

: 1 :

**IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH**

DATED THIS THE 11<sup>TH</sup> DAY OF APRIL, 2017

Before

**THE HON'BLE MR. JUSTICE BUDIHAL R.B.**

CRIMINAL REVISION PETITION NO.100004/2014

BETWEEN:

1. SMT.SAVITRI  
W/O MARUTI NAYAK  
AGE: 37 YEARS  
OCC: HOUSEHOLD WORK  
R/O HUKKERI  
TAL: HUKKERI  
DIST: BELGAUM
2. SRI MARUTI  
S/O NAGAPPA NAYAK  
AGE: 50 YEARS  
OCC: LECTURER  
R/O HUKKERI  
TAL: HUKKERI  
DIST: BELGAUM

...PETITIONERS

(BY SRI SRINAND A.PACHCHAPURE, ADVOCATE)

A N D :

1. THE STATE OF KARNATAKA  
BY PSI, JAMAKHANDI P.S.  
NOW REP.BY SPP

: 2 :

HIGH COURT OF KARNATAKA  
BENCH AT DHARWAD

2. SMT.SARASWATI  
W/O ARUN DAPHEDAR  
AGE: 28 YEARS  
OCC: HOUSEWIFE  
R/O GANESH NAGAR  
HUNNUR, TQ: JAMAKHANDI  
DIST: BAGALKOT

... RESPONDENTS

(BY SRI RAJA RAGHAVENDRA NAIK, HCGP FOR R-1;  
SRI S.G.KADADAKATTI, ADVOCATE FOR R-2)

THIS REVISION PETITION IS FILED SECTION 397 READ WITH SECTION 401 OF CR.P.C., SEEKING TO SET ASIDE THE ORDER DATED 07.12.2013 PASSED BY THE PRINCIPAL CIVIL JUDGE (JR.DN) AND JMFC, JAMKHANDI IN C.C.No.35/2012 MARKED AT ANNEXURE-A SO FAR AS PETITIONERS ARE CONCERNED.

THIS REVISION PETITION COMING ON FOR FINAL HEARING THIS DAY, THE COURT, MADE THE FOLLOWING:

### **ORDER**

This is the petition filed by petitioners-accused No.4 and 5 under Section 397 read with Section 401 of Cr.P.C., praying the Court to set aside the order dated 07.12.2013 passed by Principal Civil Judge (Jr.Dn) and J.M.F.C., Jamkhandi in C.C.No.35/2012 produced as per Annexure-A in so far as it relates to the petitioners and also sought to

quash the charge dated 07.12.2013 passed by the Principal Civil Judge (Jr.Dn) and J.M.F.C., Jamkhandi in C.C.No.35/2012 produced at Annexure-B.

2. Brief facts of the complainant's case as per the complaint averments that one Smt.Saraswati gave the complaint against the accused and other accused persons alleging ill-treatment by the accused. After detailed investigation the CID has submitted the charge sheet against accused No.5 for the offence under Section 498A of I.P.C. and Section of 4 of the Dowry Prohibition Act. Though the present application is filed by the accused under Section 245 of the Cr.P.C. the arguments were submitted to treat as under Section 239 of Cr.P.C. Ultimately the trial court after considering the materials placed on record rejected the said application holding that there is a prima facie case even against the petitioners-accused No.4 and 5. Being aggrieved by the said order and also challenging the legality and correctness of the said

: 4 :

order, the petitioners-accused Nos.4 and 5 presented this petition.

3. Heard the arguments of learned counsel appearing for the petitioners-accused Nos.4 and 5 and also the learned counsel appearing for respondent No.2-complainant and the learned High Court Govt.Pleader on behalf of respondent No.1-state.

