

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF JANUARY 2018

BEFORE:

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

CRIMINAL PETITION NO.6370/2017

BETWEEN

1. SMT. SARVA MANGALA
W/O LATE SHANKARAPPA,
AGED ABOUT 60 YEARS,
R/AT BEGUR-KOPPA ROAD,
BEGUR-BENGALORE CITY-560068.

2. SMT. RUPA
W/O SHIVAKUMAR SWAMY,
AGED ABOUT 30 YEARS,
R/AT JAHANVI WIDDOS,
APARTMENT, 4TH FLOOR,
BEGUR-KOPPA ROAD,
BANGALORE CITY-560068.

... PETITIONERS

(BY SRI. JAIRAJ G., ADV.)

AND

1. STATION HOUSE OFFICER
KUNIGAL POLICE STATION,
KUNIGAL TALUK,
TUMKUR DISTRICT-572130,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT, B'LORE.

2. JAGADISH
S/O LATE B.S.SHANKARAPPA,
AGED ABOUT 35 YEARS,
R/AT THABARANAHALI VILLAGE,

HESARAGHATTA HOBLI,
BENGALURU-560088.

... RESPONDENTS

(BY SRI. S.RACHAIAH, HCGP FOR R-1,
SRI. RAJASHEKHARA SEERI, ADV. FOR
SRI. T.R.MANJAPPA, ADV. FOR R-2)

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THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 04.05.2017 PASSED BY THE VI ADDL. DIST. AND S.J., TUMAKURU AND QUASH THE PROCEEDINGS AGAINST THE PETITIONERS (WHO ARE ARRAYED AS ACCUSED Nos.3 AND 4) IN S.C. NO.40/2016.

THIS CRL.P COMING ON FOR 'ADMISSION', THIS DAY THE COURT MADE THE FOLLOWING:

ORDER

The petitioners are arrayed as accused Nos.3 and 4 in S.C. No.40/2016, pending on the file of VI Additional District and Sessions Judge, Tumakuru.

2. Respondent No.1-Police have registered a case in Crime No.259/2015 against all the accused persons for the offences under Sections 465, 498A, 120B, 201, 302 and 307 r/w. 34 of I.P.C. During the course of enquiry before the trial Court, accused Nos.3 and 4 i.e.,

petitioners herein have filed an application for their discharge under Section 227 of the Cr.P.C. The trial Court after hearing both the parties has passed an order on 04.05.2017 holding that there are sufficient grounds to frame charges against accused Nos.1 to 4 for the offences punishable under Sections 465, 498A, 120B, 201, 302 and 307 r/w. 34 of I.P.C. and accordingly posted the case for framing of charges against them.

3. Learned counsel for the petitioners seriously contends that the trial Court has committed serious error in not looking into the charge-sheet papers and reading statement of the witnesses and in omnibus manner has come to conclusion that, the offences have to be proved during full fledged trial, therefore, there is sufficient grounds to frame charges against accused Nos.3 and 4 also even for the offences under Sections 465, 498A, 120B, 201, 302 and 307 r/w. 34 of I.P.C.

4. The main strong witness to the prosecution case is Smt. Vedha [C.W.1], who is none other than the wife of accused No.1. The case of the prosecution is that, accused Nos.1 and 2 are brothers to each other. Accused No.1 married C.W.1-Vedha and accused Nos.3 and 4 are none other than the mother and sister-in-law of accused No.1. It is alleged that, the accused persons were ill-treating and harassing C.W.1 and in this context, the petitioners did not go and see the child born to C.W.1 because, it was a female child and they were also planning to give divorce to C.W.1 etc. It is also alleged that accused Nos.1 and 2 have hatched a conspiracy for doing away with the life of C.W.1. In this context, on 24.07.2015 and 25.07.2015, accused No.1 in the guise of taking C.W.1 and her parents to Dharmastala, accused No.1, C.W.1 and parents of C.W.1 went in a Nano car bearing reg. No.KA 51 MG 7143 to Dharmastala. In fact, near Kunigal, particularly near Girigowdana Palya gate, the Nano car was parked on the guise of the car tyre was

punctured and accused No.1 went with the punctured tyre to get it repaired and thereafter, it is alleged that accused Nos.1 and 2 came in a tipper lorry bearing reg. No.KA 02 AD 1314 and dashed against the parked Nano car. Due to the impact of the said accident, the parents of C.W.1-Vedha lost their lives by succumbed to severe injuries. C.W.1 and her child also suffered injuries and thereafter, to make towards to believe it appears, an accident case has been lodged by accused No.1. The petitioners were not at all in the frame of the above events.

Subsequently, after investigation and recording the statement of C.W.1-Vedha, Police have registered a case against the accused for the aforesaid offences. On careful perusal of the statement of C.W.1-Vedha, who has stated about the incident taken place in a detailed manner and the allegations made against accused Nos.3 and 4 are to be looked into, whether they are sufficient to

frame charges against them, for any of the offences alleged against them.

5. The learned High Court Government Pleader in fact, strongly relied upon the statement of C.W.1 alone. There is no dispute with regard to other allegations made against accused Nos.1 and 2 that, the allegations do attract the provisions against them. As accused Nos.1 and 2 did not choose to challenge the order passed by the trial Court deciding to frame charges against them. The learned High Court Government Pleader submits before the Court that except the statement of C.W.1, no other witnesses have spoken to anything about accused Nos.3 and 4. Therefore, what remains for consideration of the trial Court and for this Court is the statement of C.W.1.

