

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7<sup>TH</sup> DAY OF NOVEMBER, 2019

BEFORE:

THE HON'BLE MR. JUSTICE K. SOMASHEKAR

CRIMINAL REVISION PETITION NO.1232 OF 2015

TILOTAMA MISHRA

AND:

STATE OF KARNATAKA

## ORDER

This criminal revision petition is filed challenging the Order passed by the trial Court in S.C. No.1123/2014 dated 05.09.2015 for having rejected the application filed by accused Nos.2 and 4 i.e., petitioners herein under Section 227 of Cr.P.C. seeking for their discharge from the offences charged against them under Sections 498(A) and 304(B) of IPC r/w. Sections 3 and 4 of the Dowry Prohibition Act, 1961 [hereinafter referred to as 'D.P. Act' for short].

2. The factual matrix of this petition are as under:

The marriage of Sowmya Kar [deceased] was taken place on 06.12.2013 with accused No.1 as per the customs prevailed in their community. Subsequent to her marriage with accused No.1- Shreebhathsa Mishra, she was in Orissa for about one month. In the month of February 2014, they shifted to Bengaluru and stayed in a rented house at Devarachikkanahalli. It is stated in the complaint and so also the substance of the charge-sheet laid by the Investigating Officer that accused No.1, who is the husband of the deceased is working as a Telecom Engineer and accused No.3 is working as H.R. in Accenture and also staying with them in the aforesaid rented house. Deceased Sowmya Kar showed her interest to work and was working as a Finance Executive in Bengaluru. Accused No.2 i.e., Smt. Tilothama Mishra

arrayed in the charge-sheet is the mother-in-law and accused No.4 viz., Poornima Mishra is the sister-in-law of the deceased and they are residing at Orissa. The complainant is none other than the cousin sister of deceased Sowmya Kar, who is married and stayed in her matrimonial home at Orissa at a far away distance from the place of incident i.e., Bengaluru as narrated in the complaint and post-mortem in substance of the charge-sheet.

3. Learned counsel Sri. Rajendra C. Desai for the petitioners contended that based upon the complaint filed by the informant said to be the cousin sister of the deceased, the crime came to be registered for the offence punishable under Sections 498(A) and 304(B) of IPC, besides Sections 3 and 4 of the D.P. Act. Whereas, the complainant who is said to be the cousin sister of the deceased never been to the house of accused No.1 and so also never contacted them at any point of time and she has not even familiar with the family members of the accused. Though the complainant is not knowing the altercations said to be taken between the deceased and her husband, who is arrayed as accused No.1 as well as other accused but, the entire complaint is based upon the theory set up to rope the accused in the alleged crime. Whereas, FIR is said to be recorded for the offences under Section 498(A) of IPC though in a remote chances to see the ingredients which collected by the Investigating Officer,

which does not constitute an offence punishable under Section 498(A) of IPC against these accused Nos.2 and 4 and also for the offence under Sections 304(B) of IPC as the death caused within the span of 7 years from the date of the marriage. But, the ingredients relating to the aforesaid offences lugged against the accused do not constitute any offence in respect of these accused Nos.2 and 4 as they are residing away from the scene of crime. The complainant said to be the cousin sister of the deceased and she has not seen commission of the offences as narrated in the complaint as well as in the substance of the charge-sheet. But, the entire complaint is based upon the hear say statements and also after thought relating to the alleged crime that these accused were caused the death of Sowmya Kar at the instigation of her husband i.e., accused No.1.

Further, the learned counsel for the petitioners contended that the allegations made in the complaint and in the charge-sheet are general allegations and they are nothing but ambiguous allegations made against the petitioners/accused Nos.2 and 4. In the charge-sheet there are no tangible material to connect these accused even regarding the overt-act attributed against them for the harassment meted out by the deceased in the hands of these accused.

The family members of deceased Sowmya Kar have not made any allegations specifically in their statements said to be recorded during the course of the investigation and in numerical value to quantify the dowry harassment stated. The relatives of the deceased even though given statements during the course of the investigation before the Investigating Officer, they have not even specifically stated any attempt made by these accused directly through accused No1, who is the husband of deceased Sowmya Kar. Whereas the allegations made against these accused in the charge-sheet, it is only allegations that they have roped in the alleged crime because they are mother and sister relatively of accused No.1.

