

Basavaraj And Ors Vs. The State And Anr

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Court : Karnataka Kalaburagi

Decided On : Aug-18-2023

Judge : Venkatesh Naik T

Appeal No. : CRL.P 200977/2022

Appellant : Basavaraj And Ors

Respondent : The State And Anr

Judgement :

- 1 - NC:

2023. KHC-K:6521 CRL.P No.200977 of 2022 R IN THE HIGH COURT OF KARNATAKA KALABURAGI BENCH DATED THIS THE18H DAY OF AUGUST, 2023 BEFORE THE HON'BLE MR. JUSTICE VENKATESH NAIK T. CRIMINAL PETITION NO.200977/2022 BETWEEN:

1. BASAVARAJ S/O. SHARANAPPA POOJARI AGE:

54. YEARS, OCC: BANK EMPLOYEE, R/O. H.No.T-8-1545/18 PLOT NO.72. SHIVALINGESHWAR TEMPLE ROAD, SHIVAJI NAGAR, KALABURAGI - 585104

2. BABURAO S/O. SHARANAPPA POOJARI AGE:

41. YEARS, OCC: AUTO DRIVER, R/O. PLOT NO4 SEDAM ROAD, SIDDESHWAR COLONY KALABURAGI OPP ESI HOSPITAL KALABURAGI -

585106 3. NEELAMMA @ CHANDRAKALA W/O. BABURAO POOJARI AGE:

35. YEARS, OCC: HOUSEWIFE, R/O. PLOT NO4 SEDAM ROAD, SIDDESHWAR COLONY KALABURAGI - 2 - NC:

2023. KHC-K:6521 CRL.P No.200977 of 2022 OPP ESI HOSPITAL KALABURAGI - 585106 4. CHANDRAMMA @ CHANDRAKALA W/O. BASAVARAJ POOJARI AGE:

49. YEARS, OCC: HOUSEWIFE, R/O. H.No.T-8-1545/18, PLOT No.72 SHIVALINGESHWARA TEMPLE ROAD, SHIVAJI NAGAR, KALABURAGI - 585104 5. JAGADEVI @ JAGAMMA W/O. NAGAPPA HIRE KURUBURA AGE:

34. YEARS, OCC: HOUSEWIFE, R/O. No.56, MALINGARAYA GUDI BHUSANGI, MAHAGAON, KALABURAGI - 585316 6. SANGAMMA W/O. AMBARAYA ARAGUDADORE AGE:

35. YEARS, OCC: HOUSEWIFE, R/O. BELUR-J KAPANOOR KALABURAGI DIST. KALABURAGI - 585104 7. ARATI W/O. SIDRAMAPPA POOJARI AGE:

22. YEARS, OCC: HOUSEWIFE, R/O. TAVARAGERA, DIST. KALBURAGI - 585104 8. MALAPPA S/O SAYABANNA NINGADALLI AGE:

50. YEARS, OCC: COOLIE, R/O. MAHAGAON KALBURAGI DIST. KALABURAGI - 585316 - 3 - NC:

2023. KHC-K:6521 CRL.P No.200977 of 2022 9. KASHAMMA @ KASHIBAI W/O. MALLAPPA NINGADALLI AGE:

45. YEARS, OCC: HOUSEWIFE, R/O. MAHAGAON TQ. KAMALAPUR, DIST. KALABURAGI - 585316 10. VIMALABAI W/O. SAIBANNA NINGADALLI AGE:

72. YEARS, OCC: HOUSEWIFE, R/O. MAHAGAON TQ. KAMALAPUR, DIST. KALABURAGI - 585316 11. MALAPPA S/O SAYABANNA NINGADALLI AGE:

38. YEARS, OCC: COOLIE, R/O. MAHAGAON TQ. KAMALAPUR, DIST. KALABURAGI - 585316 PETITIONERS (BY SRI. AVINASH A. UPLOANKAR,

ADVOCATE) AND:

