

HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

CRIMINAL PETITION No.5588 OF 2023

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') by the petitioner/accused No.4 to quash the docket order dated 06.04.2023 in C.C. No.588 of 2023 passed by the learned III Additional Junior Civil Judge-cum-X Additional Metropolitan Magistrate, at Medchal, Medchal Malkajgiri District.

2. Heard learned counsel for the petitioner and Sri S.Ganesh, learned Assistant Public Prosecutor for the respondent – State. Perused the record.

3. The brief facts of the case are that the marriage between accused No.1 and respondent No.2 took place on 31.01.2020 in Srikakulam District and it was an arranged marriage. Thereafter, some misunderstandings arose between respondent No.2 and her husband and in laws, for which, respondent No.2 filed a complaint in crime No.284 of 2022 on the file of the Station House Officer, Alwal Police Station, Cyberabad, for the offences punishable under Section 498-A of the Indian Penal Code (for short 'IPC') and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (for short 'DP Act').

4. Pursuant to the registration of crime, the Police have investigated the crime and filed charge sheet before the Court concerned. The trial Court took cognizance *vide* order dated 06.04.2023 and numbered it as C.C.No.588 of 2023 of the file of learned III Additional Junior Civil Judge-cum-X Additional Metropolitan Magistrate, Medchal.

5. It is the contention of the learned counsel for the petitioner that though the case was registered against four accused (including the petitioner herein), who are the in laws and cousin sister of accused No.1 (husband of respondent No.2), the police have investigated and filed charge sheet only against accused Nos.1 to 3 by deleting the name of accused No.4, who is the petitioner herein. It is further contented that the petitioner is the cousin sister of accused No.1 and she is no way connected with the day to day affairs of respondent No.2 and accused No.1 or of the in laws of respondent No.2 but respondent No.2 has falsely implicated the petitioner in the present case. Police after due investigation have filed charge sheet only against accused Nos.1 to 3. But as per the docket order dated 06.04.2023 passed by the trial Court, cognizance was taken against accused No.1 to 4 basing on the sworn statements of LWs 1 to 3, which is illegal and arbitrary. Therefore, prayed to set aside the docket order dated 06.04.2023 passed by the trial Court in C.C.No.588 of 2023.

6. On the other hand, learned Assistant Public Prosecutor contended that basing on the sworn statements of the witnesses, the trial Court has taken cognizance against accused No.1 to 4, though charge sheet is not filed against petitioner/accused No.4. Therefore, prayed this Court to dismiss the Criminal Petition.

7. Record reveals that basing on the complaint of respondent No.2, a case was registered in Crime No.284 of 2022 and police after investigating the case, filed charge sheet on 01.07.2022. The cause title of docket order, dated 06.04.2023 in C.C.No.588 of 2023 passed by the trial Court, shows the names of accused No.1 to 4 and *de-facto* complainant and it reads as follows:

“Heard upon perusing and hearing sworn statements this Court is inclined to take cognizance for offences under Section 498-A & 3, 4 of D.P. Act. Issue summons by 10.05.2023.”

8. It is pertinent to mention that the procedure to be followed under Code of Criminal Procedure is quite distinct in warrant cases and in a private complaint. The sworn statements of the witnesses will be recorded under Section 200 of the Cr.P.C. In a case filed under Section 200 Cr.P.C., if the Court feels that there is *prima facie* case as per the complaint and basing on the sworn statements of the *de-facto* complainant as well as witnesses, the Court can refer the matter to police under Section 156 (3) of Cr.P.C. for further investigation. The police shall register a case against the accused and after investigation, they shall either file a charge sheet or a final

report. The option left to the *de-facto* complainant is to file a protest petition against the final report. If being aggrieved by the protest petition before the Court below, the accused shall contest it and the trial Court shall pass necessary orders.

9. During the course of investigation in a warrant case, the police shall record statements of witnesses under Section 161 of the Cr.P.C., collect all the relevant material for the purpose of trial and after due investigation shall file charge sheet against the accused before the concerned Court having jurisdiction under Section 173 of the Cr.P.C. The trial Court has to apply its judicial mind to assign number to calendar case by considering the charge sheet. If at all, the names of the accused are deleted from the charge sheet, the *de-facto* complainant has every opportunity to implead them before the concerned Court by filing a petition under Section 319 of the Cr.P.C. before the Court concerned or the Court below can *suo motu* implead the accused, who are not arrayed as accused before the Court, during the course of evidence. That is the only option available to the *de-facto* complainant, if he/she is aggrieved by the deletion of the name of the accused.

10. In the present case, the record does not reveal that a protest petition is filed by respondent No.2/*de-facto* complainant. Furthermore, in a warrant case, the question of recording sworn statement will not arise and it will only arise in a private complaint.

The trial Court cannot equate the procedure for private complaint under Section 200 Cr.P.C. with that of warrant case. As already stated supra, if at all *de-facto* complainant is aggrieved by deletion of the name of the accused, he can file a petition under Section 319 of Cr.P.C. before the concerned Court at appropriate stage. Furthermore, so far as involvement of petitioner/accused No.4 in the case is concerned, the statements of LWs.1 to 3 recorded under Section 161 Cr.P.C. are inadequate and no allegations are leveled against the petitioner/accused No.4. However, the trial Court after considering the sworn statements of witnesses, which are quite contrary to the statements of the witnesses under Section 161 of Cr.P.C. with regard to the involvement of accused No.4 in the offence, took cognizance of the case against the petitioner for the offences punishable under Section 498-A of IPC and Sections 3 and 4 of Dowry Prohibition Act, which is unjustified. Therefore, this Court is of the considered view that it is a fit case to set aside the docket order dated 06.04.2023 passed by the trial Court.

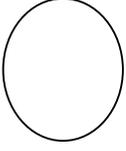
11. Taking into consideration the facts and circumstances of the case, the docket order dated 06.04.2023 in C.C. No.588 of 2023 passed by the learned III Additional Junior Civil Judge-cum-X Additional Metropolitan Magistrate, at Medchal, Medchal Malkajgiri District, is hereby set aside.

12. Accordingly, the Criminal Petition is allowed.

Miscellaneous applications pending, if any, shall stand closed.

G.ANUPAMA CHAKRAVARTHY, J

Date: 23.06.2023
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