Accused Nos.2 and 4 are totally innocent of the alleged offences and they never involved in the offences alleged against them in the charge-sheet laid by the Investigating Officer. Accused Nos.2 and 4 are the permanent residents of Orissa and they are residing 2000 kms. away from the scene of crime. It is relevant to clarify that the scene of crime is situated in Bengaluru City and deceased Sowmya Kar has stayed for a period of one month with accused No.2 at Orissa and not at all with accused No.4. During her stay at Orissa, accused No.2 treated the deceased as her own daughter. This aspect has not been considered by the trial Court while disposing of the application

filed by the petitioners/accused Nos.2 and 4 under Section 227 of Cr.P.C., seeking for discharge from the alleged offences.

Accused No.2 is an aged old lady and being a mother-in-law of the deceased had suffered with fracture of leg was not in a position to travel for a long distance and she spent a very short period with deceased Sowmya Kar. But, she has been lugged in the alleged charge-sheet filed by the Investigating Officer. Accused No.2 never demanded any sort of dowry either from the deceased or from her parents. Despite of it, the offence under Sections 3 and 4 of the D.P. Act so also the offence under Section 498(A) of IPC regarding physical and mental harassment meted out by the deceased in the hands of the accused and also causing the death of Sowmya Kar within a span of 7 years from the date of her marriage with accused No.1 has been roped in the charge-sheet laid by the Investigating Officer.

There is no specific material in the form of evidence have been secured by the Investigating Officer during the course of investigation in order to prove the guilt of the accused. But, accused No.4 is residing at a distance of 300 kms. away from her parental house at Orissa and she is separated from her husband and living with her son, who is aged about 14 years and she did not interfere in her parental family affairs of deceased Sowmya Kar, who was residing in the house of her husband. But, she has

also been roped in the charge-sheet laid by the Investigating Officer.

Lastly, the learned counsel for the petitioner submitted that the complainant is none other the cousin sister of deceased Sowmya Kar and has not aware of the family members of the accused. She has narrated the incident and filed a complaint before the MICO Layout Police Station. But, there are no specific allegations made against accused Nos.2 and 4. Accused No.3 is said to be facing trial in S.C.No.1123/2014. But, subsequent to laying the charge-sheet against the accused, they having filed an application under Section 227 of Cr.P.C. seeking for their discharge on various grounds though there are no specific overt-act attributed against the accused Nos.2 and 4 to commit the alleged offence. These are all the contentions taken by the learned counsel for the petitioners/accused Nos.2 and 4 seeking for allow the revision petition and set aside the order passed by the trial Court in S.C. No.1123/2014 for having rejected their application under Section 227 of Cr.P.C. In consequence upon, to allow the application filed by them and discharge them from the alleged offences.

4. The learned HCGP for the State has countered to the arguments advanced by the learned counsel for the petitioners on

various aspects relating to the allegations made in the complaint as well as the substance of the charge-sheet laid by the Investigating officer. Once the charge-sheet has been laid against the accused, it is inspired that the Investigating Officer has power under Section 173 of Cr.P.C. During the investigation, the Investigating Officer recorded the statements of the witnesses and so also conducted the seizure mahazar. But, in the instant case, the death of Sowmya Kar has occurred within a span of 7 years from the date of her marriage in the house of her husband. The charge-sheet has been perused by the trial Court, but it is not a mini trial for consideration of the application filed by the accused under Section 227 of Cr.P.C. seeking for their discharge. The charge-sheet has been laid against the accused and it is enough to proceed with the case as there are sufficient material against them for trial. In the instant case, accused Nos. 2 and 4 are none other than the mother-in-law as well as sister-in-law of deceased Sowmya Kar and they were extending physical as well as mental harassment through accused No. 1, who is none other than the husband of the deceased. During the course of the inquest proceedings held over the dead body, the Competent Authority have conducted mahazar in the presence of panch-witnesses, which reveals that accused No. 2 - Tilotama Mishra is none other than the mother-in-law and accused No. 4 - Poornima Mishra @ Smithashree Mishra is none other than the sister-in-law of



deceased Sowmya Kar and they were giving physical as well as mental harassment to the deceased. Therefore, the deceased has left the death note, which has been seized by the Investigating Officer during the course of investigation and laid the charge-sheet and the same indicates that the deceased has meted out physical as well as mental harassment in the hands of the accused and hanged herself to the ceiling fan by means of piece of cotton saree, which has been subjected in the P.F. These are all the contentions taken up by the learned HCGP for the State and seeking for dismissal of the criminal revision petition filed by accused Nos.2 and 4.