1. THE STATE THROUGH HUMANABAD POLICE STATION, DIST. BIDAR, NOW REPRESENTED BY ADDL. S.P.P. HIGH COURT OF KARNATAKA KALABURAGI BENCH - 585107 2. SMT. ROHINI W/O. SIDRAMAPPA POOJARI AGE:

24. YEARS, OCC: HOUSEWIFE, R/O. TAVAREGERA NOW RESIDING AT MANIK NAGAR, HUMANABAD, - 4 - NC:

2023. KHC-K:6521 CRL.P No.200977 of 2022 TQ. HUMANABAD, DIST. BIDAR - 585330 RESPONDENTS (BY SMT. ANITA M. REDDY, HCGP FOR R1; SRI ANILKUMAR NAVADAGI, ADVOCATE FOR R2) THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO EXERCISE INHERENT POWERS UNDER SECTION 482 CR.P.C., EXAMINE THE RECORDS AND QUASH THE PROCEEDINGS IN CC.NO.793/2022 (CRIME NO.204/2021 HUMANABAD P.S.), FOR THE OFFENCES UNDER SECTIONS 498A), 323, 506, 494 R/W 34 IPC, AND 3 AND 4 DP ACT, PENDING ON THE FILE OF CIVIL JUDGE AND JMFC COURT AT HUMANABAD, AGAINST THE PETITIONERS. THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1 Heard learned counsel for petitioners, learned High Court Government Pleader for respondent No.1-State and learned counsel for respondent No.2-complainant.

2. For the sake of convenience, the parties are referred as per their status before the trial Court. Petitioners herein are accused Nos.3 to 13 and respondent No.2 is complainant.-. 5 - NC:

2023. KHC-K:6521 CRL.P No.200977 of 2022 3. Brief facts of the prosecution case is as under: On 29.06.2021 the complainant Smt. Rohini lodged a complaint alleging that her marriage was solemnized with accused No.1 on 22.04.2019 and at the time of marriage her parents have given cash of Rs.1,00,000/-, 2.5 tolas of gold and also household articles worth Rs.5,00,000/- to accused No.1 as per

demand made by him and accused No.2. Thus, they incurred marriage expenses of Rs.8,00,000/-. After marriage, initially her relationship with accused No.1 was cordial and thereafter her in-laws started harassing her physically and mentally, who were demanding her to bring additional dowry amount. Thereafter accused No.1 performed his second marriage with accused No.9 on 18.06.2021. In this regard, complainant and her family members had been to the house of accused No.1, at that time they voluntarily caused hurt to complainant, intentionally insulted her provoking breach of peace and criminal intimidation to eliminate her. Hence, she lodged - 6 - NC:

2023. KHC-K:6521 CRL.P No.200977 of 2022 complaint. On the basis of said complaint respondent No.1 - Police registered a case in Crime No.204/2021 for the offences punishable under Sections 498A, 323, 504, 506, 494 read with 34 of IPC and Sections 3 and 4 of Dowry Prohibition Act. The Investigating Officer completed the investigation and filed charge-sheet in C.C. No.793/2022 before the Additional JMFC, Humnabad Taluk, Bidar District. Being aggrieved by initiation of proceedings in C.C. No.793/2022, these petitioners being accused Nos.3 to 13 have filed this petition praying to quash the proceedings.

4. It is contended that petitioners are innocent of the alleged offences, they have been falsely involved in the case and allegations made in the complaint are vague and omnibus statement in view of there being no specific allegation against the accused persons. It is contended that the offence under Section 494 of IPC is not cognizable and no police case can be registered under Section 154 of Cr.P.C., as there is a bar under Section 198(1)(c) of - 7 - NC:

2023. KHC-K:6521 CRL.P No.200977 of 2022 Cr.P.C., but the learned Magistrate wrongly took cognizance and issued process against accused persons. In fact, these petitioners i.e., accused Nos.3 to 13 are not at all involved in the case. Hence, prayed to quash the proceedings.

