

Deva Prasad Reddy Vs. Kamini Reddy

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Court : Karnataka

Decided On : Apr-03-2000

Reported in : 2000CriLJ3745; ILR2000KAR3663; 2000(6)KarLJ95

Judge : S.R. Venkatesha Murthy, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 200, 309 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 276-C, 277 and 494; [Companies Act, 1956](#) - Sections 630

Appeal No. : Criminal Petition No. 2817 of 1997

Appellant : Deva Prasad Reddy

Respondent : Kamini Reddy

Advocate for Def. : M/s. Sundaraswamy Ramdas and ;Anand, Adv.

Advocate for Pet/Ap. : Sri M. Arun Ponappa, Adv.

Judgement :

ORDER

1. The petitioner who is the accused in CC No. 15057 of 1997 on the file of the 6th Additional Chief Metropolitan Magistrate, Bangalore for an offence under Section 494 is seeking quashing of the complaint by resorting to Section 482 of the Cr.P.C. The respondent-complainant alleged that the petitioner, was found on 16th of May,

1992 to have had an extra marital relationship with one Smt. Nageena and had taken the said Nageena as an wife during the subsistence of her marriage with the petitioner and thus, the accused-petitioner is guilty of the offence under Section 494 of the IPC.

2. The petitioner has sought to challenge the taking of cognizance of the offence under Section 494 of the IPC on the ground that in O.S. No. 130 of 1995 filed by the complainant, the legitimacy of the marriage between the complainant and the petitioner is in question, besides the petitioner's application for amendment in MC No. 232 of 1996 on the file of the Family Court, Bangalore. Thus, the very foundation of the complainant's case is in question before the competent Civil Court and therefore the proceedings on the criminal side instituted by the respondent would have to be quashed by exercising the petition under Section 482 of the Cr. P.C.

3. The learned Counsel for the petitioner sought to contend that in the event of the decree in O.S. No. 130 of 1995 being passed in favour of the petitioner, the alleged second marriage of the petitioner in contravention of Section 494 of the IPC would have to be fall to the ground and therefore the proceedings initiated by the complainant (respondent herein) would have to be terminated. Ultimately, the whole contention boils down on to the situation as to whether the civil proceedings and the criminal proceedings pending between the parties should be allowed to continue or whether the criminal proceedings should be quashed as now sought.

4. Even if it were to be assumed that the petitioners did not succeed in O.S. No. 130 of 1995 holding that the petitioner's marriage with the respondent was void, by reason of the previous divorce in the U.S.A., being not in accordance with law, the finding would have to be canvassed in the Criminal Court in support of the contention of the petitioner and a trial would have to be gone through, as undisputedly the allegations made in the complaint disclose an offence under Section 494 of the IPC. A similar question came up for consideration in *P. Jayappan v S.K. Perumal, First Income-tax Officer, Tuticorin*. The Supreme Court in para 5 of the judgment observed thus:

'5. ... No other legal bar for the institution of the proceedings is urged except stating that in the event of the petitioner being exonerated in the reassessment proceedings, the prosecutions may have to be dropped. It is true that as observed by this Court in *Uttam Chand v Income-tax Officer, Central Circle, Amritsar*, the prosecution once initiated may be quashed in the light of a finding favourable to the assessee recorded by an authority under the Act subsequently in respect of the relevant assessment proceedings but that decision is no authority for the proposition that no proceedings can be initiated at all under Section 276-C and Section 277 as long as some proceeding under the Act in which there is a chance of success of the assessee is pending. A mere expectation of success in some proceeding in appeal or reference under the Act cannot come in the way of the institution of the criminal proceedings under Section 276C and Section 277 of the Act. In the criminal case all the ingredients of the offence in question have to be established in order to secure the conviction of the accused. The Criminal Court no doubt has to give due regard to the result of any proceeding under the Act having a bearing on the question in issue and in an appropriate case it may drop the proceedings in the light of an order passed under the Act. It does not, however, mean that the result of a proceeding under the Act would be binding on the Criminal Court. The Criminal Court has to judge the case independently on the evidence placed before it. Otherwise, there is a danger of a contention being advanced that whenever the assessee or any other person liable under the Act has failed to convince the authorities in the proceedings under the Act that he has not deliberately made any false statement or that he has not fabricated any material evidence, the conviction of such person should invariably follow in the Criminal Court. The High Court of Punjab and Haryana has correctly applied the rule regarding the maintainability of prosecution in such circumstances in *Telu Ram Raunqi Ram v Income-tax Officer, 'A' Ward, Hoshiarpur*'.

