

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY 2019

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

CRIMINAL PETITION NO.6374 OF 2012

BETWEEN:

DR SWAGATH
S/O K S NARAYANA
AGED ABOUT 34 YEARS
LIG 255, 25TH CROSS
KUVEMPU NAGAR, HASSAN-573201. ... PETITIONER

(BY SRI: SWAGATH N, PARTY-IN-PERSON)

AND

1. STATE OF KARNATAKA
BY EXTENSION POLICE STATION, HASSAN
2. CHAITRA PALLAVI D/O MANJE GOWDA
"SRI SADANA NILAYA"
OPP NETHAJI PUBLIC SCHOOL
2ND STAGE, VIDYA NAGAR,
HASSAN-573201. ... RESPONDENTS

(BY SRI: I.S.PRAMOD CHANDRA, SPP-II FOR R1
SRI: K.J.SAGAR, ADVOCATE FOR
SRI: M.SHARASS CHANDRA, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S.482 CR.P.C BY THE PARTY-IN-PERSON PRAYING TO QUASH THE ORDER DATED 16.08.2012 PASSED BY THE ADDL. DIST. JUDGE & P.O., F.T.C., HASSAN IN S.C.NO.19/2012.

THIS CRL.P COMING ON FOR HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Petitioner is aggrieved by the order dated 16.08.2012 passed by the Fast Track Court-I and Additional Sessions Judge at Hassan, whereby the application filed by the petitioner (accused No.1) and accused Nos.2 and 4 under section 227 of Cr.P.C. has been dismissed.

2. Respondent No.2, the ex-wife of the petitioner herein lodged a complaint before Hassan Extension Police Station, Hassan alleging that on 19.03.2010 at about 8.15 a.m., when she along with her parents, brothers and sisters had gone to the house of the petitioner/accused No.1, the petitioner and his family members namely accused Nos.2 to 4, his uncle and aunt abused them in vulgar language and came forward to assault them with long and when her parents tried to ward off the blow, they sustained injuries. In the complaint, it is alleged that at the time of the marriage, demand for dowry was made

and on account of not satisfying dowry demand, she was ill-treated and harassed in the matrimonial home.

3. Based on this complaint, Crime No.63/2010 was registered under sections 143, 147, 148, 324, 323, 506, 498A read with 149 Indian Penal Code and sections 3 and 4 of Dowry Prohibition Act. In the course of investigation, the complainant gave her further statement and alleged that, 15 days prior to 21.03.2010, the petitioner herein caused bleeding injury on her left arm with a blade and with an intent to cause her death, splashed oil on the stairs and made her to walk up and down and also forced her to consume sleeping tablets. After investigation, charge-sheet has been laid against the petitioner and other accused persons for the above offences including the charge under section 307 Indian Penal Code.

4. The petitioner herein sought for his discharge before the trial court mainly on the ground that the allegations made against the petitioner are false and are counterblast to the complaint lodged by him against the second respondent and her family members who had unlawfully trespassed into his house

and were the assailants, in respect of which FIR was registered at the instance of the petitioner herein in Crime No.62/2010. Further he contended that the allegation of attempt of murder attracting offence under section 307 of Indian Penal Code was clearly an afterthought and no material was available in support of the said charge insofar as the petitioner is concerned. The trial court however by the impugned order dated 16.08.2012 has rejected the application observing that the material produced by the complainant *prima facie* makes out the offence alleged against the petitioner and accused Nos.2 and 4 including the offence under section 307 of Indian Penal Code.

5. I have heard the petitioner-party-in-person as well as the learned counsel for respondent No.2 and learned SPP-II and have perused the charge-sheet papers and the impugned order passed by the learned Sessions Judge.

6. It is a matter of record that in respect of the very same incident, father of the petitioner herein had filed a complaint against the second respondent and her parents and

others, making similar accusations that the second respondent along with her parents and others unlawfully trespassed into his house and abused him and also quarreled and assaulted him and his relatives. Further, prosecution has also produced reliable materials by way of wound certificates to show that during the occurrence, petitioner, his father and brother had sustained injuries.

7. So in the wake of these materials, trial court was justified in rejecting the applications filed by the petitioner /accused No.1 and accused Nos.2 and 4 seeking their discharge for the offences punishable under sections 143, 147, 148 and 149 of Indian Penal Code. Hence, charges under sections 143, 147, 148 and 149 of Indian Penal Code read with sections 3 and 4 of Dowry Prohibition Act are sustained.

