

IN THE HIGH COURT OF KARNATAKA BANGALORE

DATED THIS THE 25<sup>TH</sup> DAY OF JULY 2013

BEFORE

THE HON' BLE MR. JUSTICE K.N. KESHAVANARAYANA

CRL.P.No.3981 OF 2009

BETWEEN:

1. SMT VIRAL GODA @ VIRAL DHULIA  
D/O.SRI.HARISH GODA,  
W/O.SRI.VIRAG R DHULIA,  
AGED ABOUT 24 YEARS
2. SRI.HARISH GODA,  
S/O.LATE SRI.MANIKANT GODA,  
AGED ABOUT 50 YEARS
3. SMT.SONAL GODA,  
W/O.SRI.HARISH GODA,  
AGED ABOUT 45 YEARS

PETITIONERS 1 TO 3 ARE  
RESIDING AT NO.29-B  
ALLENBY ROAD, 1<sup>ST</sup> FLOOR,BHOWANIPORE,  
KOLKATA – 700 020

4. SRI.RAJESH BHARWADA,  
S/O LATE D.V.BHARWADA  
AGED ABOUT 53 YEARS
5. SRI.HEMANT BHARWADA,  
S/O LATE D.V.BHARWADA  
AGED ABOUT 45 YEARS

PETITIONERS 4 AND 5 ARE  
RESIDING AT NO.28/B,  
3RD FLOOR, KALIGHAT ROAD,  
BHOWANIPORE,  
KOLKATA - 700 020.

... PETITIONERS

(By Sri S.SHIVANAND & SRI.K.S.RAGHAVENDRA  
FOR M/S. LAW ASSOCIATES, ADVS)

AND

1. SRI.VIRAG R DHULIA,  
S/O RAMNIK DHULIA,  
AGED ABOUT 27 YEARS  
R/A NO.203, KK TOWERS,  
6TH CROSS, BALAJI LAYOUT,  
KAGGADASAPURA,  
C V RAMAN NAGAR,  
BANGALORE - 560 093
2. STATE OF KARNATAKA  
BY MAHADEVPURA POLICE STATION,  
BANGALORE

... RESPONDENTS

(By Sri K.DILIP KUMAR, HCGP FOR R2 AND R1-  
SERVED)

THIS CRL.P FILED U/S.482 CR.P.C BY THE  
ADVOCATE FOR THE PETITIONERS PRAYING THAT THIS  
HON'BLE COURT MAY BE PLEASED TO QUASH THE  
PROCEEDINGS BEFORE THE X ADDL.C.M.M.,  
BANGALORE IN CR.NO: 72 OF 2009 OF MAHADEVAPURA  
POLICE STATION, BANGALORE URBAN, ETC.

THIS PETITION IS COMING ON FOR ADMISSION  
THIS DAY, THE COURT MADE THE FOLLOWING:-

## ORDER

Petitioners in this petition filed under Section 482 of Cr.P.C., have sought for quashing complaint lodged by the respondent No.1 in PCR No.64/2008 on the file of the X Addl. Chief Metropolitan Magistrate, Bangalore and the FIR registered by the Mahadevapura Police in Cr. No.72/2009, pursuant to the order of reference made by the learned jurisdictional Magistrate for the offence punishable under Section 3 of the Dowry Prohibition Act read with Sections 120-B & 34 of IPC.

2. Though the respondent No.1 has been served with the notice of this petition, he has remained absent and unrepresented.

3. I have heard the learned counsel for petitioners and the learned Government Pleader.

4. The respondent No.1 is the husband of petitioner No.1. Petitioner No.1 lodged a report before Mahadevapura Police making allegations attracting the

offences under Section 498-A IPC against the respondent No.1 herein. Based on the said report the police registered case in Cr. No. 236/2007 and after investigation. filed charge sheet in C.C. No.23074/07, which is pending consideration before the jurisdictional Court.

5. After receipt of the summons in that case, the respondent No.1 herein presented a complaint under Section 200 Cr.P.C., inter alia, alleging that by admission made by the petitioner No.1 herein in her report to the police and other petitioners through their statements made during investigation in that case, have confessed to the fact of giving dowry and thereby they have committed the offence punishable under Section 3 of the DP Act read with Sections 120-B & 34 of IPC.