5. It is in this backdrop of the contention taken by the learned counsel for the petitioners stated supra so also the counter made by the learned HCGP for the State, it is relevant to state that based upon the complaint filed by the cousin sister of deceased Sowmya Kar, the case in Crime No.423/2014 came to be registered by the MICO Layout Police for the offence punishable under Sections 498(A) and 304(B) r/w. Sections 3 and 4 of the D.P. Act. Whereas, the complaint averments reveal that the marriage of deceased Sowmya Kar was taken place with accused No.1 on 06.12.2013 as per the customs prevailed in their community. During the marriage, her parents had provided dowry considerably in the form of gold and silver articles and also cash. So also, the marriage has been performed in a grand manner by

providing household articles. Subsequent to the marriage, deceased Sowmya Kar was residing in the house of her husband. The remaining accused were insisting her to bring additional dowry from her parents house. Accused No.2 is said to be harassed the deceased and also driven her out from the house. In the month of February 2014, deceased Sowmya Kar and her husband i.e., accused No.1 returned to Bengaluru and were residing in a rented house situated in MICO Layout, where also accused Nos.1 and 3 are said to be given physical as well as mental harassment to the deceased and they did not allow her to go to the village for attending the marriage function of her brother. These are all the things which find a place in the charge-sheet laid by the Investigating Officer and also the allegations made against the accused. But, Sowmya Kar hanged herself to the ceiling fan by means of piece of cotton saree on 19.06.2014. There is no dispute that the death has occurred within a span of 7 years from the date of the marriage. But, it has occurred in rented house of accused No.1 in MICO Layout, Bengaluru. Accused No.1 is working as a Telecom Engineer and accused No.3 is working as H.R. in Accenture and also staying with them in the above said rented house. There is no dispute that accused No.2, who is the mother-in-law of deceased Sowmya Kar was residing at Orissa and accused No.4, who is the sister-in-law of deceased Sowmya Kar was also residing at

Orissa, away from her parental home, whereas in the charge-sheet laid by the Investigating Officer and also in the complaint filed by the cousin sister of deceased who is married and living in her matrimonial house at a far away distance from the place of incident at Bengaluru strangely indicated that the accused persons are responsible for the aforesaid offences. The complainant though being the cousin sister of the deceased, she never visited the house of accused No.1 and never contacted them regarding their family affairs. The family members of the deceased have stated that dowry harassment was given by the accused to deceased Sowmya Kar. But, they never stated specifically in their statements relating to the demand directly made by the petitioners/accused Nos.2 and 4 to the deceased through accused No.1.

6. It is relevant to note that during the investigation, the statements of Sathyabhama and Nagendranathakar who are the parents of deceased Sowmya Kar, and Sathyanarayan Mahapatra who is the uncle and Radhaballakar who is the brother of deceased Sowmya Kar and also Sharada Prasannadas who is none other than the husband of the complainant have been recorded, wherein they have stated that accused Nos.2 and 4 have also subjected the deceased to physical and mental harassment in the matter of additional dowry. But, the complainant is none other

than the cousin sister of deceased Sowmya Kar. These witnesses have given their statements before the Investigating Officer alleging that accused Nos.2 and 4 also gave physical as well as mental harassment to deceased by insisting her to bring additional dowry from her parental house. But, at a cursory glance of the entire material available on record, so also the charge-sheet laid by the Investigating Officer, which consisting statements of C.Ws.1 to 20 and also the charge-sheet consisting of mahazar said to be conducted by the Investigating Officer in the presence of panch-witnesses relating to the seizure of the piece of cotton saree said to be used by the deceased Sowmya Kar to hang herself to the ceiling fan in the scene of crime and the same has been subject in PF. Accused No.1 is having a sufficient source to lead a decent life. Accused Nos.3 and 4 are also working. Therefore, the family members of accused No.1 having sufficient source to lead their decent life and they did not crave for money for anything before any one. But, these accused Nos.2 and 4 are residing 2000 kms. away from the scene of crime. Deceased Sowmya Kar was stayed in the house of her husband at Orissa for a period of one month only. But, she hanged herself to the ceiling fan by means of piece of cotton saree in the house of her husband at Bengaluru. The same has been reflected in the material collected by the Investigating officer. The death has occurred within a span of 7 years from the

date of her marriage.

