

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF DECEMBER, 2018

BEFORE

THE HON'BLE MR. JUSTICE H. P. SANDESH

CRIMINAL PETITION NO.9561 OF 2018

Between:

M.Justin Samson,
S/o Manoah
Aged about 38 years
R/at Joy-Prayer House,
No.38, Guru Reddy Layout,
Akash Nagar, A.Narayanapura,
Dooravani Nagar Post,
Bengaluru-560 016. ...Petitioner

(By Sri.Hashmath Pasha, Senior Advocate for
Sri.Syed Muzakkir Ahmed, Advocate)

And:

State of Karnataka by:
Mahadevapura Police Station,
Bengaluru. ...Respondent

(By Sri.Divakar Maddur, HCGP)

This Criminal Petition is filed under Section 439 of Cr.P.C. praying to enlarge the petitioner on bail in Crime No.578/2018 of Mahadevapura Police Station, Bengaluru City for the offence punishable under Sections 498A, 420, 468, 471 read with Section 34 of IPC and Sections 3 and 4 of Dowry Prohibition Act.

This Criminal petition coming on for *Orders* this day, the Court made the following:-

ORDER

Heard the arguments of learned counsel for the petitioner and learned HCGP.

2. The contention of the petitioner is that police have registered a case against this petitioner and other five persons in Crime No.578/2018 for the offences punishable under Sections 498A, 420, 468, 471 read with Section 34 of IPC and Section 3 and 4 of Dowry Prohibition Act.

3. Further, he contends that the marriage of the petitioner and the complainant was solemnized on 28.09.2014 in Frazer Town Church as per Christian tradition and customs. It is alleged that at the time of marriage, as per demand Rs.5,00,000/- and jewels were given as dowry and after the marriage complainant resided in the house of the husband for only three

months in Bengaluru. Thereafter, the petitioner, who was working in Malaysia as Lecturer in the College, went back to Malaysia after three months of marriage along with the complainant. Thereafter, the other accused are also said to have gone to Malaysia as tourists for a period of one month and returned back. The complainant continued to reside in Malaysia with her husband till 2016 for a period of two years and thereafter, returned back to India.

4. In the meanwhile, petitioner got fresh appointment in Qatar Country. Therefore, he went to Qatar from Malaysia and started working there. In the year 2016, the petitioner came to Bengaluru and got examined the complainant medically because her pregnancy was not sustaining. Since, the petitioner went back to Qatar, the complainant went back to her parents house and started to reside there. Since, the petitioner did not maintain her nor sent money to her for maintenance and since he had asked her for divorce and

go away, the complainant filed a complaint before Mahadevapura Police on 11.11.2017, upon which NCR No.942/2017 was registered. Thereafter, again on 25.08.2018, she lodged one more complaint before Women Police Station, East zone, Bengaluru, which is also registered in NCR No.420/2018.

5. The petitioner returned from Qatar Country to Bengaluru on 03.11.2018 and resided with his parents. Since, complainant-wife had lodged a complaint in Mahadevapura Police Station, Bengaluru and also Women Police Station, East Zone, Bengaluru, which was registered in NCR, the Police had called him for enquiry. Then, the petitioner explained as to how the complainant has not led the marital life with him. Therefore, they applied for decree of divorce before the Hon'ble IV Additional Family Court, Bengaluru in M.C.No.5408/2016 by raising various grounds including the ground that she is suffering from HIVS and has produced various medical records in this regard. The

Family Court after hearing the arguments of both the parties and on considering the relevant materials on record, dismissed the divorce petition filed by the petitioner against his wife. The Advocate, who was appearing for petitioner before the trial Court, in the month of January 2018, had informed the petitioner telephonically that divorce petition was allowed. The complainant had lodged a complaint before the Mahadevapura Police Station alleging that petitioner was insisting for divorce and she wants her husband and she does not want divorce. Since, the petitioner was in Malaysia, his father Mr.Manoah was called by the respondent-Police and he explained the fact that the petitioner being employed in Malaysia is unable to attend immediately but, he will try to secure him.

6. In the meanwhile, the complainant lodged another complaint on 25.08.2018, before the Women Police Station, East Zone, Bengaluru, which was also treated as NCR.No.420/2018. Then the petitioner had

produced the Xerox copy of the decree of divorce before the Police which was given by his Advocate to his father and stated that the marriage between himself and the complainant has been dissolved by virtue of decree of divorce. When the petitioner was called upon to appear before the Police Station on 03.12.2018, his appearance being secured, come to know that M.C. case in M.C.No.5408/2016 was dismissed. Petitioner was shocked to hear the fact of dismissal of his divorce petition. Till then, he was not aware of the fact that his divorce petition was dismissed. He was under the bonafide belief that his divorce petition has been allowed and decree has been passed in his favour as told by his Advocate. He was not indulged in any such activities of tampering any document. Copies are produced at Annexures-A to D to this petition.

