

Karnataka High Court

Smt. Saritha Sekhar vs State Of Karnataka on 18 May, 2023

Bench: K.Natarajan

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF MAY, 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.7866 OF 2022

CONNECTED WITH

CRIMINAL PETITION NO.833 OF 2023

IN CRIMINAL PETITION NO.7866 OF 2022

BETWEEN

- 1 . SMT. SARITHA SEKHAR
W/O LATE PREM SHEKAR,
AGED ABOUT 71 YEARS,
- 2 . SMT YOGITHA REDDY
W/O RAVINDRA REDDY,
AGED ABOUT 48 YEARS,
- 3 . SRI RAVINDRA REDDY
S/O K RAMASWAMY REDDY,
AGED ABOUT 52 YEARS,
- 4 . SMT SHRAVANTI N
W/O HARISH KUMAR,
AGED ABOUT 42 YEARS,

ALL ARE R/AT PLOT NO.24,
BAJRANG COLONY,
RISALA BAZAR, BURTON ROAD,
BOLLARUM,
SECUNDARABAD-500010

... PETITIONERS

(BY SRI V. LAXMINARAYANA , SENIOR ADVOCATE
SHI S. ISMAIL ZABIULLA, ADVOCATE)

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AND

- 1 . STATE OF KARNATAKA

BY TILAK NAGAR POLICE STATION,
REP BY SPP
HIGH COURT OF KARNATAKA,
BANGALORE-560002

2 . SMT SHIPLA KISHORE
W/O NANDA KISHORE,
AGED ABOUT 39 YEARS,
R/AT NO.1261, BELAKU,
32ND G CROSS,
28TH MAIN ROAD,
JAYANAGAR 4TH T BLOCK,
BANGALORE-560041

... RESPONDENTS

(BY SRI R.D. RENUKARADHYA, HCGP, FOR R1
SRI B.N. SHIVANNA, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
OF CR.P.C. PRAYING TO CONTINUATION OF THE PROCEEDINGS
AGAINST THE PETITIONERS IS NOTHING BUT ABUSE OF
PROCESS OF LAW AND HENCE THE PETITIONERS HUMBLY PRAY
THAT THIS HONBLE COURT BE PLEASED TO
A. QUASH THE CHARGE SHEET IN C.C.NO.32748/2014 FILED BY
THE 1st RESPONDENT AT ANNEXURE-C AND CONSEQUENTLY
QUASH ALL FURTHER PROCEEDINGS IN C.C.NO.32748/2014
FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 498A, 506,
324 READ WITH SECTION 34 OF IPC AND ALSO UNDER
SECTIONS 3, 4 OF D.P ACT PENDING ON THE FILE OF THE
XXXVII ACMM, BANGALORE SO FAR AS AGAINST THESE
PETITIONERS.

IN CRIMINAL PETITION NO.833 OF 2023

BETWEEN

SRI NANDA KISHOR @ HRITHVIK RAJ KISHOR
S/O LATE PREM SHEKAR
AGED ABOUT 49 YEARS,

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R/AT NO.72/A, BRINDAVAN NAGAR COLONY
SUBASH NAGAR
TIRUMALAGIRI
SECUNDARABAD
HYDERABAD - 500 015

... PETITIONER

(BY SRI V. LAXMINARAYANA SENIOR ADVOCATE FOR
SRI S. ISMAIL ZABIULLA, ADVOCATE)

AND

1 . STATE OF KARNATAKA
BY TILAK NAGAR POLICE STATION
REP BY SPP
HIGH COURT OF KARNATAKA
BANGALORE - 560 002

2 . SMT SHILPA KISHORE
W/O NAND KISHORE
AGED ABOUT 39 YEARS,
R/AT NO.1261, BELAKU
32ND G CROSS
28TH MAIN ROAD,
JAYANAGAR 4TH T BLOCK
BANGALORE - 560 041