7. In the instant case, it is relevant to place a reliance on the decision of the Hon'ble Apex Court in the case of Indu Jain Vs. State of Madhya Pradesh and Others, reported in (2009)3 SCC (Crimes) 996, wherein it is held as under:

"Holding of a mini trial at the time of framing of charge deprecated - Also, held, various circumstances can only be considered during a proper trial and not on the basis of surmises at the time of framing charge, where on the strength of the charge sheet only a prima facie satisfaction about the commission of an offence is to be arrived at by the trial court".

But, in the instant case, accused Nos.2 and 4, who are none other than the mother-in-law and sister-in-law of deceased Sowmya Kar have been lugged in the alleged crime and also lugged in the substance led in the charge-sheet by the Investigating Officer. By appreciating the materials produced by the Investigating Officer, a mini trial at the stage of framing of charges are not justified. At the time of framing of charge-sheet the trial Court is not require marshalling the material evidence on record, but only as to prima facie consider whether there is any sufficient material against the accused to proceed with the case in order to face the trial. But, in the instant case, at the cursory

glance of the material having secured by the Investigating Officer during the course of investigation or otherwise to say collected material in order to lay the charge-sheet as contemplated under Section 173 of Cr.P.C., the complainant is the cousin sister of deceased Sowmya Kar and she was residing in the house of her matrimonial house at a far away distance from the scene of crime. But, whatever the allegations made in the complaint and so also the substance in the charge-sheet, it has to be taken during the course of trial by the prosecution, the prosecution ought to have produced cogent evidence and also the evidence which beyond all reasonable doubt to secure conviction for the offences, which leveled against the accused. But, accused Nos.2 and 4 are said to be the mother-in-law and sister-in-law of deceased Sowmya Kar and they were also been lugged in the charge-sheet and they are also require to face trial. But, having gone through the materials which are collected by the Investigating Officer relating to the offence under Sections 498(A) of IPC that these accused were also giving physical as well as mental harassment to deceased Sowmya Kar and driven her to death by hanging herself to the ceiling fan by means of a piece of cotton saree in the house of her husband within a span of 7 years from the date of marriage. But, merely because the charge-sheet is laid against the accused, it cannot be said that these accused were also require to face trial but, the materials

which collected by the Investigating Officer even in the remote chances of which is enough materials for facing of trial by accused No.1, who is none other than the husband of deceased Sowmya Kar.

8. Accused No.2 is the mother-in-law and accused No.4 is the sister-in-law of deceased Sowmya Kar respectively and they are residing at Orissa whereas, accused No.3 is the brother-in-law of deceased Sowmya Kar was also residing in the family of his brother i.e., accused No.1. Therefore, the materials in which collected by the Investigating officer during the course of Investigation in order to laying the charge-sheet against accused Nos.2 and 4 i.e., the petitioners herein, there are no strong material against them and there are no chances by the prosecution even to the extent for establishing the case against these accused Nos.2 and 4 to prove the guilt.

But, in the doctrine of criminal justice system, the case has to be proved beyond all reasonable doubt and that is the cardinal principle. Therefore, in terms of the aforesaid reasons and findings, I am of the considered opinion that there are substance in the contention of the learned counsel for the petitioners who are arrayed as accused Nos.2 and 4 in this revision petition seeking for intervention to the impugned order passed by the Court below in S.C. No.1123/2014 for having rejected their

application filed under Section 227 of Cr.P.C. seeking for discharge. Accordingly, I proceed to passthe following:

ORDER

The criminal revision petition filed by the petitioners/accused Nos.2 and 4 under Sections 397 r/w. Section 401 of Cr.P.C is hereby allowed. Consequently, the order passed bythe trial Court in S.C. No.1123/2014 dated 05.09.2015 is setaside.

Consequent upon allowing this criminal revision petition, the application filed by the petitioners/accused Nos.2and 4 under Section 227 of Cr.P.C. is hereby allowed and theyare discharged from the alleged offences as stated in the charge-sheet laid by the Investigating Officer against them.

Whatever observations made in this order, it shall not influence in the mind of the trial Court in S.C. No.1123/2014for facing of trial by accused Nos.1 and 3.

Consequent upon disposal of the main petition, I.A. No.1/2016 seeking for stay does not survive for considerationand it is accordingly stands rejected.