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Sadhasivan Vs. the State of Tamil Nadu Rep. by the Inspector of Police, All Women Police Station

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Court : Chennai

Decided On : Sep-25-2002

Reported in : I(2003)DMC481

Judge : A. Kulasekaran, J.

Appeal No. : Criminal R.C. No. 1593 of 2002 and Crl. M.P. No. 8206 of 2002

Appellant : Sadhasivan

Respondent : The State of Tamil Nadu Rep. by the Inspector of Police, All Women Police Station

Advocate for Def. : A.N. Thambidurai, G.A. Crl. side

Advocate for Pet/Ap. : R.N. Amarnath, Adv.

Disposition : Criminal revision case allowed

Judgement :

ORDER

A. Kulasekaran, J.

1. This criminal revision case is filed by the fourth accused the petitioner herein to set aside the order of the learned Judicial Magistrate I at Kuzhithurai made in C.M.P.No.1029 of 2001 in C.C.No.353 of 1998 dated 9.5.2002 dismissing the petition for discharge filed under sec.239 Cr.P.C.

2. The case of the petitioner who is A4 before the court below is as follows:-

The petitioner is the President of Checkala Community of Ambalakadai village. He is neither related to the complainant nor related to A1 to A3. It was falsely alleged by the de facto complainant that A1 to A4 demanded Rs.1,00,000/= as dowry prior to her marriage with A1, but her family has prepared to give Rs.80,000/= which was allegedly agreed by A1 to A3. Since the petitioner was not related to the family of the accused, charge under sec. 498A IPC and sec. 3 and 4 of Dowry Prohibition Act is not sustainable. The de facto complainant has stated in her complaint that additional dowry of Rs.50,000/= was demanded by her husband and mother in law and they had driven her out of the house, that she has immediately lodged a complaint with the petitioner herein requesting him to take necessary action against both of them. It is also admitted in the complaint that the petitioner herein has advised the husband of the de facto complainant to live with her and the child, but, she could not stay there because of the harassment. It is further mentioned in the complaint that the petitioner promised to deliver his decision in fifteen days, however, in the meanwhile she has chosen to give a complaint to All Women Police Station, Nagercoil. The said version was repeated by her witnesses Kolappan, Neelapillai, Neelakandan, Baburaj. The other witnesses Raghavan Pillai, Kumarapillai, Sankaranarayana Pillai have not whispered anything in their sec. 161(3) statement against the petitioner herein.

3. Learned counsel Mr. Amarnath appearing for the petitioner has submitted that the Trial Court without proper consideration of the documents erroneously found that prima facie case has been made out against the petitioner and ultimately dismissed the application for discharge.

4. Learned Government Advocate appearing for the respondent has submitted that the order passed by the learned Magistrate was on proper consideration of the records placed before him.

5. Under sec. 239 Cr.P.C. the court, upon considering the documents and after giving prosecution and accused opportunity of being heard, if considers the charge against the accused to be groundless, it shall discharge the accused and record its reasons for so doing otherwise dismiss. The Magistrate has to consider all documents viz., complaint, statement of witnesses to decide and if the materials placed accepted on their face value, would furnish a reasonable basis or foundation for accusation. The Magistrate cannot disbelieve evidence at the stage of considering whether he should discharge the accused by elaborate and painstaking examination of the evidence. Sec. 239 Cr.P.C. should be read along with sec. 240 Cr.P.C. If there is no ground for presuming that the accused has committed an offence, the charge must be considered as groundless. It is the duty of the Magistrate to consider the entire materials before deciding the case either way. In order to hold a charge groundless, there would either be no iota of evidence or the evidence should be contra, indicate error in assuming the cognizance of the offence. Even if the materials placed do not make out or is not sufficient to make out a prima facie case against the accused, the court shall discharge the accused by recording reason.

6. In this case, even in the complaint, it is alleged that the additional dowry of Rs.50,000/= was demanded by the husband and mother in law, ultimately they have driven her out of the house which was complained to the petitioner herein and the petitioner has advised her husband to live with the de facto complainant and his child, however, due to the harassment, she could not live with her husband. It is also admitted in the complaint that the petitioner herein has agreed to deliver his decision in fifteen days, but, in the meanwhile, she has preferred the said complaint with the All Women Police Station, Nagercoil. The said version is repeated in the Sec. 161(3) statements of the witnesses.

7. On a careful consideration of the complaint as well as sec. 161(3) statements, I am of the view that the allegations made against the petitioner are groundless. Yet another fact is that the petitioner is not related to the de facto complainant or A1 to A3. The above said factors were not also considered by the court below while dismissing the petition for discharge.

8. The real test for determining whether the charge should be considered groundless under sec. 239 Cr.P.C. is what were the materials are such that even if unrebutted make out no case whatsoever, the accused should be discharged. In the instant case, the charge against the petitioner is totally groundless. The Trial court has failed to consider the said aspects, hence, I feel it is a fit case to interfere and accordingly, I set aside the order passed by the court below.

9. In the result, the criminal revision case is allowed. Consequently, the connected Crl.M.P. is closed.

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