4. Learned counsel for the petitioners during the course of argument made the submission that looking to the allegations in the complaint and also the other materials collected by the Investigation Officer during investigation, there is no prima facie case as against petitioners-accused Nos.4 and 5 for the alleged offences. He submitted that the allegations are vague and not supported by any independent material. He submitted that even the witnesses who are said to be the elders before whom the complainant's father placed the material even the statement of such witnesses also goes to show that the allegations are only against the husband and the in-laws of

: 5 :

the complainant. Hence, he made the submission so far as the petitioners-accused Nos.4 and 5 are concerned the statement of independent witnesses clearly goes to show that they have not at all involved in committing the alleged offences. Hence, he made the submission that accused No.5 is working as a Lecturer in Hukkeri, District Belagavi, the accused No.4 who is the wife of accused No.5 is residing along with accused No.5 at Hukkeri and they never residing together in the house along with their parents i.e. accused Nos.2 and 3 and accused Nos.1 to 3. Hence, it is his contention that false case has been filed against the petitioners-accused Nos.4 and 5. Hence, he submitted that even if there is a trial but looking to the materials collected during investigation, it will be futile exercise on the part of the prosecution to proceed with the accused Nos.4 and 5. Hence, he submitted that it is only abuse of the process of the Court and there is no prima facie material. Hence, he submitted to allow the petition and to discharge the accused from the proceedings. It is his contention that the trial court without considering the

materials in a proper perspective wrongly appreciated the materials and comes to the wrong conclusion.

5. In support of his contention, learned counsel for the petitioners relied upon the following decisions.

- i. 2010(3) G.L.H. 258 of the Hon'ble Apex Court;*
- ii. Judgment rendered in the case of Neelu Chopra V/s Bharti dated October 07, 2009 by the Hon'ble Apex Court;*
- iii. Decision of the Hon'ble Apex Court dated 14<sup>th</sup> December, 2007 rendered in the case of Onkar Nath Mishra and others V/s State (NCT of Delhi) and another and*
- iv. Another decision dated 19<sup>th</sup> July 2000 of the Hon'ble Apex Court rendered in State of Madhya Pradesh V/s Mohanlal Soni.*

6. Per contra, the learned counsel appearing for respondent No.2-complainant during the course of his argument made the submission that looking to the allegations in the complaint, there is a specific allegation

:7:

as against the petitioners herein who are accused Nos.4 and 5 also that they use to give ill-treatment and harassment to the complainant stating that she does not know how to do the work and how to prepare food and also they were giving physical and mental ill-treatment to her. He also made the submission that even on earlier occasion the petitioners filed the petition under Section 482 of the Cr.P.C. and subsequently the petitioners withdrawn the said petition and there is order dated 01.07.2013 passed in Criminal Petition No.10545/2012. Hence, it is his contention that the withdrawal of the earlier petition itself goes to show that there is a prima facie case as against the petitioners-accused Nos.4 and 5. It is also his submission that during the course of investigation, the Investigation Officer has collected the material by recording the statement of many witnesses, who have also stated about the involvement of the present petitioners in committing the alleged offences. It is also his submission that the allegations made in the complaint and further statement of the complainant clearly goes to show

the involvement of the petitioners and it is enough material to show the prima facie case on the side of the complainant. Hence, he submitted that the trial court has rightly appreciated all these materials and rejected the application.

7. Learned counsel for the respondent-complainant made the submission that the trial court while disposing of the application relied upon two decisions. It is the main contention of the petitioners-accused Nos.4 and 5 before the trial court that the marriage with the complainant is not at all the first marriage and in that connection they have produced the materials i.e. the matrimonial proceedings which took place between the complainant accused No.1. Hence, he submitted that even if considering all these materials, but the trial court after appreciating the entire materials held that there is a prima facie case as against the present petitioners also and rejected the application. It is his contention that there is no merit in the petition and same is to be rejected.

8. I have perused the grounds urged in the petition. The order passed by the trial court on the application seeking discharge of the petitioners-accused Nos.4 and 5 and also considered the entire charge sheet material produced by the petitioners along with the petition.