5. Learned High Court Government Pleader contended that petitioners are involved in the offences punishable under Section 498A, 323, 504, 506, 494 read with Section 34 of IPC and there are prima facie materials against these petitioners, therefore, at this stage the proceedings cannot be quashed.

6. Learned counsel for respondent No.2 vehemently submitted that entire family members of accused No.1 have harassed complainant physically and mentally and they intentionally insulted complainant to provoke her breach of peace and also intended to eliminate her. Now accused No.1 married accused No.9, therefore, the complainant has come on street and - 8 - NC:

2023. KHC-K:6521 CRL.P No.200977 of 2022 therefore without conducting full fledged trial the Court cannot quash the proceedings against these petitioners, thus prayed to reject the petition.

7. After hearing the arguments by all the parties and having perusal of material available on record it appears that the learned Magistrate on perusal of charge-sheet materials took cognizance of the aforesaid offences and issued summons. Hence, the petitioners have filed this petition.

8. As per charge-sheet material, accused No.1 performed his second marriage with accused No.9 during the life time of 1st wife of accused No.1. Thus, the complainant lodged FIR for various Sections including Section 494 of IPC. The Investigating Officer after conducting investigation, filed charge sheet including the offence punishable under Section 494 of IPC. Admittedly, there is a bar under Section 198(1)(c) of Cr.P.C. Section 198(1)(c) of Cr.P.C., reads as under: - 9 - NC:

2023. KHC-K:6521 CRL.P No.200977 of 2022 "198(1) - No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence: Provided that- (c) where the person aggrieved by an offence punishable under section 494 or section 495 of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father' s or mother's brother or sister, or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.

9. In view of the aforesaid proposition, the Magistrate shall not take cognizance upon a Police Report for the offence under Section 494 of IPC. But learned Magistrate without perusing the mandate of Section 198(1)(c) of Cr.P.C., has wrongly took cognizance of an offence under Section 494 of IPC, and issued

process to accused persons.

10. Insofar as other offences are concerned, on perusal of charge-sheet material, the complainant has - 10 - NC:

2023. KHC-K:6521 CRL.P No.200977 of 2022 specifically stated that she was thrown out from matrimonial home on 23.04.2021 and accused No.1 performed his second marriage with accused No.9 on 18.06.2021. Therefore, on 18.06.2021 complainant and her family members had been to the house of accused No.1 and questioned the act of accused No.1 in respect of his second marriage with accused No.9; at that time, accused Nos.1 to 13 abused complainant and her parents in filthy language and also assaulted her. Admittedly the first information was lodged after two months from the date on which complainant was thrown out from the matrimonial house, and except omnibus and general allegations, there is no specific allegation made against these petitioners, as to how and in what manner they subjected complainant to cruelty, both physically and mentally, and also demanded to bring dowry from her parental house.-. 11 - NC:

2023. KHC-K:6521 CRL.P No.200977 of 2022 11. The Hon'ble Apex Court in the case of State of A.P. vs. M. Madhusudhan Rao reported in (2008) 15 SCC582at para No.30 has held as follows:

"Time and again, the object and importance of prompt lodging of the First Information Report has been highlighted. Delay in lodging the First Information Report, more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of coloured version, exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained.

12. Further, the Hon'ble Apex Court in the case of Kahkashan Kausar @ Sonam vs The State Of Bihar reported in (2022)6 SCC599at Para 18 has held as follows:
- 12 - NC:

2023. KHC-K:6521 CRL.P No.200977 of 2022

"18. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

13. In the absence of any material that accused Nos.3 to 15 have subjected the complainant to cruelty both physically and mentally and also that there was demand to bring money from her parental home, the cognizance taken by the learned Magistrate for the aforesaid offences, particular under Section 494 of IPC, though there is a bar under Section 198(1)(c) of Cr.P.C., - 13 - NC:

2023. KHC-K:6521 CRL.P No.200977 of 2022 the Magistrate has taken cognizance without any substance. Even otherwise, the incident took place in the month of April 2021 and FIR was lodged in the month of June 2021 without having any plausible explanation.