7. Learned counsel for the petitioner contends that accused Nos. 2 to 5 have been granted anticipatory bail and this petitioner, who is a Lecturer working at

Malaysia, was not aware of the dismissal of decree of divorce and the Advocate gave a copy of the decree of divorce substituting the dismissal as allowed. This petitioner has not played any fraud on his part in preparing document of allowing the decree petition and he is ready to abide by any conditions that may be imposed by this Court. He is already in judicial custody and police have interrogated him since 03.12.2018. There is no necessity to keep the petitioner in judicial custody for further interrogation. Hence, he prays that petitioner may be enlarged on bail.

8. Learned counsel for the petitioner in support of his arguments referred to the judgment of Hon'ble Apex Court in the case of ***Arnesh Kumar V/s. State of Bihar and another*** reported ***in (2014) 8 SCC 273***.

9. Per contra, learned HCGP opposes the bail application contending that the petitioner has indulged in creating false document of decree of divorce even

though the Family Court has dismissed the divorce petition. He also tendered the copy of the order of the Court before the Police Station. And further submits that he had gone to the extent of creating false Court document of decree of divorce and he has committed heinous offence and the same is punishable for seven years. Hence, he is not entitled for grant of bail.

10. Learned HCGP contends that this Court cannot show any lenience to the petitioner as he has not only committed the offence punishable under Section 498A but has also involved in tampering the document and forgery. Hence, he prays for dismissal of the petition.

11. After hearing the arguments of learned counsel for the petitioner and learned HCGP for the respondent-State, the point that arise for my consideration is whether the petitioner has made out grounds to grant the bail for the alleged offences in respect of Crime No.578/2018?

12. The main contention of the petitioner's counsel in his arguments, is that his presence is not required now since he is already in judicial custody and police have already investigated the petitioner and as a measure of punishment, he cannot be kept in judicial custody. This Court has to consider the nature of the allegations and gravity of the offences and since the petitioner is a Lecturer by profession and working in Malaysia, he has not caused any kind of cruelty to his wife. Petitioner is ready to abide by any conditions that may be imposed by this Court.

13. Per contra, learned HCGP in his arguments contended that when divorce petition was dismissed, the petitioner has indulged in creating the document that it was allowed.

14. In reply to the arguments of learned HCGP, petitioner's counsel contend that the document of Family court are verified and there is no tampering or creating of

the Court documents. Only at the instance of the Advocate who has been arraigned as accused No.6, document came into existence. Petitioner has no knowledge about the manipulation of said document.

15. Considering the grounds urged by the petitioner's counsel and respondent's counsel, this Court has to examine the allegations made in the complaint. On perusal of the complaint, the complainant in her complaint has narrated the date of marriage, subsequent development and also mentioned about the registration of NCR Nos.942/2017, 420/2018 registered before jurisdictional Police and also before Women Police Station. But, in the complaint, she contends that her husband came to Bengaluru in the year 2018 when he was called upon to appear before the Police Station. He produced the copy of the decree of divorce passed by the Family Court in MC.No.5408/2018 and stated that the divorce petition was allowed and gave copy of the said order to the Police. Immediately, the complainant went

and verified the records of the Family Court. On verification, it was noticed that divorce petition before the Family Court was rejected and same was altered and manipulated as allowed. Hence, complaint was registered against this petitioner and others including Advocate of the petitioner in trial Court who has been arraigned as accused No.6 in this petition.

16. Now, it is the contention of the petitioner's counsel that the Family court records was not tampered and the learned counsel did not dispute the fact that document was tendered before the Police which shows decree of divorce allowed instead of dismissed. Learned counsel also submits that the petition filed by this petitioner before the Family Court was rejected. Now the question is, who has manipulated the documents.

17. The learned counsel for the petitioner has made an allegation against the learned counsel, who has appeared before the trial Court has manipulated the

document and has given the same to the petitioner. Petitioner is in judicial custody and investigation is not yet completed. During the course of investigation, the police have to investigate the matter that at whose instance the document came to be manipulated and was indulged in forgery of making petition as allowed instead of dismissal. No doubt, document of Family Court was not the document which was produced before the Police by the petitioner when he was called upon to appear before the Police but the manipulated document is produced.

18. On perusal of allegation, document is manipulated that too Court Order and offence is serious in nature and I am of the opinion that when the Court order was tampered substituting the dismissal as allowed, it requires detailed investigation that at whose instance document has been manipulated. The learned counsel appearing for the petitioner has relied upon the judgment of Apex court in the case of **Arnesh Kumar**

(*Supra*) wherein a direction was given that if the offence is under Section 498A of IPC, the right of liberty of the accused cannot be contained. But the factual aspect is different from the offences alleged against the petitioner herein. In this case, not only the offence of Section 498A of IPC is invoked but also the other offences of Sections 468 and 471 of IPC are invoked apart from Section 420 of IPC.

19. Having considered the nature and gravity of the offence and since all allegations are against this petitioner that he has indulged in preparing the decree copy by substituting dismissal as allowed, I am of the opinion that provision under Section 439 of Cr.P.C. cannot be invoked to enlarge the petitioner on bail during the course of investigation and hence, I pass the following order.

ORDER

- i) The criminal petition is ***dismissed***.

- ii) The petitioner can approach the Court after completion of the investigation.

**Sd/-
JUDGE**

SB