

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.574 OF 2010
[arising out of SLP(Crl.)No.3562 of 2009]

K. NEELAVENI

..... APPELLANT

VERSUS

STATE REP. BY INSP. OF
POLICE & ORS.

.....RESPONDENTS

J U D G M E N T

HON. C.K. PRASAD, J.

Leave granted.

1. The appellant-wife aggrieved by the order dated 29th September, 2008 passed by the High Court of Judicature at Madras in Criminal O.P. No. 23473 of 2008, whereby it had quashed the charge sheet under Sections 406 and 494 of the Indian Penal Code, has preferred this appeal seeking special leave to appeal.

2. Shorn of unnecessary details, the facts giving rise to the present appeal are that the appellant-wife K. Neelaveni on 07/11/2002 gave a written report to the Inspector of Selaiyur Police Station, inter alia, alleging

that her marriage was performed with accused respondent No. 2 - S.K. Siva Kumar on 3rd September, 1997 in which gold ornaments and various other household articles were given by her parents. She had further alleged that her husband used to abuse her and her family members under influence of alcohol and demanded Rs. 50,000/- from her parents. According to the First Information Report, when she was pregnant, on scan it was found that she was carrying a female foetus, her husband and his family members started harassing her and insisted for aborting the child. On her refusal to give consent for abortion according to the informant on 18.1.1998, her husband, mother-in-law, brother-in-law and sister-in-law assaulted her and had driven her out from the matrimonial home and the husband left her on way to her parents house. She gave birth to a girl child on 25.6.1998.

3. Informant in the written report had further alleged that her husband had married another lady namely, Bharathi without her consent with the help and in the presence of other accused persons. She had further alleged that a female child was born to them in the wedlock.

4. On the basis of the aforesaid written report, a case under Sections 406, 494 and 498A of the Indian Penal Code

was registered against the accused persons. Police after usual investigation submitted charge sheet under Sections 406, 494 and 498A of the Indian Penal Code.

5. Accused persons namely respondent Nos. 2 to 13 filed petition before the High Court for quashing the charge sheet under Sections 406 and 494 of the Indian Penal Code, inter alia, contending that in the absence of any material to show that "the second marriage was duly performed with religious rites and essential ceremonies" charge sheet under Section 494 of the Indian Penal Code is fit to be quashed. It was, further, contended that allegations made in the First Information Report and the materials collected during the course of investigation do not fulfill the ingredients of offence under Section 406 of the Indian Penal Code. Aforesaid submissions found favour with the High Court and it had quashed the charge sheet under Sections 406 and 494 of the Indian Penal Code. While doing so the High Court observed as follows:-

"As rightly contended by the learned counsel for the petitioners, a careful reading of the complaint of the second respondent, statements of witnesses recorded under Section 161 Cr.P.C. and the charge sheet do not reveal the ingredients constituting the offences under Section 494 and 406 IPC, yet the first respondent has chosen to file the charge for the said offences. Therefore, this court is constrained to

quash the charge sheet as against the petitioners as far as the offences under Sections 406 and 494 IPC alone are concerned. It is made clear that the charge sheet as against the petitioners under Section 498A IPC is not quashed."

6. Mr. Guru Krishna Kumar, the learned counsel on behalf of the appellant submits that the conclusion arrived at by the High Court that the charge sheet did not reveal the ingredients constituting the offences under Sections 494 and 406 of the Indian Penal Code is erroneous. He draws our attention to the First Information Report and submits that there is an allegation of the second marriage and even birth to a child and hence it cannot be said that ingredients constituting offence under Section 494 of the Indian Penal Code do not exist. He pointed out that the High Court while considering the application for quashing of the charge sheet was obliged to take into account the allegations made in the First Information Report and the materials collected during the course of investigation. He submits that in case the allegations made in the First Information Report and the materials collected during the course of the investigation are taken into account, same constitute an offence under Section 494 of the Indian Penal code. It has further been pointed out that gold ornaments and household articles were given to the husband and she

was driven out from the matrimonial home on a refusal to consent for abortion. Accordingly, Mr. Guru Krishna Kumar submits that allegation in the First Information Report and the materials collected during the course of investigation clearly constitute offences under Sections 406 and 494 of the Indian Penal Code.