9. Looking to the allegations in the complaint, it is stated that the marriage of the complainant with respondent No.1-accused No.1-Arun took place on 10.02.2008. It is stated in the complaint that the marriage took place in the presence of elders namely (i) Tammanna Beerappa Dafedar, (ii) M.M.Baligar, (iii) Sangondeppa Ningondeppa Lesappagol, (iv) Sangondeppa Hulagabal. It is also stated that at the time of marriage they have given the dowry of Rs.1,50,000/- and Rs.25,000/- towards the cloths for the accused No.1 and 5 tolas of gold. After the marriage, she had been to the husband's house and accused Nos.1 to 5 were present in the said house. For a period of one month all were happy with her and they

treated her properly. Thereafterwards the accused No.1 stating that he left with another girl, he is not liking the complainant and so saying gave harassment to her. It is also the allegation that her in-laws and sister-in-law of her husband Maruti were telling that she does not know how to attend the work properly, she does not know how to prepare food and they have abused her in filthy language and they use to assault her with the hands and she was asked to wash cloths of all the persons in the family. In the very complaint, it is mentioned that when they started to give such ill-treatment and harassment alleging that her father did not give the car and dowry amount. Therefore, regarding the ill-treatment she informed her father and mother. It is further pleaded in the complaint that her father advised the accused persons to treat the complainant properly. So in this connection and in view of the said averment that the matter was placed before the very elders which she has named in the complaint, it is better to refer to the statement of such elders which were

recorded during the course of investigation by the Investigation Officer.

10. I have perused the said statements dated 10.07.2011, namely Sangondeppa Siddappa Hulagabal, the statement Sangondeppa Ningondeppa Lesappagol, Shrishail Basappa Gundagi, Kallappa Beerappa Dafedar, Mallappa Mahadev Baligar, Tammanna Beerappa Jakkannavar and Ningappa Siddappa Layannavar. Looking to all these statement of said witnesses, they are all dated 10.07.2011. Looking to the statement of these witnesses wherein they have stated that it is alleged before them by the complainant and her father that accused Nos.1 to 3 i.e. the husband of the complainant, her father-in-law and her mother-in-law were giving ill-treatment and harassment to her. So in the statement of all these witnesses absolutely there is no reference so far as the present petitioners-accused Nos.4 and 5 stating that they also giving such ill-treatment. The statement of these witnesses completely silent about the involvement of petitioners-accused Nos.4

and 5. Therefore, looking to the statement of these witnesses it clearly goes to show that absolutely there is no allegation and even there is no statement of such witnesses that they were informed by either complainant or her father about the ill-treatment given by the present petitioners herein. When i.e. so it assumes importance whether really the prosecution placed prima facie material so far as the petitioners-accused Nos.4 and 5. Looking to the decisions relied upon by learned counsel appearing for the petitioners which are referred above at Sl.Nos.1 to 4 principles laid down in the said decisions also goes to show that the proceedings against the accused person should not be as an abuse of process of the Court or by making false allegations. But here, it is do doubt true as contended by the learned counsel for the respondent-complainant that in the beginning of the complaint there are some allegation even against petitioners-accused Nos.4 and 5, but the same is not corroborated by the statement of independent witnesses about whose statements I have made the reference. Therefore, reading the entire charge

sheet material and the principles in the decisions relied upon by the learned counsel for the petitioners, it goes to show that there is no prima facie material so far as the petitioners-accused Nos.4 and 5 are concerned. The trial court while considering the application seeking discharge from the proceedings ought to have considered these aspects, which is not done by the trial court. The trial court wrongly comes to the conclusion that even there is prima facie case as against petitioners-accused Nos.4 and 5. Therefore, the order passed by the court below suffers from legal infirmity. Therefore, it will not sustain in law. Criminal Revision Petition is allowed accordingly. The order passed by the learned Trial Judge dated 07.12.2013 on the application seeking discharge so also the charge sheet materials so far as accused-petitioner Nos.4 and 5 are concerned are hereby set aside and quashed.

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**Sd/-  
JUDGE**