A K. NEELAVENI

v.

STATE REP. BY INSP. OF POLICE AND ORS.

(Criminal Appeal No. 574 of 2010)

MARCH 22, 2010

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[D.K. JAIN AND C.K. PRASAD, JJ.]

Code of Criminal Procedure, 1973 – ss.482, 190 and 239 – Charge sheet under ss.406 and 494 IPC – Quashed C *by High Court, even before exercise of discretion by Magistrate under s.190, CrPC – Justification of – Held: On facts, not justified – High Court ought not to have interfered when the Magistrate had not even examined as to whether the accused persons deserved to be discharged in terms of* D *s.239,CrPC – High Court ought to have allowed the provisions of CrPC its full play – Penal Code, 1860 – ss.406 and 494.*

On the basis of complaint lodged by the appellant-wife, police submitted charge-sheet under ss. 406 and E **494 IPC against the husband and in-laws of the appellant i.e. respondent nos. 2 to 13.**

The accused-respondents approached the High Court for quashing of the charge sheet even before any F **order was passed by the Magistrate in terms of s.190, CrPC.**

The High Court quashed the charge-sheet on the ground that it did not reveal ingredients constituting G **offences under ss.494 and 406. Hence the present appeal.**

Allowing the appeal, the Court

HELD: 1.1. From a perusal of the allegations made in the FIR, it is evident that the appellant-wife has clearly

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alleged that her husband had married another lady and the said marriage had taken place in the presence and with the support of other accused persons. The appellant had also stated that from the second marriage a girl child was born. In the FIR, it had clearly been alleged that besides gold ornaments other household articles were given in marriage and further the appellant was subjected to cruelty and driven out from the matrimonial home by the accused persons. [Para 8] [554-B-D]

1.2. The allegations made in the FIR, at such a stage, have to be accepted as true, and allegations so made *prima facie*, constitute offences under ss. 406 and 494, IPC. It has to be borne in mind that while considering the application for quashing of the charge sheet, the allegations made in the FIR and the materials collected during the course of the investigation are required to be considered. Truthfulness or otherwise of the allegation is not fit to be gone into at this stage as it is always a matter of trial. Essential ceremonies of the Marriage were gone into or not is a matter of trial. [Para 8] [554-D-F]

1.3. The High Court erred in holding that the charge sheet does not reveal the ingredients constituting the offences under ss. 494 and 406, IPC. [Para 9] [554-G]

2. It seems that accused persons approached the High Court for quashing of the charge sheet even before any order was passed by the Magistrate in terms of s.190, CrPC. When a report is submitted to the Magistrate he is required to be *prima facie* satisfied that the facts disclosed therein constitute an offence. It is trite that the Magistrate is not bound by the conclusion of the investigating agency in the police report i.e. in the charge sheet and it is open to him after exercise of judicial discretion to take the view that facts disclosed in the report do not constitute any offence for taking cognizance. Quashing of ss.406 and 494, IPC from the charge sheet even before

A **the exercise of discretion by the Magistrate under s.190, CrPC is undesirable. In the facts and circumstances of the case, quashing of the charge sheet under ss.406 and 494, IPC at this stage in exercise of the power under s.482, CrPC was absolutely uncalled for. [Para 10] [554-**
B **H; 555-A-D]**

3. Offences under ss.406, 494 and 498A are triable by a Magistrate, First Class and as all these offences are punishable with imprisonment for a term exceeding two years, the case has to be tried as a warrant case. The
C **procedure for trial of warrant case by a Magistrate instituted on a police report is provided under Chapter XIX Part A, CrPC. Section 239, CrPC *inter alia* provides that if upon considering the police report and the document sent with it under s.173 and making such**
D **examination, if any, of the accused and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing. It seems**
E **that the accused persons even before the case had reached that stage filed an application for quashing of the charge sheet under ss.406 and 494, IPC. The High Court ought not to have interfered after the submission of the charge sheet and even before the Magistrate examining**
F **as to whether the accused persons deserved to be discharged in terms of s.239, CrPC. [Para 11] [555-D-H; 556-A]**

4. There is yet another reason which the High Court
G **ought to have considered before quashing the charge sheet under ss.406 and 494, IPC. All the offences are triable by Magistrate and quashing of the charge sheet under ss.406 and 494, IPC had not resulted into exonerating the accused persons from facing the trial itself. Matter would have been different had the offences**
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under ss.406 and 494, IPC been triable as sessions case. In matter like this the High Court ought to have allowed the provisions of the Code of Criminal Procedure its full play. [Para 12] [556-B-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 574 of 2010.

