

(2016) 06 KAR CK 0082

KARNATAKA HIGH COURT (DHARWAD BENCH)

Case No: Criminal Petition No. 100512 of 2015

Sushma Suchetan Poojari

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision: June 29, 2016

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 323, Section 498A

Citation: (2016) 4 AirKarR 693

Hon'ble Judges: A. N. Venugopala Gowda, J.

Bench: Single Bench

Advocate: Raja Raghavendra Naik, HCGP, for the Respondents No. 1; S. S. Yadrami, Advocate, for the Petitioner; Dinesh M. Kulkarni, Advocate, for the Respondents No. 2

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

A. N. Venugopala Gowda, J. - The respondent No.2 - Smt. Chaitra w/o Amamath, having lodged a complaint on 07.03.2015, Hubli - Dharwad Women Police registered a case in Crime No.7/2015, for the offences punishable under Sections 498-A, 323, 504, 506, 149 of IPC and under Sections 3 and 4 of Dowry Prohibition Act, 1961 against Amamath and 6 others, including the petitioner (A7), and submitted the FIR to the JMFC - II Court, Dharwad. Investigation having been taken up by the police, this petition was filed under Section 482 Cr.P.C., to quash the FIR and the complaint, insofar as they relate to the accused No.7.

2. The allegations in the FIR, in short, is that the marriage of the complainant was solemnised with Amamath (A1), on 27.11.2013 and she was subjected to cruelty and dowry harassment by her husband and his relatives. The complainant has alleged that her husband is having an affair (illicit relationship) with the petitioner and is not properly taking care of her and committed the acts of physical assault, abuse in

vulgar language and ill-treated, both physically and mentally. Apart from demand for dowry, cruelty and the harassment, the complainant has made certain other allegations against Amarnath and his relatives and the same being unnecessary to decide this petition, are not noticed in detail.

3. The petitioner, a married woman and living with her husband, filed this petition, contending that the naming of her in the impugned complaint / FIR is with ulterior motive and there is abuse of process of law.

4. Sri. S. S. Yadrami, learned advocate contended that the complaint lacks bona fides in so far as the petitioner is concerned. He submitted that the complaint, insofar as the petitioner is concerned, has been instituted with mala fide intention of destroying her family life. He submitted that, even if the entire allegations made in the complaint are taken into consideration on their face value, do not constitute any of the offences alleged i.e., insofar as the petitioner is concerned, as she is neither a family member nor a relative much less in any way connected with the complainant and her husband's family. He submitted that the police having mechanically registered the FIR, are causing harassment to the petitioner and her privacy and marital life is severely affected.

5. Sri Dinesh M. Kulkarni, learned advocate, on the other hand, submitted that the illicit intimacy of the petitioner with the husband of respondent No.2, being the root cause for disruption of the marital life of complainant and consequently, the complainant having been subjected to cruelty and harassment, the complaint was filed and there being cognisable offences committed, requires investigation by the police. He submitted, that at this stage, the petition being premature, is liable to be rejected.

6. Learned HCGP submitted that in view of the allegations made in the complaint having disclosed the commission of cognisable offences, FIR was registered against the husband of the complainant Mr. Amamath, his relatives and the petitioner. Learned counsel submitted that the direct allegation of illicit relationship of the complainant's husband with the petitioner having been made, which appears to be a cause for harassment of the complainant, FIR was registered and investigation was undertaken.

7. Perused the complaint, copy of which is at Annexure-B. A bald statement has been made, that on account of illicit relationship which her husband is having with the petitioner, he is not properly taking care of the complainant and there are acts of physical assault, harassment and demand for dowry etc.

8. In **State of Haryana v. Bhajan Lal, 1992 SCC (Cri) 426 : (AIR 1992 SC 604)**, Apex Court has held, that in order to prevent abuse of process of law or of Court, the inherent power under Section 482, Cr.P.C. could be exercised. The relevant portion reads as follows:

"102(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

"102(7) 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."

9. When on the face of the complaint, if the allegations made are totally absurd and there is lack of bona fides on the part of the complainant, inherent power under Section 482, Cr.P.C. can be exercised to quash the FIR.

10. In the present case, not even an iota of material was produced in proof of the allegation made, that the complainant's husband had illicit relationship with the petitioner and the same is the cause for committing of violence by him against her. The allegation made may be on account of the suspicion the complainant is having on her husband. In view of the complete absence of particulars or any materials, the allegation made against the petitioner being absurd, the police cannot mechanically register the FIR against the petitioner, who is a married woman and living with her husband.

11. Since the allegation made against the petitioner is absurd and as no reasonable person would accept the same, particularly on account of lack of particulars and / or any material, there cannot be an investigation against the petitioner. The continuance of the impugned proceeding, insofar as the petitioner is concerned, could be an abuse of process of law. The allegation against the petitioner, does not constitute the ingredients of any of the offences alleged in the complaint.

12. In the result, petition is allowed and the FIR in Crime No.7/2015 of Hubli-Dharwad Women Police Station, pending on the file of II Addl. Civil Judge & CJM (Jr. Dn.), JMFC Court, Dharwad, Hubli, insofar as accused No.7 is concerned, is quashed.