

HONOURABLE SRI JUSTICE E.V.VENUGOPAL

WRIT PETITION Nos.6403 & 11387 of 2015

COMMON ORDER:

1 Heard Sri Muddu Vijay, learned senior counsel appearing for Aequitasjuris Law Firm, learned counsel for the petitioners in both the writ petitions and Sri Ch.Samson Babu, learned counsel for the third respondent in both the writ petitions and Sri Vizarath Ali, learned Assistant Public Prosecutor appearing for the State.

2 Since the petitioners in both the writ petitions are seeking quashment of the proceedings in C.C.No.668 of 2010 on the file of the Court of the XIII Additional Chief Metropolitan Magistrate, Hyderabad, arising out of Cr.No.632 of 2008 on the file of Sanjeeva Reddy Nagar Police Station, Hyderabad, these two writ petitions are being disposed of by way of this common order.

3 The facts, succinctly, are that the third respondent filed a complaint before the Sanjeeva Reddy Nagar Police Station, Hyderabad, against her husband – Dabeeruddin Khaja and also the petitioners in both the writ petitions for the offences punishable under Section 498-A of IPC and under Sections 3 and 4 of Dowry Prohibition Act. The same was registered as a case in

Cr.No.632 of 2008. After investigation, the police filed charge sheet, which was taken cognizance for the aforesaid offences only against the husband of the third respondent, vide C.C.No.333 of 2008. Insofar as the other accused are concerned, the final report filed by the police disclose that there was no *prima facie* case against them. It is the further case that after the first charge sheet was filed, the police filed an additional charge sheet arraying the petitioners in both the writ petitions as accused Nos.2 to 11 vide C.C.No.668 of 2010. Hence these two writ petitions seeking quashment of the proceedings in the above Calendar Case.

4 The learned counsel for the petitioners submitted that all the petitioners are non-resident Indians and that though the final report filed by the police at the initial stage does not disclose any *prima facie* case against the petitioners, but subsequently due to the pressure exerted by the third respondent and for the reasons best known to them, the police filed an additional charge sheet, which is contrary to law and abuse of process of law. The additional charge sheet was filed two years after filing of the first charge sheet. The learned counsel for the petitioners further submitted that after registration of the FIR, the third respondent

herself filed O.P.No.1421 of 2010 on the file of the Judge, Family Court, Hyderabad and obtained an order on 10.11.2011 dissolving the marriage between her and her husband Dabeeruddin Khaja. The learned counsel for the petitioners relied on the following judgments in support of his contentions. **1) Kapil Agarwal vs. Sanjay Sharma¹, Preeti Gupta vs. State of Jharkhand², Anil Khadkiwala vs. State³, Pritam Ashok Sadaphule vs. State of Maharashtra⁴ and Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Mohan Singh⁵.**

5 The second respondent – State filed counter affidavit in W.P.No.6403 of 2015 denying the various allegations made by the petitioners contending *inter alia* that at the time of filing of the charge sheet, the investigating officer did not examine the independent witnesses as they were not available at that time and after the first charge sheet was filed, the investigating officer examined the independent witnesses in the case and they corroborated with the contents of the FIR. After completion of investigation the investigating officer filed the additional charge

¹ (2021) 5 SCC 524

² (2010) 7 SCC 667

³ 2019 SCC OnLine SC 941

⁴ (2015) 11 SCC 769

⁵ (1975) 3 SCC 706

sheet against the petitioners in both the writ petitions, which was taken cognizance as C.C.No.668 of 2010 and the same was clubbed with C.C.No.333 of 2008. Therefore, it is prayed that it is not a fit case to quash the proceedings at this stage.

6 On the other hand, the learned counsel for the third respondent submitted that all the petitioners including the husband of the third respondent demanded Rs.10.00 lakhs towards dowry and as they could give only Rs.5.00 lakhs, all the petitioners and her husband threatened her to leave in case she does not bring the additional amount. After the marriage, the third respondent lived with her husband and the petitioners herein only for 13 days in India during which period her in-laws including her husband abused her verbally and physically and threatened her that they would not allow her husband to join her in USA if she does not pay them the remaining dowry amount. They also forced her parents to provide gold jewelry and articles worth Rs.20.00 lakhs during the wedding. Hence it is not a fit case to quash the proceedings against the petitioners at this stage and that truth or otherwise will be elicited after full-fledged trial. In support of his contentions, the learned counsel for the third

respondent relied on the following judgments: **K.D.Sharma vs. Steel Authority of India Limited⁶**, **M.B.Rajanikanth vs. State Inspector of Police⁷**, and **P.Anji Babu vs. Government of Andhra Pradesh⁸**.

7 The Supreme Court observed that it would be impermissible under the law for a Judicial Magistrate to take cognizance of a supplementary charge-sheet submitted after further investigation if it doesn't contain any fresh oral or documentary evidence.