From the Judgment & Order dated 29.9.2008 of the High Court of Judicature at Madras in Criminal O.P. 23473 of 2008.

Guru Krishna Kumar, Sumit Kumar for the Appellant.

R. Shunmugarundaramn, R.V. Kameshwaran, S. Thananjayan for the Respondents.

The Judgment of the Court was delivered by

C.K. PRASAD, J. Leave granted.

1. The appellant-wife aggrieved by the order dated 29th September, 2008 passed by the High Court of Judicature at Madras in Criminal O.P. No. 23473 of 2008, whereby it had quashed the charge sheet under Sections 406 and 494 of the Indian Penal Code, has preferred this appeal seeking special leave to appeal.

2. Shorn of unnecessary details, the facts giving rise to the present appeal are that the appellant-wife K. Neelaveni on 07/11/2002 gave a written report to the Inspector of Selaiyur Police Station, inter alia, alleging that her marriage was performed with accused respondent No. 2 - S.K. Siva Kumar on 3rd September, 1997 in which gold ornaments and various other household articles were given by her parents. She had further alleged that her husband used to abuse her and her family members under influence of alcohol and demanded Rs. 50,000/- from her parents. According to the First Information Report, when she was pregnant, on scan it was found that she

A was carrying a female foetus, her husband and his family members started harassing her and insisted for aborting the child. On her refusal to give consent for abortion according to the informant on 18.1.1998, her husband, mother-in-law, brother-in-law and sister-in-law assaulted her and had driven B her out from the matrimonial home and the husband left her on way to her parents house. She gave birth to a girl child on 25.6.1998.

3. Informant in the written report had further alleged that her husband had married another lady namely, Bharathi without her C consent with the help and in the presence of other accused persons. She had further alleged that a female child was born to them in the wedlock.

4. On the basis of the aforesaid written report, a case D under Sections 406, 494 and 498A of the Indian Penal Code was registered against the accused persons. Police after usual investigation submitted charge sheet under Sections 406. 494 and 498A of the Indian Penal Code.

5. Accused persons namely respondent Nos. 2 to 13 filed E petition before the High Court for quashing the charge sheet under Sections 406 and 494 of the Indian Penal Code, inter alia, contending that in the absence of any material to show that "the second marriage was duly performed with religious rites and essential ceremonies" charge sheet under Section 494 of F the Indian Penal Code is fit to be quashed. It was, further, contended that allegations made in the First Information Report and the materials collected during the course of investigation do not fulfill the ingredients of offence under Section 406 of the Indian Penal Code. Aforesaid submissions found favour with G the High Court and it had quashed the charge sheet under Sections 406 and 494 of the Indian Penal Code. While doing so the High Court observed as follows:-

"As rightly contended by the learned counsel for the H petitioners, a careful reading of the complaint of the

second respondent, statements of witnesses recorded under Section 161 Cr.P.C. and the charge sheet do not reveal the ingredients constituting the offences under Section 494 and 406 IPC, yet the first respondent has chosen to file the charge for the said offences. Therefore, this court is constrained to quash the charge sheet as against the petitioners as far as the offences under Sections 406 and 494 IPC alone are concerned. It is made clear that the charge sheet as against the petitioners under Section 498A IPC is not quashed."

6. Mr. Guru Krishna Kumar, the learned counsel on behalf of the appellant submits that the conclusion arrived at by the High Court that the charge sheet did not reveal the ingredients constituting the offences under Sections 494 and 406 of the Indian Penal Code is erroneous. He draws our attention to the First Information Report and submits that there is an allegation of the second marriage and even birth to a child and hence it cannot be said that ingredients constituting offence under Section 494 of the Indian Penal Code do not exist. He pointed out that the High Court while considering the application for quashing of the charge sheet was obliged to take into account the allegations made in the First Information Report and the materials collected during the course of investigation. He submits that in case the allegations made in the First Information Report and the materials collected during the course of the investigation are taken into account, same constitute an offence under Section 494 of the Indian Penal code. It has further been pointed out that gold ornaments and household articles were given to the husband and she was driven out from the matrimonial home on a refusal to consent for abortion. Accordingly, Mr. Guru Krishna Kumar submits that allegation in the First Information Report and the materials collected during the course of investigation clearly constitute offences under Sections 406 and 494 of the Indian Penal Code.