7. Mr. R. Shunmugasundaram, learned senior counsel appearing on behalf of respondent Nos. 2 to 13, however, submits that the ingredients of an offence under Sections 406 and 494 of the Indian Penal Code do not exist and, therefore, the High Court did not err in quashing the charge sheet under Sections 406 and 494 of the Indian Penal code.

8. We have given our thoughtful consideration to the submissions advanced and we are inclined to accept the submission of Mr. Guru Krishna Kumar, learned counsel for the appellant. From a perusal of the allegations made in the First Information Report, it is evident that the appellant has clearly alleged that her husband had married another lady namely Bharathi and the said marriage had taken place in the presence and with the support of other accused persons. She had also stated that from the second marriage with Bharathi a girl child was born. In the First

Information Report, it had clearly been alleged that besides gold ornaments other household articles were given in marriage and further she was subjected to cruelty and driven out from the matrimonial home by the accused persons. In our opinion, the allegations made in the First Information Report, at this stage, have to be accepted as true, and allegations so made prima facie, constitute offences under Sections 406 and 494 of the Indian Penal Code. It has to be borne in mind that while considering the application for quashing of the charge sheet, the allegations made in the First Information Report and the materials collected during the course of the investigation are required to be considered. Truthfulness or otherwise of the allegation is not fit to be gone into at this stage as it is always a matter of trial. Essential ceremonies of the Marriage were gone into or not is a matter of trial.

9. From what we have said above, we are of the opinion that the High Court erred in holding that the charge sheet does not reveal the ingredients constituting the offences under Sections 494 and 406 of the Indian Penal Code.

10. It seems that accused persons approached the High Court for quashing of the charge sheet even before any order was passed by the Magistrate in terms of Section 190

of the Code of Criminal Procedure. In our opinion, when a report is submitted to the Magistrate he is required to be prima facie satisfied that the facts disclosed therein constitute an offence. It is trite that the Magistrate is not bound by the conclusion of the investigating agency in the police report i.e. in the charge sheet and it is open to him after exercise of judicial discretion to take the view that facts disclosed in the report do not constitute any offence for taking cognizance. Quashing of Sections 406 and 494 of Indian Penal Code from the charge sheet even before the exercise of discretion by the Magistrate under Section 190 of the Code of Criminal Procedure is undesirable. In our opinion, in the facts and circumstances of the case, quashing of the charge sheet under Sections 406 and 494 of the Indian Penal Code at this stage in exercise of the power under Section 482 of the Code of Criminal Procedure was absolutely uncalled for.

11. It is relevant here to state that offences under Sections 406, 494 and 498A are triable by a Magistrate, First Class and as all these offences are punishable with imprisonment for a term exceeding two years, the case has to be tried as a warrant case. The procedure for trial of warrant case by a Magistrate instituted on a police report

is provided under Chapter XIX Part A of the Code of Criminal Procedure, 1973. Section 239 inter alia provides that if upon considering the police report and the document sent with it under Section 173 and making such examination, if any, of the accused and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing. It seems that the accused persons even before the case had reached that stage filed an application for quashing of the charge sheet under Sections 406 and 494 of the Indian Penal Code. In our opinion, the High Court ought not to have interfered after the submission of the charge sheet and even before the Magistrate examining as to whether the accused persons deserved to be discharged in terms of Section 239 of the Code of Criminal Procedure.

JUDGMENT

12. There is yet another reason which the High Court ought to have considered before quashing the charge sheet under Sections 406 and 494 of the Indian Penal Code. All the offences are triable by Magistrate and quashing of the charge sheet under Sections 406 and 494 of the Indian Penal Code had not resulted into exonerating the accused persons from facing the trial itself. Matter would have been

different had the offences under Sections 406 and 494 of the Indian Penal Code been triable as sessions case. In matter like this the High Court ought to have allowed the provisions of the Code of Criminal Procedure referred to above its full play.

13. For all these reasons we are unable to sustain the order impugned in the present appeal.

14. We hasten to add that all the observations made in this judgment are for the purpose of disposal of this appeal and shall have no bearing during the course of trial.

15. In the result, we allow the appeal and set aside the impugned judgment.

.....J
[D.K. JAIN]

.....J
[C.K. PRASAD]

NEW DELHI
MARCH 22, 2010.