

Sarasamma Vs. State Of Karnataka

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Court : Karnataka

Decided On : Dec-10-2020

Judge : K.Somashekar

Appeal No. : CRL.P 77/2018

Appellant : Sarasamma

Respondent : State Of Karnataka

Advocate for Def. : Sri. M.Vinaya Keerthy

Advocate for Pet/Ap. : Sri. H.C.Shivaramu

Judgement :

R :

1. : IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE10H DAY OF DECEMBER, 2020 BEFORE THE HONBLE MR.JUSTICE K.SOMASHEKAR CRIMINAL PETITION NO.77 OF 2018 CONNECTED WITH CRIMINAL PETITION No.735 OF 2019 CRL.P.77/2018 BETWEEN1 Sarasamma W/o Krishnegowda Aged about 58 years Residing at No.285 Kyathanahalli, Y.N.Koppal Road Pandavapura Taluk Mandya District-571427.

2. Krishne Gowda S/o Late Honnegowda Aged about 70 years Residing at No.285 Kyathanahalli, Y.N.Koppal Road Pandavapura Taluk Mandya District-571427.

3. Latha Aged about 39 years W/o Ravi Lecturer at Vidyavardaka Collage Mysore Residing at Door No.34 DBC Block, R.K. Nagar Mysore-571101. :

2. :

4. Ravi Kumara @ Ravi Aged about 41 years S/o Prakasha Residing at Door No.34 DBC Block, R.K. Nagar Mysore - 571101.

5. Krishne Gowda Aged about 57 years S/o Late Thimme Gowda Resident of Kyathanahalli Village Kasaba Hobli Pandavapura Taluk Mandya District-571427.

6. Channakeshava K.S Aged about 48 years S/o Late Shivanna Resident of Kyathanahalli Village Kasaba Hobli Pandavapura Taluk Mandya District-571427.

... Petitioners (By Sri. H.C. Shivaramu, Advocate) AND1 State of Karnataka Represented by New Extension Police Station Tilak Park, Tumkur-572101.

2. Smt. Sharmila Rani S.M., W/o Ashok Kumar K D/o S.D. Munidevegowda Aged about 32 yeas Resident of Near Sacred Heart School Gedlahalli Road, Upparhalli Tumkur-572101. ... Respondents (By Smt. Rashmi Jadhav - HCGP for R-1; Sri. M Vinaya Keerthy - Adv., for R-2) :

3. : This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, praying to quash the entire criminal proceedings in Crime No.22/2015 for the alleged offences punishable under Section 498A, 323, 504, 506 r/w 34 of IPC and Sections 3 and 4 of Dowry Prohibition Act on the file of the Honble Additional Civil Judge (Sr.Dvn.,) and CJM Court, Tumkur. CRL.P.735 /2019 BETWEEN Ashok Kumar S/o Krishnegowda Aged about 39 years Working as Asst. Manager TVS Company, Mumbai Kyathanahalli Village Kasaba Hobli Pandavapura Taluk Mandya District-571427. ... Petitioner (By Sri. H.C. Shivaramu, Advocate) AND1 State of Karnataka Represented by New Extension Police Station Tilak Park, Tumkur-572101.

2. Smt. Sharmila Rani S.M., W/o Ashok Kumar K D/o S.D. Munidevegowda Aged about 32 yeas Resident of Near Sacred Heart School Gedlahalli Road, Upparhalli Tumkur-572101. ... Respondents (By Smt. Rashmi Jadhav - HCGP for R-1; Sri M. Vinaya Keerthy - Adv., for R-2) :

4. : This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, praying to quash the entire criminal proceedings in C.C.No.101/2015 for the offences punishable under Section 498A, 323, 504, 506 r/w 34 of IPC and Sections 3 and 4 of Dowry Prohibition Act, before the Honble Additional Civil Judge (Sr. Dvn.,) and CJM Court, Tumkur. These Criminal Petitions coming on for Orders, through video conferencing this day, the court made the following:
COMMON

ORDER

Crl.P.No.77/2018 is filed by the petitioners/accused Nos.2 to 7 seeking to quash the entire criminal proceedings in Crime No.22/2015 for the offences punishable under Sections 498A, 323, 504, 506 r/w 34 of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

2. Crl.P.No.735/2019 is filed by petitioner/Accused No.1 seeking to quash the entire criminal proceedings in C.C.No.101/2015 for the offences punishable under Sections 498A, 323, 504, 506 r/w 34 of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. :

5. :

3. Heard Sri H.C.Shivaramu, learned counsel for the petitioners in both these petitions who appears through video conferencing and learned HCGP for respondent No.1 - State and Sri M.Vinaya Keerthy, learned counsel for respondent No.2 who are present before the Court physically.