... RESPONDENTS

(BY SRI R.D. RENUKARADHYA HCGP R1
SHI S. ISMAIL ZABIULLA)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO A. QUASH THE CHARGE SHEET IN C.C.NO.32748/2014 FILED BY THE 1st RESPONDENT AT ANNEXURE-C AND CONSEQUENTLY QUASH ALL FURTHER PROCEEDINGS IN C.C.NO.32748/2014 FOR THE OFFENCES PUNISHABLE UNDER SECTIONS 498A, 506, 324 READ WITH SECTION 34 OF IPC AND ALSO UNDER SECTIONS 3, 4 OF D.P. ACT, PENDING ON THE FILE OF XXXVII ACMM, BANGALORE SO FAR AS AGAINST THE PETITIONER IS CONCERNED.

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THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 9.02.2023, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Crl.P.No.7866/2022 is filed by the petitioners- accused Nos.2 to 5 and Crl.P.833/2023 is filed by petitioner-accused No.1 under Section 482 of Cr.P.C. for quashing the criminal proceedings in C.C.No.32748/2014 in respect of Crime No.386/2013 registered by Thilaknagar Police Station, Bengaluru, for the offences punishable under Sections 498A, 506, 324 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 3 and 4 the Dowry Prohibition Act, 1961 (for short 'D.P. Act'), pending on the file of the XXXVII Additional CMM, Bengaluru.

2. Heard the arguments of learned counsel for the petitioners, learned High Court Government Pleader for respondent No.1-State and learned counsel for respondent No.2.

3. The case of the petitioners is that on the private complaint filed by respondent No.2, the learned Magistrate referred the complaint under Section 156(3) of the Cr.P.C. and in turn, the Police registered FIR and filed the charge-sheet. It is alleged by respondent No.2 that she has married accused No.1 on 10.03.2008 and the same was registered before the Sub-Registrar of Marriage on

18.06.2009. At the time of marriage, the father of respondent No.2 paid Rs.15.00 lakhs towards dowry and later, accused No.1 and complainant started residing at 1st Block, Jayanagar, Bengaluru. Accused No.5 who is the sister-in-law of the complainant used to torture the complainant for money as she and her husband were jobless. The complainant was only the working hand, therefore, they were blackmailing and demanding money from her. Accused No.1 used to assault her physically by demanding more dowry. The complainant obtained Rs.1,50,000/- from her mother and given to the accused for wedding of the brother of accused No.1. They went on increasing the harassment. She has deposited Rs.1.00 lakh in the account of accused No.5 and subsequently, they demanded money for the marriage of accused No.5, when she was six months pregnant and they demanded Rs.25.00 lakhs to give to Shravanti-accused No.5 as dowry. Then she was forced to transfer Rs.8.50 lakhs. At the time of naming ceremony of daughter of the complainant, again they demanded money and her parents could not arrange any money, at that time, accused No.1 was absconding. Subsequently, the family members of accused No.1 changed their numbers and later, she came to know that accused No.1 was working in a new name along with his father, daughter and his mother at Gurgaon in March 2013. She tried to meet them, but they were reluctant to meet her and recently she came to know that the accused persons trying to marry some other lady to accused No.1. Hence, she went to Gurgaon on 30.09.2013. After seeing her, they started assaulting the complainant. They tried to squeeze her neck and threatened with dire consequences and they caused injury. Accordingly, the complaint came to be registered and charge-sheet has been filed which is under challenge.

4. The learned Senior counsel for the petitioners has contended that there was delay of seven years in filing the complaint. The complainant has suppressed the material fact and there is no explanation in the complaint regarding delay in filing the complaint. The learned Senior counsel has taken another contention mainly that the private complaint has been filed and referred to the Police under Section 156(3) of Cr.P.C., where the affidavit was not filed by the complainant along with the complaint. Therefore, as per the guidelines issued by the Hon'ble Supreme Court in the case of Priyanka Srivastava and Another vs. State of Uttar Pradesh and Others reported in (2015) 6 SCC 287, the very complaint referring to the Police without compliance of Sections 154(1) and 154(3) of Cr.P.C., the complaint before the Magistrate is not maintainable and liable to be quashed. In support of his contention, the learned Senior counsel has relied upon various judgments of the Hon'ble Supreme Court and the High Court.