6. I have also heard Sri. Rajashekhara Seeri, learned counsel for respondent No.2.

7. I have meticulously gone through the statement of C.W.1-Vedha, because, she has categorically stated about the accident taken place on 25.07.2015 and she actually saw on that day accused Nos.1 and 2 came in a tipper lorry and dashed the Nano car, wherein C.W.1 and her child and parents were there. Due to the said impact, her father and mother died on the spot. C.W.1 and her child sustained injuries. She has also categorically stated that when she questioned her husband as to why he has given complaint as if it is an accident, then, he threatened her with dire consequence of killing her and the child. But, there is no allegation against these petitioners explaining as to how the incident has happened right from the beginning. Except stating that when accused Nos.3 and 4 though informed about the birth of female child, they did not come and see the child because, it is a female child. She has only stated that there was a small quarrel taking place in the family and sometimes, accused Nos.3 and 4 were also

telling her to listen to their words, C.W.1 taken advantage of these small incidents in the family to make allegations. Even it has not been stated as to in what manner those small incidents, projected to mentally and physically harass her. Except making a bald and trivial allegation that they were also ill-treating and harassing her, nothing has been given in the statement except stating that they were quarrelling for trivial issues. Therefore, on these factual aspects, she omnibusly states that accused Nos.3 and 4 were also ill-treating and harassing her.

8. The aforesaid factual aspects in my opinion attract the alleged offences insofar as accused Nos.1 and 2 are concerned. The Court has to examine not only the allegations made against accused Nos.3 and 4 under Section 302 of I.P.C., but, also whether those allegations are sufficient to attract the other provisions invoked by the Police in this regard. There is no submission made

that, the offences under Sections 302, 201, 307, 120B of I.P.C. are attracted insofar as the petitioners herein are concerned. However, the learned High Court Government Pleader submits that there is some semblance of materials to attract Section 498-A of I.P.C. In this background, the Court has to see whether the said allegations are sufficient to attract Section 498-A of I.P.C. What Section 498-A of I.P.C. says is;

“whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine”. Cruelty is also explained in the said provision.”

So far as explanation (a) is concerned, there should be a wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health [whether mental or

physical] of the woman. Explanation (b) refers to harassment of the woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. There is absolutely no allegation insofar as explanation (b) is concerned. No allegation of any demand of dowry and no allegation of harassment with regard to payment of dowry. The injuries sustained by C.W.1 in this particular case are not referable to any wilful misconduct on the part of accused Nos.3 and 4. It is a specific allegation of C.W.1 that because of wilful misconduct of accused Nos.1 and 2 in dashing of Nano car with the tipper lorry, she sustained injuries. Therefore, the Court has to see whether C.W.1 had made any attempt to sustain any injuries on her own or the injuries sustained by her was danger to her life, limb or health and due to the misconduct of accused Nos.3 and 4. There is no

allegation at any point of time till the incident has happened that, the conduct of accused Nos.3 and 4 made her at any time in any manner driven her to commit suicide or to cause herself any injuries danger to life, limb or health. Therefore, the wilful misconduct must be of such a nature, if the said allegations are understood, they are sufficient to drive a woman to commit suicide or at least cause danger to life, limb or health. Though the learned High Court Government Pleader submits that C.W.2 has stated that, accused No.3 was not liking her daughter-in-law because, she gave birth to a female child and due to that, there was ill-treatment. But, in fact, C.W.1 herself has not stated in her statement with regard to what is the nature of ill-treatment and harassment that was given to her except in omnibus manner stating that, they were ill-treating and harassing her. In the absence of specific allegations, though the omnibus statement made creates a suspicion but, not a strong suspicion, in the conduct of accused Nos.3 and 4 but, on

such omnibus statement itself the Court cannot come to a conclusion that it is a wilful misconduct which is of such a nature that could be driven C.W.1 to commit suicide or to cause any grave injury to her life, limb or health. Therefore, in the aforesaid circumstances, there must be a strong suspicion in order to frame charges. It does not mean to say that charges cannot be framed on the basis of suspicion at all. But, there must be a strong suspicion, which creates serious ground for framing of charges against the accused. Mere suspicion on the basis of omnibus statement may not be sufficient to frame charges against accused Nos.3 and 4.

9. Framing of charges against the accused persons depends upon the facts and circumstances of each case. One case cannot be compared with another at all. The nature of the allegations made, strength of those allegations and surrounding circumstances have to be looked into by the Court in each case. In this particular

case, till the point of time the incident took place, it appears that no allegations have been made against accused Nos.3 and 4. Though there are certain allegations against accused No.1 i.e., the husband of C.W.1, there is no serious allegations against accused Nos.3 and 4. In the above facts and circumstances, particularly, looking to the facts of this case, I am of the opinion that the trial Court has committed a serious error in ordering to frame charges against these petitioners for the offence under Sections 302 and 201 of IPC. It is apparently materials are lacking against these petitioners. Further, I am of the opinion that the allegations made are omnibus in nature and they are not sufficient to frame charges against accused Nos.3 and 4 even for the offence under Section 498-A of I.P.C. Therefore, I am of the opinion that the petitioners i.e., accused Nos.3 and 4 are entitled to be discharged. Hence, I proceed to pass the following:

ORDER

The petition is allowed. The order passed by the learned Sessions Judge in ordering to frame charges against the petitioners i.e., accused Nos.3 and 4 for the offences under Sections 465, 498A, 120B, 201, 302 and 307 r/w. 34 of IPC is hereby set aside. Consequently, the petitioners i.e., accused Nos.3 and 4 are hereby discharged for the offences alleged against them. The trial Court is directed to proceed against accused Nos.1 and 2 in accordance with law.

In the circumstances, I.A. No.1/2017 filed for stay does not survive for consideration and the same is accordingly disposed of.

Sd/-
JUDGE.

CT-HR
Ksm*