4. It is transpired in the case of the prosecution leading to file a complaint by the complainant - Sharmila Rani S.M., the second respondent herein alleging that she had married with one Ashok Kumar.K and their marriage was performed on 09.03.2014 at A.C.Madegowda Kalyana Mantapa as per the customs prevailed in their society. He was working as Assistant Manager in TCS Company at Mumbai. At the time of marriage, her parents had given 300 gms of gold, cash of Rs.4,50,000/- and 260 gms of gold ornaments as dowry. Subsequent to her marriage with Ashok Kumar, her husband forcefully received a sum of Rs.3,00,000/-. Apart from that Ashok Kumar demanded a site at Bangalore and

also demanded for construction of a building in the site. :

6. :

5. It is further stated that there was panchayath constituted regarding the family dispute emerged in between them on 4.1.2015 at the house of one Somanna in Mandya. In that panchayat her relatives namely Varadarajegowda and Ravi and the family members of petitioners participated but the petitioners family insulted the complainant and her family. These are all the allegations made in the complaint and also alleged of extending of some sort of criminal intimidation.

6. Based upon her complaint, the case in Crime No.22/2015 came to be registered by the New Extension Police, Tumkur for the offences punishable under Sections 498A, 323, 504, 506 r/w 34 of IPC, besides Sections 3 and 4 of the Dowry Prohibition Act, 1961. Thereafter, the IO took up the case for investigation and thoroughly investigated the case and laid the charge sheet against the accused. The charge sheet is consisting CWs.1 to 20. CW.20 - K.Raghavendra being a Police Officer investigated the case and laid the charge sheet against the accused persons in C.C.No.101/2015. :

7. :

7. Since the second respondent - Sharmila Rani was not willing to lead her happy married life had set up all kinds of allegations against the accused persons. Accused No.1 being her husband filed M.C.No.163/2017 before the Family Court seeking divorce which came to be allowed on 27.02.2018 under Section 13(1)(i-a)(i-b) of the Hindu Marriage Act.

8. Whereas learned counsel for the petitioners in these petitions has taken me through the allegations made in a complaint filed by Smt.Sharmila Rani contending that there is no specific allegation made against her husband/accused No.1 and so also, accused Nos.2 to 7 said to be his family members. But her husband Ashok Kumar was residing at Mumbai when the alleged incident took place. Therefore, a prudent man can infer that the allegations made out in the complaint are merely a baseless and concocted for the purpose of initiating a false criminal proceedings.

9. The second limb of the arguments advanced by the learned counsel for the petitioners is that due to some :

8. : sort of incompatible conditions in between the Ashok Kumar and his wife, her husband had filed the case in M.C.No.163/2017 seeking for divorce which came to be allowed on 27.02.2018 by granting divorce. However, the complainant has initiated the proceedings against the petitioners just to harass her husband and his family members by implicating them for the allegations that they have given physical as well as mental harassment and also extending the criminal intimidation. When there is no specific allegation made in the complaint, certainly it can be inferred that the complaint filed by her is just to cause harassment to Ashok Kumar and his family members which is abuse of process of law. Therefore, it requires intervention of this court by exercising powers under Section 482 of Cr.P.C., if not, certainly there shall be miscarriage of justice to the gravamen of the accused and so also, abuse of process of law. On this premise, the counsel for the petitioners seeks for allowing these petitions by considering the grounds as urged.
:

9. :

10. Learned HCGP for the respondent - State has taken me through the allegations made in the complaint filed by the complainant that subsequent to her marriage with accused - Ashok Kumar that her husband and also his family members extended mental as well as physical harassment and demanding her to provide site in Bangalore for construction of building. Though the panchayath has been constituted by participating of elderly persons but the same went in vain which indicates that the complainant has meted out physically as well as mental harassment at the hands of her husband and his family members. Therefore, the ingredients which have been constituted for the aforesaid offences as there is common intention of accused having extended criminal intimidation. In addition to that they alleged to have demanded dowry in terms of the site from her parents despite of receipt of considerable dowry in terms of gold items stated in the complaint. Subsequent to the registration of the case in Crime No.22/2015, the IO took up the case for investigation and thoroughly investigated the case and laid

the charge sheet against the accused in :

10. : C.C.No.101/2015. Mere because the complainant and her husband obtained divorce it cannot be diluting the harassment meted out to her by Ashok Kumar and his family members. The same is reflected in the statement of witnesses cited to have been recorded in the charge sheet. These are all the contentions as taken by learned HCGP for the State and seeking for dismissal of the petitions filed by the accused.

11. Sri Vinaya Keerthy, learned counsel for second respondent/complainant who is assisted to her learned HCGP for State in this petition in putting forth the materials in which secured by the IO in order to laying the charge sheet against the accused. His submission is in conformity with the submission made by learned HCGP and seeking for dismissal of the petitions filed by the petitioners/accused.

12. It is in this context of the contention taken by the learned counsel for the petitioners and so also, counter made by learned HCGP for the respondent - State it is relevant to refer that Accused No.1 - Ashok Kumar :

11. : instituted the proceedings before the Family Court against the second respondent being his wife in M.C.No.163/2017 under the provisions of Hindu Marriage Act seeking decree of divorce as she was not willing to lead happy married life had set up all kinds of allegations against him and his family members. The petition came to be allowed on 27.02.2018. Even in the petition filed by the accused No.1 in MC No.44/2016 for restitution of conjugal rights before the Family Court, a categorical statement has been made by the second respondent that she is not ready and willing to lead the life with her husband.