14. Further, the ingredients of Sections 504 and 506 of IPC are also not established. In fact, the prosecution has to show that accused persons have intentionally insulted the complainant, so as to give her provocation, intending or knowing that such provocation will cause her break the public peace or to commit any other offence. Thus, mere act of insulting a person would not satisfy the ingredients of Section 504 of IPC. The Hon'ble Apex Court in case of *Fiona Shrikhande vs State Of Maharashtra & Anr.*, reported in AIR (2014) SC2013 at Paragraph Nos. 13 and 14 has held as under:

"13. Section 504 IPC comprises of the following ingredients, viz., (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted,

and (c) the accused must intend or know - 14 - NC:

2023. KHC-K:6521 CRL.P No.200977 of 2022 that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC.

14. We may also indicate that it is not the law that the actual words or language should figure in the complaint. One has to read the complaint as a whole and, by doing so, if the Magistrate comes to a conclusion, prima facie, that there has been an intentional insult so as to provoke any person to break the public peace or to commit any other offence, that is sufficient to bring the complaint within the ambit of Section 504 IPC. It is not the law that a complainant should verbatim reproduce each word or words capable of provoking the other person - 15 - NC:

2023. KHC-K:6521 CRL.P No.200977 of 2022 to commit any other offence. The background facts, circumstances, the occasion, the manner in which they are used, the person or persons to whom they are addressed, the time, the conduct of the person who has indulged in such actions are all relevant factors to be borne in mind while examining a complaint lodged for initiating proceedings under Section 504 IPC.

15. So far as Section 506 of IPC is concerned, in order to satisfy the ingredients of offence of criminal intimidation, there has to be threat of injury to a person, reputation or property of the complainant by the accused, which should be the intention to cause harm to that person or to cause that person to do any act, which is not legally bound to do, or to omit to do so as to avoid the execution of such threat. In the case of Manik Taneja & Anr vs State Of Karnataka & Anr., reported

in (2015) Part 7 SCC423 the Hon'ble Apex Court had an occasion to examine the ingredients of Sections 503 and 506 of IPC, wherein the observation made by the Hon'ble Apex Court is as under: - 16 - NC:

2023. KHC-K:6521 CRL.P No.200977 of 2022 " The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made, prima facie, establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit the prosecution to continue. Where, in the opinion of the Court, the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may quash the proceeding even though it may be at a preliminary stage.

16. So far as the Section 323 of IPC is concerned, though complainant has made out the allegations against the petitioners, neither the complainant nor the Investigating Officer has furnished Wound Certificate to show that these petitioners have voluntarily caused bodily injury to the complainant.

17. In the instant case as also in the above discussed material on record coupled with the allegation - 17 - NC:

2023. KHC-K:6521 CRL.P No.200977 of 2022 made in the complaint, the complainant does not establish the offences under Sections 504, 506 and 323 of IPC against these petitioners.

18. In view of the above analysis, the continuation of criminal proceedings against these petitioners i.e., accused Nos.3 to 13, will be an abuse of process of law. Accordingly, I pass the following:

ORDER

The petition is allowed. The proceedings in C.C. No.793/2022 pending on the file of the learned Civil Judge and J.MF.C., Humnabad, Bidar District arising out of Crime No.204/2021, registered by the respondent- police for the offences

punishable under Sections 323, 504, 506, 494 read with 34 of IPC and Sections 3 and 4 of Dowry Prohibition Act, in so far as it relates to the petitioners (Accused Nos.3 to

13) is hereby quashed.-. 18 - NC:

2023. KHC-K:6521 CRL.P No.200977 of 2022 Any how, the de-facto complainant is at liberty to approach the jurisdictional Court to file appropriate complaint in accordance with law, if she is advised so. In view of the disposal of the petition, pending I.A's. if any, do not survive for consideration, accordingly rejected. Sd/- JUDGE SBS List No.:

1. SI No.:

1.

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