclusion of the proceedings is anticipated to result in the acquittal of the accused individuals. Consequently, it is asserted that the trial Court, given this foreseeable outcome, should have exercised its discretion to discharge the accused persons from further legal proceedings. In

⁶(2007) 15 SCC 369

support of their contention, the Petitioners have also placed reliance on the judgment of the Hon'ble Apex Court in ***P. Siva Kumar & ors. V. State Rep., by the Deputy Superintendent of Police and ors***⁷, wherein it held that:

7. Undisputedly, the marriage between the appellant No.1 and PW-1 has been found to be null and void. As such the conviction under Section 498-A IPC would not be sustainable in view of the judgment of this Court in the case Shivcharan Lal Verma's case supra. So far as the conviction under Sections 3 and 4 of the Dowry Prohibition Act is concerned, the learned trial Judge by an elaborate reasoning, arrived at after appreciation of evidence, has found that the prosecution has failed to prove the case beyond reasonable doubt. In an appeal/revision, the High court could have set aside the order of acquittal only if the findings as recorded by the trial Court were perverse or impossible.

In light of the observations outlined in the aforementioned decision, this Court perceives that there is no utility in prolonging the proceedings against the accused individuals, especially in light of the Family Court's order nullifying the marriage between the 1st Petitioner and the 2nd Respondent.

17. The learned counsel representing the Petitioners ardently asserts that in instances where a marriage is deemed null and void, the pursuit of legal proceedings under sections 3 and 4 of the Dowry Prohibition Act becomes untenable. Central to this argument is the delineation of "dowry" as envisaged within the Act, positing it as a demand for property or valuable security intricately intertwined with the institution of marriage. Emphasizing the exhaustive scope of dowry as defined in section 2 of the Dowry Prohibition

⁷ 2023 LiveLaw (SC) 116

Act, counsel underscores its inclusive nature, encompassing a wide array of assets and properties exchanged directly or indirectly in connection with matrimonial alliances. Furthermore, counsel contends that once a marriage is declared null and void, any purported demand for dowry in relation to said marriage loses legal validity. Notably, in the case of **P. Siva Kumar's case** as referred to supra, the Hon'ble Apex Court independently scrutinized the trial court's decision, despite the nullification of the marriage, to assess the applicability of charges under sections 3 and 4 of the Dowry Prohibition Act.

18. Learned counsel for the Petitioners has apprised the Court of an admission made by the 2nd Respondent herein (wife/Defacto Complainant) during the Family Court proceedings. The order passed in F.C.O.P.No.1275 of 2015 reveals that the wife/Defacto Complainant did not raise any objection to the declaration of the marriage as null and void, but sought leave to contest other allegations pertaining to the recovery of amounts and ornaments through separate proceedings. Additionally, it appears that both parties have reached an amicable compromise, rendering the continuation of the proceedings unnecessary. In light of these circumstances, this Court is inclined to believe that the Petitioners have established a case warranting the allowing of the Revision Case.

19. The nature of the evidence recorded or collected by the investigating agency, or the documents produced, which prima facie reveal suspicious circumstances against the accused, suffice for the purposes of framing a charge. Such material is taken into account in the process of framing the

charge. If there are insufficient grounds for proceeding against the accused, they would be discharged. However, if the court, after due consideration of the material, finds grounds for presuming that the accused has committed the triable offence, then a charge must necessarily be framed.

20. The learned counsel for the Petitioners asserts that vague and general allegations have been levied against the Petitioners. While certain documents have been referenced to demonstrate the amount of transfer, no specific documents have been presented to substantiate the actual transfer of amounts. Consequently, the contention raised by the Defacto Complainant, suggesting that the amounts were transferred as dowry, cannot be accepted.

21. As rightly pointed out by the Petitioners' counsel, the expenses purportedly incurred by the family members of the 2nd Respondent/wife for the marriage have been categorized as dowry. The version presented by the 2nd Respondent lacks specificity and consistency concerning the alleged dowry payments and their particulars. Vague assertions have been made in both the police complaint and the Domestic Violence Case, without providing any clear explanation. Furthermore, the 2nd Respondent has failed to explain why she did not produce documentary evidence to support the alleged payments. Additionally, it is noteworthy that the 2nd Respondent, in F.C.O.P.No.1275 of 2015, relinquished her claim in the divorce petition, with the intention to pursue the recovery of the amount through separate proceedings.

22. On a careful conspectus of the legal spectrum, juxtaposed in my view on the facts and merits expressed hereinbefore, I am satisfied that there is no

suspicion, much less strong or grave suspicion that the Petitioners are guilty of the offence alleged under section 3 and 4 of D.P.Act. It would be unjustified to make the Petitioners face a full-fledged criminal trial in this backdrop.

23. Accordingly, the Revision Petition is **allowed**. The Revision Petitioners, on bail, stand discharged of the liabilities of their bail bonds. The Impugned order of the learned Magistrate dismissing the prayer for discharge is set aside. Consequently, there not being sufficient material on record to proceed against them, the Petitioner shall stand discharged in the criminal case.

Miscellaneous applications pending, if any, shall stand closed.

T. MALLIKARJUNA RAO, J

Date: 03.05.2024

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THE HON'BLE SRI JUSTICE T.MALLIKARJUNA RAO

CRIMINAL REVISION CASE No. 165 of 2023

Date: 03.05.2024

SAK