7. Mr. R. Shunmugasundaram, learned senior counsel

A appearing on behalf of respondent Nos. 2 to 13, however, submits that the ingredients of an offence under Sections 406 and 494 of the Indian Penal Code do not exist and, therefore, the High Court did not err in quashing the charge sheet under Sections 406 and 494 of the Indian Penal code.

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8. We have given our thoughtful consideration to the submissions advanced and we are inclined to accept the submission of Mr. Guru Krishna Kumar, learned counsel for the appellant. From a perusal of the allegations made in the First Information Report, it is evident that the appellant has clearly C alleged that her husband had married another lady namely Bharathi and the said marriage had taken place in the presence and with the support of other accused persons. She had also stated that from the second marriage with Bharathi a girl child was born. In the First Information Report, it had clearly been D alleged that besides gold ornaments other household articles were given in marriage and further she was subjected to cruelty and driven out from the matrimonial home by the accused persons. In our opinion, the allegations made in the First Information Report, at this stage, have to be accepted as true, E and allegations so made prima facie, constitute offences under Sections 406 and 494 of the Indian Penal Code. It has to be borne in mind that while considering the application for quashing of the charge sheet, the allegations made in the First Information Report and the materials collected during the course of the F investigation are required to be considered. Truthfulness or otherwise of the allegation is not fit to be gone into at this stage as it is always a matter of trial. Essential ceremonies of the Marriage were gone into or not is a matter of trial.

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9. From what we have said above, we are of the opinion that the High Court erred in holding that the charge sheet does not reveal the ingredients constituting the offences under Sections 494 and 406 of the Indian Penal Code.

10. It seems that accused persons approached the High H Court for quashing of the charge sheet even before any order

was passed by the Magistrate in terms of Section 190 of the Code of Criminal Procedure. In our opinion, when a report is submitted to the Magistrate he is required to be prima facie satisfied that the facts disclosed therein constitute an offence. It is trite that the Magistrate is not bound by the conclusion of the investigating agency in the police report i.e. in the charge sheet and it is open to him after exercise of judicial discretion to take the view that facts disclosed in the report do not constitute any offence for taking cognizance. Quashing of Sections 406 and 494 of Indian Penal Code from the charge sheet even before the exercise of discretion by the Magistrate under Section 190 of the Code of Criminal Procedure is undesirable. In our opinion, in the facts and circumstances of the case, quashing of the charge sheet under Sections 406 and 494 of the Indian Penal Code at this stage in exercise of the power under Section 482 of the Code of Criminal Procedure was absolutely uncalled for.

11. It is relevant here to state that offences under Sections 406, 494 and 498A are triable by a Magistrate, First Class and as all these offences are punishable with imprisonment for a term exceeding two years, the case has to be tried as a warrant case. The procedure for trial of warrant case by a Magistrate instituted on a police report is provided under Chapter XIX Part A of the Code of Criminal Procedure, 1973. Section 239 inter alia provides that if upon considering the police report and the document sent with it under Section 173 and making such examination, if any, of the accused and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing. It seems that the accused persons even before the case had reached that stage filed an application for quashing of the charge sheet under Sections 406 and 494 of the Indian Penal Code. In our opinion, the High Court ought not to have interfered after the submission of the charge sheet and

A even before the Magistrate examining as to whether the accused persons deserved to be discharged in terms of Section 239 of the Code of Criminal Procedure.

12. There is yet another reason which the High Court ought to have considered before quashing the charge sheet under B Sections 406 and 494 of the Indian Penal Code. All the offences are triable by Magistrate and quashing of the charge sheet under Sections 406 and 494 of the Indian Penal Code had not resulted into exonerating the accused persons from facing the trial itself. Matter would have been different had the C offences under Sections 406 and 494 of the Indian Penal Code been triable as sessions case. In matter like this the High Court ought to have allowed the provisions of the Code of Criminal Procedure referred to above its full play.

D 13. For all these reasons we are unable to sustain the order impugned in the present appeal.

14. We hasten to add that all the observations made in this judgment are for the purpose of disposal of this appeal and shall have no bearing during the course of trial.
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15. In the result, we allow the appeal and set aside the impugned judgment.

B.B.B. Appeal allowed.