

Varala Bharath Kumar vs The State Of Telangana on 5 September, 2017

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1565 OF 2017
(Arising from SLP(Crl.) No.5458/2016)

Varala Bharath Kumar and another
..Appellants
Versus
State of Telangana and another
..Respondents

JUDGMENT

MOHAN M. SHANTANAGOUDAR,J.

Leave granted.

2. The impugned order dated 28.03.2016 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in Criminal Petition No. 3302 of 2016, as well as, the criminal proceedings initiated against the appellants in C.C. No. 442 of 2015 on the file of XIV Metropolitan Signature Not Verified Digitally signed by ASHOK RAJ SINGH Date: 2017.09.06 Magistrate, Cyberabad at L.B. Nagar, arising out of Crime No. 151 11:46:36 IST Reason:

of 2015 of Saroornagar Women Police Station, Cyberabad, registered for the offences punishable under Sections 498A and 406 of the Indian Penal Code, are called in question.

3. The brief facts leading to this appeal are as under:

The marriage between the first appellant and the second respondent (complainant) was solemnized at Hyderabad as per Hindu rites and rituals. They lived together for about 20 days in matrimonial house. Thereafter, the first appellant left India and went to Australia, where he is working as an engineer. It is alleged by the second respondent, that during her stay at the matrimonial house for the period of afore-mentioned 20 days, the first appellant did not come close to the complainant and he was not even willing to talk freely with the complainant, despite her sincere efforts to come close to her husband. It is also alleged, that the first appellant never behaved as a dutiful husband and used to evade the complainant whenever she approached to him; he maintained the distance even during nights; when asked, the first appellant informed the complainant that he was suffering from viral fever; the first appellant took treatment in the hospital for two-three days, and even after discharge from the hospital, he did not come closer to the complainant; the first appellant postponed the nuptial night ceremony and he was not interested in co-habitation. Even after the first appellant left for Australia, the family members of the first appellant including the second appellant were not talking to the complainant. The complainant left for her parents' house and started residing there. It is further alleged, that the parents of the complainant had spent about rupees fifteen lakhs for the marriage ceremony and rupees twenty lakhs for the gold ornaments. On these, among other grounds, complaint came to be lodged by the second respondent.

4. The police after registering the crime for the offences punishable under Sections 498A and 406 of the Indian Penal Code investigated and filed the charge sheet, which culminated in CC No. 442 of 2015, pending on the file of XIV Metropolitan Magistrate, Cyberabad, L.B. Nagar.

5. The appellants herein approached the High Court of Judicature at Hyderabad under Section 482 of the Code of Criminal Procedure seeking to quash the proceedings initiated against the appellants. The High Court by the impugned order has rejected the prayer of the appellants to quash the proceedings initiated against them, and instead directed appellant no.1 to file an application under Section 70(2)Cr.P.C. seeking to recall NBW issued against him and directed appellant no.2 to file an application under Section 205 Cr.P.C. seeking to dispense with his presence before the trial Court. Hence, this appeal.

6. Respondent No.2, though served, has chosen to remain absent. We have heard learned counsel for the rival parties who are present and perused the record. Having carefully perused the first information report, as well as, the contents of the charge sheet, we find that the ingredients of Sections 498A and 406, IPC are not forthcoming. The entire story narrated by the complainant does not attract the afore-mentioned provisions, as there has not been any dowry demand of the appellants or harassment to the second respondent. Before proceeding further, it would be relevant to note the provisions of Sections 498A, 405 and 406 of the Indian Penal Code, which read thus:

“498A. Husband or relative of husband of a woman subjecting her to cruelty – 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.

Explanation:-For the purpose of this section, “cruelty” means—

(a) any willful 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; or

(b) 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.

405. Criminal breach of trust – Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust”.

Explanation [1] – A person, being an employer [of an establishment whether exempted under section 17 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee’s contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2 – A person, being an employer, who deducts the employees’ contribution from the wages payable to the employee for credit to the Employees’ State Insurance Fund held and administered by the Employees’ State Insurance Corporation established under the Employees’ State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

406. Punishment for criminal breach of trust – Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

7. It is by now well settled that the extraordinary power under Article 226 or inherent power under Section 482 of the Code of Criminal Procedure can be exercised by the High Court, either to prevent abuse of process of the court or otherwise to secure the ends of justice. Where allegations made in the First Information Report/the complaint or the outcome of investigation as found in the Charge Sheet, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out the case against the accused; where the allegations do not disclose the ingredients of the offence alleged; where the uncontroverted allegations made in the First Information Report or complaint and the material collected in support of the same do not disclose the commission of offence alleged and make out a case against the accused; where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the power under Article 226 of the Constitution of India or under Section 482 of Code of Criminal Procedure may be exercised.

While exercising power under Section 482 or under Article 226 in such matters, the court does not function as a Court of Appeal or Revision. Inherent jurisdiction under Section 482 of the Code though wide has to be exercised sparingly, carefully or with caution and only when such exercise is justified by the tests specifically laid down under Section 482 itself. It is to be exercised ex debito justitiae to do real and substantial justice, for the administration of which alone courts exist. The court must be careful and see that its decision in exercise of its power is based on sound principles. The inherent powers should not be exercised to stifle a legitimate prosecution. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extra ordinary jurisdiction of quashing the proceedings at any stage.

8. We are conscious of the fact that, Section 498A was added to the Code with a view to punish the husband or any of his relatives, who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands of dowry. Keeping the afore-mentioned object in mind, we have dealt with the matter. We do not find any allegation of subjecting the complainant to cruelty within the meaning of Section 498A of IPC. The records at hand could not disclose any willful conduct which is of such a nature as is likely to drive the complainant to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the complainant. So also, there is nothing on record to show that there was a demand of dowry by the appellants or any of their relatives, either prior to the marriage, during the marriage or after the marriage. The record also does not disclose anywhere that the husband of the complainant acted, with a view to coerce her or any person related to her to meet any unlawful demand of any property or valuable security.

9. The ingredients of criminal breach of trust are also not forthcoming from the records as against the appellants. The allegations contained in the complaint and the charge sheet do not satisfy the definition of criminal breach of trust, as contained in Section 405 of the I.P.C. In view of the blurred allegations, and as we find that the complainant is only citing the incidents of unhappiness with her husband, no useful purpose will be served in continuing the prosecution against the appellants. This is a case where there is a total absence of

allegations for the offences punishable under Section 498A and Section 406 of the I.P.C. In the matter on hand, the allegations made in the First Information Report as well as the material collected during the investigation, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute the offences punishable under Section 498A and 406 of the IPC against the accused/appellants. So also the uncontroverted allegations found against the appellants do not disclose the commission of the offence alleged and make out a case against the accused. The proceedings initiated against the appellants are liable to be quashed.

10. Accordingly, we allow this appeal, set aside the impugned order of the High Court, and quash the proceedings initiated against both the appellants in CC No. 442 of 2015, pending on the file of XIV Metropolitan Magistrate, Cyberabad at L.B. Nagar, arising out of Crime No. 151 of 2015 of Saroornagar Women Police Station, Cyberabad, Registered for the offences punishable under Sections 498A and 406 of the Indian Penal Code.

.....J.

[ARUN MISHRA]J.

[MOHAN M. SHANTANAGOUDAR] NEW DELHI;

SEPTEMBER 05, 2017.