

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF SEPTEMBER, 2022

BEFORE

THE HON'BLE Mr. JUSTICE HEMANT CHANDANGOUDAR

CRIMINAL PETITION No.7036 OF 2019

BETWEEN:

1. DR. SHAHUL HAMEED VALAVOOR

2. SMT. HAJARA

3. ABDUL RAZAK MUSLIYAR

4. MOHAMMED V @ MOHAMMED KHALEEL

...PETITIONERS

(BY SRI.VISHWAJITH RAI.M., ADVOCATE A/W
SMT. ANANYA RAI, ADVOCATE)

AND:

1. STATE OF KARNATAKA BY
BANTWAL RURAL POLICE, BANTWAL
BY STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BENGALURU - 560 001.
2. NILOPHER NASEEMA

...RESPONDENTS

(BY SRI.SHANKAR.H.S, HCGP FOR R1
SRI.B.LETHIF, ADV FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.1426/2018 ARISING OUT OF CRIME NO.99/2018 OF BANTWAL RURAL POLICE STATION, PENDING ON THE FILE OF THE ADDITIONAL CIVIL JUDGE AND JMFC COURT, BANTWAL D.K., FOR THE OFFENCE P/U/S.498-A OF IPC AND U/S.3 AND 4 OF D.P.ACT, 1961.

THIS CRIMINAL PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The police after investigation submitted a charge sheet for the offences punishable under Section 498 A read with Section 34 of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

2. The summary of the charge sheet is that the marriage of Accused No.1 and respondent No.2 was solemnized on 08.10.2009 in accordance with islamic customs and tradition and thereafter they resided at the marital home along with other accused. Out of the said wed-lock, a child by name Rehan was born on 04.06.2011 in India. Thereafter accused No.1 and respondent No.2 along with the child went to USA in the month of December-2011. They returned to India in the year 2016 and during their stay in India, respondent No.2 was harassed by accused to bring dowry for the purpose of higher education of accused

No.1 in USA. On 08.02.2017 respondent No.2 went back to USA along with the child and later on 10.02.2018 she was sent back forcibly to India. On 28.05.2018 she went to the house of accused Nos.2 to 4. At that point of time, the said accused refused to allow her to enter the house.

3. Learned Magistrate after taking cognizance of the aforesaid offences issued summons. Taking exception of the same, this petition is filed.

4. Learned counsel for the petitioner submits that except omnibus and general allegations there is no specific allegation as against the accused for having demanded dowry or for having assaulted respondent No.2. He further submits that marriage of accused No.1 and respondent No.2 was dissolved on 29.01.2018 by the IOWA Court in USA and also permanent alimony of \$50,000 was paid to

respondent No.2. Hence, he submits that the charge sheet filed against the petitioners-accused in the absence of any essential ingredients so as to constitute the commission of aforesaid offences alleged against the petitioners-accused is without substance.

5. Learned counsel appearing for respondent No.2 submits that the order granting divorce by the Court of USA is obtained fraudulently without issuing notice to respondent No.2 and the same has no binding on respondent No.1. The charge sheet material clearly discloses commission of the offences alleged against the accused and the same does not warrant any interference.

6. I have examined the submissions of the learned counsels for the parties.

7. It is undisputed that respondent No.2 resided with accused No.1 along with child in USA. The allegation is that respondent No.2 was sent back to India forcibly on 16.02.2018 without any reasonable cause. It is also undisputed that the marriage of respondent No.2 with accused No.1 was dissolved by the IOWA Court at USA and permanent alimony has been deposited in the bank account of respondent No.2 which clearly implies that marriage of accused No.1 with respondent No.2 was dissolved and the contention of learned counsel for respondent No.2 that the order of divorce was obtained fraudulently without issuing notice to respondent No.2 cannot be considered in this petition. Hence, the marriage of respondent No.2 having been dissolved with accused No.1, the charge sheet filed against accused is without any substance. In the absence of any essential ingredients so as to constitute the commission of

offences alleged against the petitioners-accused, the charge sheet filed is not sustainable.

8. Even otherwise, except omnibus and general allegations there are no specific allegations as to how and in what manner each of the accused subjected respondent No.2 to cruelty or assaulted her. Hence, the charge sheet filed on the basis of omnibus and general allegations is also without any substance. The dispute between the parties arises out of martial discord, however, given a criminal texture so as to pressurize the petitioners/accused to arrive at settlement.

9. The allegation against accused Nos.2 to 4 subjecting respondent No.2 to cruelty was during her alleged stay in India in 2017. Respondent No.2 returned to India on 10.02.2018 and the FIR was lodged on 30.05.2018 without offering any

explanation. Hence, it is implied that the FIR was lodged against accused Nos.2 to 4 with an ulterior motive to wreak vengeance and with revengeful intent.

10. The probability of the conviction of the petitioners-accused being remote and bleak, it would be abuse of process of law, if the criminal proceeding is allowed to be continued against the petitioners-accused. Accordingly, I pass the following:

ORDER

1. Criminal petition is allowed.
2. The impugned proceedings in C.C.No.1426/2018 pending on the file of Addl. Civil Judge & JMFC, Bantwal, D.K., is hereby quashed.

Sd/-
JUDGE

RKA