6. The learned Magistrate, before whom the complaint was presented, referred the same to the police for investigation under Section 156(3) of Cr.P.C., based on which the respondent No.2 – Police registered

the case in Cr. No.72/09 and took up investigation. On coming to know of the same the petitioners have presented this petition.

7. The learned counsel for petitioners referring to the provisions of Sub-Section (7) of Section 3 of the DP Act, contended that the order of reference made by the learned Magistrate is bad in law. It is his contention that without applying judicious mind and without forming an opinion that the allegations made in the complaint constitute the offence alleged, the learned Magistrate has mechanically referred the complaint to the police for investigation, as such the said order is not in accordance with the law laid down by the Division Bench of this Court in the case of GURUDUTH PRABHU AND OTHERS vs M.S.KRISHNA BHAT AND OTHERS reported in 1999 CRL.L.J. 3909 and other decisions.

8. Having heard the learned counsel for petitioners and on perusal of the allegations made in the complaint lodged by respondent No.1 and the order

passed by the learned Magistrate, I see considerable force in the contention of the learned counsel for petitioners. It is now well settled law by catena of decisions of this Court that even at the stage of referring a private complaint to the police for investigation in exercise of power under Section 156(3) of Cr.P.C., the Magistrate has to apply judicious mind to the allegations made in the complaint for the purpose of finding out whether the allegations made therein constitute commission of any cognizable offences and whether matter requires investigation by the police.

9. The allegations made in the complaint lodged by the respondent No.1 are all in relation to the allegations made by the petitioner No.1 in her report lodged before the police, based on which the case in Cr. No. 236/2007 was registered in respect of the alleged giving of dowry to the Complainant – respondent No.1 herein in connection with the marriage of petitioner No.1 with him. The sum and substance of the allegation is that petitioner No.1 in her report lodged before the

police and other petitioners in their statement to the Investigation Officer during investigation of that case have confessed as to the fact of giving dowry and since even giving of dowry is an offence under Section 3 of the DP Act, they have committed the said offence.

10. Section 7 of the DP Act deals with the cognizance of the offence. According to this Section the Metropolitan Magistrate or Judicial Magistrate of the first class is empowered to try any offence under this Act, and he can take cognizance of the offence on his own knowledge or on police report of the facts which constitute the offence or on complaint by a person aggrieved or a parent or other relative of such person or by any recognised institution or organisation. According to sub-section (3) of Section 7 of the DP Act a statement made by the person aggrieved by the offence shall not be subjected to any prosecution under this Act.

11. The contention of the learned counsel for petitioners is that respondent No.1 cannot be termed as

an aggrieved person since he is a beneficiary of the alleged act. Relying on sub-Section (3) of Section 7, the learned counsel for petitioners contended that even if the allegations made in the report lodged by the petitioner No.1 before the Police indicates giving of dowry, she cannot be prosecuted for any of the offence under this Act based on such statement. I see considerable force in this contention. The respondent No.1 being the husband of petitioner No.1, cannot be termed as an aggrieved person for the alleged offence under Section 3 of the DP Act, as he would be the beneficiary and he is alleged to have received the dowry.

12. Therefore, the learned Magistrate could not have entertained the complaint by such person. In view of the bar created under sub-Section (3) of Section 7 of DP Act, the petitioners cannot be prosecuted even if their statements prima facie, indicate giving of dowry. A reading of complaint lodged by the respondent No.1 makes it clear that the entire case sought to be made



out by him rests on the allegations made by petitioner No.1 in the complaint to the police and the statements made by other petitioners during investigation of that case before the Investigation Officer. Therefore, petitioners cannot be prosecuted for the offence punishable under Section 3 of the DP Act, on the basis of such statement made by them before the police during investigation in a case registered on the basis of the report lodged by the petitioner No.1.

13. From the above it is clear that learned Magistrate without application of judicious mind has mechanically referred the complaint to the police for investigation under Section 156(3) of Cr.P.C. The police have no option except to register the case since they were directed to do so by the learned Magistrate. Therefore, the FIR registered by the police is liable to be quashed.

14. Accordingly, the petition is allowed. The complaint filed by the respondent No.1 before the

jurisdictional Magistrate in PCR No.64/2008, as well as the order passed by the Learned Magistrate referring the said private complaint to police for investigation and the FIR registered by respondent No.2 - Police in Cr. No.72/2009 pursuant to such order, are hereby quashed.

SD/-  
JUDGE

VK