13. There is no dispute that second respondent has lodged a complaint before the first respondent - police on 5.2.2015. But her evidence clearly reveals that inspite of issuance of notice by her husband Ashok Kumar for restitution of conjugal rights, she was not inclined to lead marital life but went on to lodge the complaint against her husband and his family members. In the said complaint there is an allegation made that her husband Ashok Kumar and his family members said to have been given :

12. : physical as well as mental harassment and demanded dowry. But if really there was any sort of harassment extended to her she would have lodged the complaint to the police even before issuance of notice by her husband for restitution of conjugal rights. However, the case in C.C.No.101/2015 came to be registered against accused persons for the aforesaid offences. Mere because in the FIR said to have been stated certain sections of IPC for taking some course of action as under Code of Criminal Procedure for proceeding with the case for investigation and laying of charge sheet against the accused under Section 173(2) of Cr.P.C. But in the instant case, accused No.1 - Ashok Kumar had instituted proceedings before the Family Court in M.C.No.44/2016 seeking restitution of conjugal rights. But there is no any sort of physical or mental harassment alleged to be meted out either from her husband or his family members. But minutely to see the ingredients of Section 498A of IPC, there shall be some physical as well as mental harassment and it is from the husband as well as family members but there shall be some material allegations with regard to constituting of :

13. : the offences against the accused persons and so also, other offences inclusive of Section 506 of IPC that some sort of criminal intimidation extending to the complainant, but there is no material as such for allegation. However, in C.C.No.101/2015 all the accused persons have been roped being the family members of the accused No.1 - Ashok Kumar. The complainant is well educated person and has secured three degrees from universities. As there was some incompatible condition between her and her husband, it can be inferred that even if the allegation made in a complaint and the substance in the FIR, they are dragged into the criminal proceedings with a view to tarnish their image in the society.

14. According to Section 154 of Cr.P.C. when the complaint is filed by the complainant either orally or in writing that the Station House Officer ought to have registered the crime against the accused if it is cognizable offence. Further, Section 169 of Cr.P.C. reads as under:

169. Release of accused when evidence deficient. If, upon an investigation under this Chapter, it appears to the officer in charge of the :

14. : police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial. Section 170 of Cr.P.C. reads as under:

170. Cases to be sent to Magistrate, when evidence is sufficient. (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed. (2) When the officer in charge of a police station forward an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the facts and circumstances of the case as he may think necessary, to execute a bond to appear before :

15. : the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused. (3) If the Court of the Chief Judicial Magistrate is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons. (4) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

15. When there is sufficient strong evidence then only the investigating officer has to lay the charge sheet against the accused as contemplated under Section 173(2) of Cr.P.C., which requires to be viewed from all angles, but mere because laying the charge sheet, it cannot said that the allegations made in the complaint and so also, the statement of witnesses said to have been recorded, it appears to be a gospel truth. In the instant case, there is a family dispute emerged in between Ashok Kumar and Smt.Sharmila Rani being the complainant. Despite of panchayath being constituted for resolving the family :

16. : dispute by participation of the elderly person it cannot be resolved, but the same went in vain and they could not unite.

16. Keeping in view some sort of materials which appeared in the charge sheet laid by the IO it is relevant to refer the reliance of Honble Supreme Court in State of Karnataka vs. L.Muniswamy and others reported in AIR 1977 SC1489 wherein it is held as under: In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Courts has inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the :

17. : High Court in quashing the proceeding in the interest of justice.

17. In the instant case, the criminal proceedings initiated by the complainant against her husband Ashok Kumar and his family members who were roped in the alleged crime, a prudent man can infer that the said proceedings initiated by her is manifestly attended with mala fide 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.

18. In the FIR recorded by the first respondent it is the uncontroverted allegations made in the FIR of a complaint filed by the complainant. The material evidence collected in support of the same do not disclose the commission of offence and make out the case against accused Nos.1 to 7 that the accused have given physical as well as mental harassment to her and also demanding additional dowry and so also extending life threat. :

18. : Therefore, there is no hesitation in quashing the FIR and the charge sheet laid by the IO against the accused in C.C.No.101/2015 for the offences punishable under Sections 498A, 323, 504, 506 r/w 34 of IPC beside Sections 3 and 4 of the Dowry Prohibition Act, 1961. In terms of the aforesaid reasons and findings, I proceed to pass the following:

ORDER

Crl.P.No.77/2018 filed by the petitioners/accused Nos.2 to 7 and Crl.P.No.735/2019 filed by petitioner/ Accused No.1 are hereby allowed. Consequently, the proceedings in C.C.No.101/2015 arose in Cr.No.22/2015 pending before the Court of Addl.Civil Judge (Sr.Dn) and JMFC, Tumkuru are hereby quashed. Sd/- JUDGE DKB

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