8. Insofar as the offences punishable under sections 324 and 307 of Indian Penal Code are concerned, on going through material on record, it is noticed that at the earliest instance, the complaint did not contain any allegation of grievous injury or an attempt on the life of the second respondent or any

of her family members with intent to cause her death. On the other hand, the allegations of the complaint lodged by her, which are duly supported by the wound certificates collected during the investigation, indicate that during the incident, simple injuries and pain were suffered by the father and brother of the complainant which rules out use of any weapon to cause the injury. There is also no clinching material to show that respondent No.2 has sustained any grievous injuries, as a result, the charge under section 324 of IPC is purely baseless and groundless. Therefore, the learned Sessions Judge ought to have discharged the petitioner of the charge under Section 324 of Indian Penal Code.

9. Coming to the charge under section 307 of Indian Penal Code is concerned, the said charge is foisted only as an afterthought by making vague and general allegations. The very allegations made by the second respondent in her further statement, on the face of it, appear to be improbable, unbelievable and a figment of her imagination. At one breath, she states that the alleged incident had taken place 15 days

prior to 21.03.2010 without even specifying the exact date and place of occurrence. Further she states that during the said occurrence, she was slashed with a blade on her left hand arm. But no material has been produced to support the said accusation either by way of medical records or by any document contemporaneously with the said incident. As such, the said accusation appears to have been made solely to bolster up the charges levelled against the petitioner and to implicate him in a heinous offence. Further in the very same breath, the complainant has alleged that in order to make an attempt on her life, petitioner herein had splashed oil on the stairs of her house and had made her to walk up and down on the stairs and he forced her to consume sleeping pills. These allegations are also not sought to be substantiated with reference to any date or place.

10. Material on record indicates that the relationship between respondent No.2 and the petitioner had strained to such an extent that much before lodging of the complaint on 19.03.2010, the petitioner himself had filed a petition seeking divorce on the ground of cruelty. The said petition was filed on

17.03.2010. Petitioner has produced copy of the judgment passed in M.C.No.83/2013 dated 10.04.2014 whereby the petition filed by the petitioner under section 13(1)(1a) of the Hindu Marriage Act is allowed indicating that the respondent No.2 herself is guilty of causing cruelty on the petitioner. Under the said circumstances, the allegations made in the complaint filed by the second respondent appear to have been made only to foist a false charge against the petitioner. The prosecution has not produced any reliable material in support of the said accusations constituting offence under section 307 of Indian Penal Code. Having regard to the above facts and circumstances of the case and having regard to the material produced by the petitioner, the trial court ought to have discharged the petitioner of the charge under section 307 of Indian Penal Code.

11. On consideration of all the above material, I am of the view that the material produced by the prosecution makes out offences under sections 143, 147, 148, 149, 323, 498A, 506 of Indian Penal Code read with sections 3 and 4 of Dowry Prohibition Act.

12. Accordingly, the petition is **allowed-in-part**. The application filed by the petitioner under section 227 of Cr.P.C. is partly allowed. The petitioner is discharged of the offences punishable under sections 324 and 307 of Indian Penal Code and trial against the petitioner shall continue only for the offences punishable under sections 143, 147, 148, 149, 323, 498A, 506 of Indian Penal Code read with sections 3 and 4 of Dowry Prohibition Act.

13. As it is submitted that the counter case filed by the father of the petitioner is pending trial, this case also shall be transferred by the learned Sessions Judge to the concerned Court for trial of case and counter case together in accordance with the judgment in ***Nathilal vs. State of U.P.*** reported in ***1990 SCC(CrI) 638***. As the proceedings are pending since 2012, trial court shall expedite the trial.

14. It is made clear that any observation made in this order touching the merits is confined to the application filed by the petitioner under section 227 of Cr.P.C. In view of the findings recorded by me as above, accused Nos.2, 3 and 4

cannot also be tried for the above offences before the Sessions Court. The benefit of the above findings are accorded to accused Nos.2, 3 and 4 as there is no material to sustain the charge against accused Nos.2, 3 and 4 for the offences under sections 324 and 307 of Indian Penal Code. For the above reasons, even accused Nos.2, 3 and 4 stand discharged of the offences punishable under sections 324 and 307 of Indian Penal Code except under sections 143, 147, 148, 149, 323, 498A, 506 of Indian Penal Code read with sections 3 and 4 of Dowry Prohibition Act. Learned Sessions Judge shall transfer the case to the concerned court trying the charge arising out of Crime No.62/2010 and the petitioner as well as accused Nos.2, 3 and 4 shall appear before the concerned court to face the trial for the offences punishable under sections 143, 147, 148, 149, 323, 498A, 506 of Indian Penal Code read with sections 3 and 4 of Dowry Prohibition Act.

**Sd/-
JUDGE**

Bss