The Supreme Court went further and in para 6 has made the following observations:

'6. It may be that in an appropriate case the Criminal Court may adjourn or postpone the hearing of a criminal case in exercise of its discretionary power under Section 309 of the Code of Criminal Procedure if the disposal of any

proceeding under the Act which has a bearing on the proceedings before it is imminent so that it may take also into consideration the order to be passed therein. Even here the discretion should be exercised judicially and in such a way as not to frustrate the object of the criminal proceedings. There is no rigid rule which makes it necessary for a Criminal Court to adjourn or postpone the hearing of a case before it indefinitely or for an unduly long period only because some proceeding which may have some bearing on it is opening elsewhere. But this, however, has no relevance to the question of maintainability of the prosecution. The prosecution in those circumstances cannot be quashed on the ground that it is a premature one'.

It is clear from the above observations that the initiation of the proceedings under Section 494 of the IPC by the respondent is not and cannot be held to be bad. What would be the result on account of the circumstances pleaded by the petitioner is a matter that can only be ascertained after a trial and not before it.

5. On behalf of the respondent a recent decision of the Supreme Court in *Medchl Chemicals and Pharma (Private) Limited v Biological E. Limited and Others*, is relied upon to support the submission that the power under Section 482 of the Cr. P.C. should be sparingly used.

6. The relevant portion of the judgment at para 2 at page 429 reads as follows:

'2. Exercise of jurisdiction under the inherent power as envisaged in Section 494 of the Cr. P.C. to have the complaint or the charge-sheet quashed is an exception rather a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgement of First Information Report the bail is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted. In the event, however, the Court on perusal of the complaint comes to a conclusion that the allegations levelled in the complaint or charge-sheet on the face of it does not constitute or disclose any offence as alleged, there ought not to be any hesitation to rise upto the expectation of the people and deal with the situation as is required under the law. Frustrated litigants

ought not to be indulged' to give vent to their vindictiveness through a legal process and such an investigation ought not to be allowed to be continued since the same is opposed to the concept of justice, which is paramount'.

In para 15 (page 435) the Court has observed as follows:

'15. Needless to record however and it being a settled principle of law that to exercise powers under Section 494 of the Code, the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint and the High Court at that stage has no authority or jurisdiction to go into the matter or examine its correctness. Whatever appears on the face of the complaint shall be taken into consideration without any critical examination of the same. But the offence ought to appear *ex facie* on the complaint'.

It is clear that in this case the allegations made in the complaint disclose the offence alleged and whatever is pleaded by the petitioner is by way of defence to the allegations in the complaint which could be established at the trial.

7. The learned Counsel for the respondent also cited in support of his case an unreported decision of the Supreme Court in *Maratt Rubber Limited v J.K. Maraltukalam*, that a civil proceedings and a criminal proceedings could continue without there being any contradiction in the case. In the case before the Supreme Court, the respondent an executive of the appellant-company was removed from service but he did not vacate the room that had been allotted to him. A suit was filed against the respondent for an injunction restraining him from interfering with the possession of the property of the company. The Court held that so far as the room in the occupation of the respondent the appellant company had to resort to a Civil Court for securing possession. Subsequently, the appellant-company filed a complaint under Section 630 of the Companies Act. The Magistrate took cognizance of the offence and issued summons to the respondent-accused. The respondent-accused filed a petition under Section 482 of the Cr. P.C. and secured a favourable order in this Court, The appellant-company filed the appeal in question and the Supreme Court held that the Magistrate rightly took cognizance for the offence under Section 630 of the Companies Act and the pendency of the suit was rightly held to be inconsequential insofar as taking cognizance of the case

was concerned. The Supreme Court held thus:--

' It has been repeatedly held by this Court that the power of the High Court under Section 482 of the Cr. P.C. should be sparingly and cautiously raised and only when the Court on consideration, comes to a conclusion that otherwise it would be a case of abuse of process of Court or that there will be gross miscarriage of justice. In a case instituted on complaint, the High Court was possibly not entitled to look to the several documents reported to have filed by the accused in several civil proceedings, and rely on some orders/observations made thereunder. A bare scrutiny of the impugned judgment would indicate that the High Court has thought, as if it is trying the case, and then after weighing the materials it has come to a conclusion one-way or the other. This is certainly in excess of the jurisdiction conferred on the High Court under Section 482 of the Code of Criminal Procedure. In that view of the matter, we have no hesitation to come to the conclusion that the High Court by the impugned order has exceeded its jurisdiction vested under Section 482 of the Cr. P.C. in quashing the criminal proceedings'.

It is clear from the above observation that the posting of the civil suit for judgment would not come in the way of the prosecution of the complaint under Section 494 of the IPC. In any event, the taking of cognizance by the Magistrate under Section 494 of the IPC on the allegations made in the complaint cannot be found fault with. What would be the result after trial in a proceedings under Section 494 of the IPC especially in the circumstances of the case is unnecessary to speculate. In any event the taking of cognizance cannot be regarded as an abuse of the process of the Court calling for the quashing of the proceedings in CC No. 15057 of 1997. The petition therefore is dismissed.

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