

Raghothaman and ors. Vs. State of Karnataka and anr.

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Court : Karnataka

Decided On : Feb-12-2004

Reported in : 2004CriLJ1974; II(2004)DMC622; ILR2004KAR1322

Judge : M.S. Rajendra Prasad, J.

Acts : Indian Penal Code (IPC) - Sections 304B and 498A; Dowry Prohibition Act - Sections 3 and 4; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Cr.P. No. 2780/2001

Appellant : Raghothaman and ors.

Respondent : State of Karnataka and anr.

Advocate for Def. : P.M. Nawaz, HCGP for R1

Advocate for Pet/Ap. : Mohad. Usman Shaik, Adv.

Disposition : Petition allowed

Judgement :

ORDER

M.S. Rajendra Prasad, J.

1. This petition, by the accused filed under Section 482 Cr.P.C. is for quashing the entire proceedings in CC No. 22703/99 on the file of the X Addl. CMM. Bangalore,

wherein the petitioners have been facing prosecution for the offence under Section 498A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act.

2. The Court has heard the arguments of Sri Mohd. Usman Shaik, the learned Counsel on behalf of the petitioners and Sri P.M. Nawaz, HCGP on behalf of the first respondent-State. The 2nd respondent has remained absent in spite of service of notice.

3. The learned Counsel for the petitioners strenuously contended that the accused have been facing prosecution for the said offences on the basis of the complaint lodged by the 2nd respondent. The material on record clearly shows that the 2nd respondent was married to another person as on the date of her undergoing with the marriage ceremony with the first respondent and this goes to show that the marriage of 2nd respondent with the first petitioner is a void marriage. As such provisions of Section 498A IPC and Section 3 and 4 of D.P. Act, are not at all attracted. The complaint filed against the accused is with only an ulterior motive. The learned Counsel relies on the following decisions in support of his contentions.

1. 1996 (2) CRIMES 41:

2. 2000 (3) CRIMES 80;

3. 1998 (2) CRIMES 139

4. AIR 1998 SC 644;

5. AIR 1998 SC 709

6. : 1992 CriLJ527 (3) CRIMES 147

Placing reliance on the ratio laid down in the said decision, he prayed for allowing the revision petition.

4. On the contrary, the learned HCGP for the first respondent -State strenuously contended that the material on record clearly goes to show that the charge sheet which has been submitted against the accused clearly shows that there has been

prima facie case made out against the accused for the said offences. He also contends that the alleged acts of the accused relating to the period where the 2nd respondent and the petitioner had been living as husband and wife and their marriage came to be declared as void by subsequent judgment and such being the case the ratio laid down in the aforesaid decisions cannot be pressed in to service. It is also contended that the learned cannot be pressed in to service. It is also contended that the learned Sessions Judge has held that there had been prima facie case against the accused for the said offences and it is not now open to the accused to seek quashing of the proceedings. Hence, the learned Counsel has prayed for dismissal of the revision petition.

5. The Court has carefully perused the material on record and gave its anxious thoughts over the rival contentions raised at the Bar.

6. From the material on record, it is seen that the 2nd respondent had submitted a private complaint before the learned magistrate under Section 200 Cr.P.C. alleging the said offences against the accused, in particular, contending that she was married to the first petitioner on 10.2.1995 and the accused have been harassing and subjecting her to cruelty and were making illegal demands of dowry. Hence, the accused have committed the said offences. The complaint was referred to the Police and after investigation, the Police have submitted the charge sheet in this regard for the offence punishable under Section 498A of the Indian Penal Code and Section 3 and 4 of the Dowry Prohibition Act. The material on record clearly shows that the accused have sought for discharge and the same has been turned down by the learned Sessions Judge. Now, the petitioners have come up before this Court seeking quashing of the proceedings.

7. The material on record clearly goes to show that, patently, the 2nd respondent was married to one R. Narayanaswamy as per Hindu Rites and customs on 26.6.1986. Both the husband and wife have filed petition under Section 13(b) of the Hindu Marriage Act before the Principal Civil Judge in M.C. No. 19/95 and this petition came to be disposed of on 5.8.1995. Granting divorce as sought for in that petition. As per the specific averment in the complaint, the marriage between the first petitioner and the 2nd respondent was held on 10.2.1995. The first petitioner

herein had filed a petition for declaration that the marriage between him and the 2nd respondent as void in MC No. 9/96 before the Family Court and the 2nd respondent herein had filed objection statement admitting that her marriage with the first petitioner had taken place on 10.2.1995 and the said MC petition has come to be disposed of by the Family Court by the order dated 8.2.2000. These aspects clearly goes to show that as on the date of the marriage the first petitioner with the 2nd respondent, the marriage between 2nd respondent and Narayanaswamy, was subsisting. The mute point canvassed by the learned Counsel for the accused is that the marriage had been void marriage and it was void -ab-initia and such being the case, the accused cannot be prosecuted for the said penal provisions at all.

8. At this stage, it is necessary to mention that the decision of the Madhya Pradesh High Court reported in 1998(3) CRIMES 147, wherein it has been held that the provision of Section 304B and 498-A IPC presupposes the marriage of the victim earlier and the offender husband. It must be shown that victim woman was a legally married woman. If not, the accused cannot be prosecuted for the said offences at all.

9. It is seen from another decision of the Andhra Pradesh High Court reported in 2000(3) CRIMES 80 wherein it has been held that the accused cannot be prosecuted for the offences under Section 498A and 494 IPC unless there has been a valid marriage.

10. It is seen from another decision of the Apex Court reported in : 1988 CriLJ793 , wherein it has been held that when the marriage is void ab initio it is void from the very inception.

11. The cumulative effect of the ratio laid down in these decisions is mat there must be a valid marriage between the parties for the purpose of invoking the provisions of Section 498A or Sections 3 and 4 of the Dowry Prohibition Act.

12. In the case on hand, patently, as on the date of marriage of the 2nd respondent with the first petitioner, the 2nd respondent had been legally wedded wife of one Narayanaswamy and the said marriage was subsisting. Such being the

case, the alleged marriage between the 2nd respondent and the first petitioner on 10.2.1995 at Tirupathi cannot be stated to be a valid marriage at all. In other words, it is not a valid marriage. Moreover, the competent Court has declared that the said marriage as void. It is settled principle of law that such declaration by the competent Court of law dates back to the date of the marriage itself. From these, it is clear that there has been a clear bar for prosecuting the accused for the said offences.

13. At this stage, it is necessary to mention another decision of the Apex Court reported in : 1992 CriLJ527 , wherein the Apex Court, in particular, has held that the Court can invoke provisions of Section 482 Cr.P.C. where there is an express legal bar engrafted in any provisions of the Code or the concerned Act. In the cases on hand, there has been a clear bar for prosecuting the accused for the said offences.

14. From the statutory provisions of Section 482 Cr.P.C., it is clear that the Court can exercise the inherent powers, if it comes to the conclusion that continuation of the proceedings against the accused for the said offences would amount to abuse of process of law. Taking these aspects into consideration and the statutory law in this regard, this Court is of the opinion that this would be a fit case for this Court to exercise inherent powers and quash the proceedings against the accused as sought for.

15. For the foregoing reasons, the petitions stand allowed and consequently the proceedings in C.C.No. 22703/1999 pending on the file of the X Addl. Chief Metropolitan Magistrate, Bangalore, stand quashed. The accused are discharged of the said offences and their bail bond stands cancelled.