8 In **Mariam Fasihuddin vs. State by Adugodi Police Station** [Criminal Appeal No. 335/ 2024 arising out of SLP (Crl.) No. 2877/2021, dated 22.01.2024] the Hon'ble Supreme Court held as follows:

Questions overlooked by the lower courts:

25. As previously noted, the Appellants stand accused of forging the signatures of Respondent No. 2 on the passport application of the minor child. The investigating agency initially found insufficient evidence to support charges under Sections 468 and 471 IPC. Accordingly, no charge sheet was filed under these provisions. However, in compliance with the Trial Magistrate's order dated 24.06.2015, a supplementary charge sheet was submitted under Sections 468, 471 and 201 IPC and Section 12(b) of the Passports Act, 1967.

⁶ (2008) 12 SCC 481

⁷ 2011 SCC OnLine AP 1123

⁸ 2013 SCC OnLine AP 1230

26. It is a matter of record that in the course of 'further investigation', no new material was unearthed by the investigating agency. Instead, the supplementary charge sheet relies upon the Truth Lab report dated 15.07.2013, obtained by Respondent No. 2, which was already available when the original charge sheet was filed. The term 'further investigation' stipulated in Section 173(8) CrPC obligates the officer-in-charge of the concerned police station to 'obtain further evidence, oral or documentary', and only then forward a supplementary report regarding such evidence, in the prescribed form.

27. The provision for submitting a supplementary report infers that fresh oral or documentary evidence should be obtained rather than reevaluating or reassessing the material already collected and considered by the investigating agency while submitting the initial police report, known as the charge sheet under Section 173(2) CrPC.4

In the absence of any new evidence found to substantiate the conclusions drawn by the investigating officer in the supplementary report, a Judicial Magistrate is not compelled to take cognizance, as such a report lacks investigative rigour and fails to satisfy the requisites of Section 173(8) CrPC. (underlined by me)

9 Let us see whether the case on hand will fall within the parameters fixed by the Hon'ble Supreme Court in the above judgment.

10 The contention of the investigating agency in this case was that at the time of filing of the charge sheet, the investigating officer did not examine the independent witnesses as they were not available at that time and after the first charge sheet was filed, the successive investigating officer examined the independent witnesses in the case and they corroborated with the contents of the FIR. After completion of investigation the

investigating officer filed the additional charge sheet against the petitioners in both the writ petitions. But as seen from the record, the additional charge sheet came to be filed long after filing of the first charge sheet. The witnesses examined by the investigating agency are none other than the parents of the third respondent. It is not known why the investigating officer filed the initial charge sheet without examining the parents of the third respondent though they were available. But what is stated in the first charge sheet which was filed against the husband of the third respondent alone was that there was no *prima facie* case against the petitioners in these two writ petitions. The averments made by the third respondent herein against the petitioners in both the writ petitions were already on record when the police filed the first charge sheet, but there was no new contention.

11 Further, as seen from the record, it is manifest that after registration of the FIR, the third respondent herself filed O.P.No.1421 of 2010 on the file of the Judge, Family Court, Hyderabad and obtained an order on 10.11.2011 dissolving the marriage between her and her husband Dabeeruddin Khaja.

12 It is also to be observed from the proceedings, the petitioners filed Crl.P.No.11912 of 2011 before this Hon'ble Court seeking to quash the proceedings in C.C.No.668 of 2010 pending before the trial Court. That petition was dismissed giving liberty to the petitioners to file a petition for discharge before the trial Court. But, the petitioners have not mentioned the said aspect.

13 However, in view of the findings of the Hon'ble Supreme Court in **Mariam Fasihuddin vs. State by Aduodi Police Station** (supra) I am of the considered view that there is no new evidence found to substantiate the conclusions drawn by the investigating officer in the supplementary charge sheet to take cognizance as contemplated under Section 173 (8) Cr.P.C. The allegations levelled against the petitioners in both the writ petitions, in my considered view, are omnibus. As held by the Hon'ble Supreme Court in **Kahkashan Kausar @ Sonam Vs. The State of Bihar**⁹ general and omnibus allegations do not warrant prosecution under Section 498-A of IPC. Further, the version put forth by the third respondent in the form of an independent witness is also no more a new version.

⁹ (2022) 6 SCC 599

14 For all the above reasons, I deem it appropriate to allow both the writ petitions.

15 Accordingly, both the writ petitions are allowed, quashing the proceedings in C.C.No.668 of 2010 on the file of the Court of the XIII Additional Chief Metropolitan Magistrate, Hyderabad, arising out of Cr.No.632 of 2008 on the file of Sanjeeva Reddy Nagar Police Station, Hyderabad. No order as to costs.

16 As a Miscellaneous petitions if any pending in this criminal revision case shall also stand dismissed.

E.V.VENUGOPAL, J.

Date: 14.03.2024

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