5. The learned counsel for the respondent objected the petitions and contended that the petitioners have already approached the High Court and the same was dismissed. The judgment of the Hon'ble Supreme Court in the case of Priyanka Srivastava (supra) is having prospective effect as the judgment was delivered on 19.03.2015. He further contended that the complaint has been filed in the year 2013 and the same was referred to the Police and charge-sheet has been filed by the Police on 12.06.2014 prior to the judgment of the Hon'ble Supreme Court which was delivered only in March, 2015. Therefore, prayed for dismissing the petition.

6. Having heard the arguments and on perusal of the records, which reveals, the respondent have filed the private complaint under Section 200 of Cr.P.C. before the II ACMM, Bengaluru on 29.10.2013. The learned Magistrate after receipt of the complaint referred the same to the Police for investigation by action under Section 156(3) of Cr.P.C. and subsequently, the Police registered the

FIR in Crime No.386/2013 for the offences punishable under Sections 498A, 324, 506 of IPC and Sections 3 and 4 of the D.P. Act and charge-sheet also came to be filed as on 12.06.2014. It is also an admitted fact that the petitioners have approached the High Court for quashing the criminal proceedings, but subsequently it was dismissed for non prosecution and also once, in the crime stage, the petition came to be dismissed by the High Court. Now once again, the petitioners are before this Court on various grounds, however, mainly on the ground that there was inordinate delay in lodging the complaint for almost seven years and the respondent not approached the Police under Sections 154(1) and 154(3) of Cr.P.C. but directly filed the complaint under Section 200 of Cr.P.C. without filing the supporting affidavit along with the complaint.

7. Of course, there is a delay in lodging the complaint and on verifying the averments, the harassment and ill treatment were all pertaining to the year 2008 and 2009 and admittedly the complaint came to be filed in October 2013. The delay has not been explained by the complainant. However, the learned Senior counsel for the petitioners has seriously contended that the very foundation of the filing complaint without supporting the affidavit and without approaching the Police under Section 154 of Cr.P.C., filing the complaint directly to the Court/Magistrate is not sustainable under the law in view of the judgment of the Hon'ble Supreme Court in the case of Priyanka Srivastava (supra).

8. It is well settled by the Hon'ble Supreme Court in the case of Priyanka Srivastava (supra) that the complainant shall approach the Police at first instance under Section 154(1) of Cr.P.C. and if the complaint is not received by the Police, then, the complainant has to approach the Higher Police Officials under Section 154(3) of Cr.P.C. and if the Higher Police Officials also not acted upon, then the complainant shall approach the Magistrate under Section 200 of Cr.P.C. The learned Magistrate may in his discretion can take the cognizance and proceed in accordance with law as per Sections 200 to 204 of Cr.P.C. or else the Magistrate in his discretion may refer the complaint under Section 156(3) of Cr.P.C. and if the Police filed the report, then the Magistrate can take the cognizance.

9. The respondent counsel has relied the judgment of the Hon'ble Supreme Court on the very same principle which was considered by the Hon'ble Supreme Court in the case of Vinubhai Haribhai Malaviya and Others vs. State of Gujarat and Another reported in AIR 2019 SC 5233. However, the Hon'ble Supreme Court has not considered the said case in the Vinubhai's case whether compliance under Sections 154(1) and 154(3) of Cr.P.C. and affidavit in respect of principle laid down by the Hon'ble Supreme Court in the case of Priyanka Srivastava (supra).

10. On the other hand, the judgment produced by the learned Senior counsel for the petitioners in various catena of decisions, the Hon'ble Supreme Court has considered the Priyanka Srivastava's case (supra) and quashed the complaint for non-compliance of the guidelines issued by the Hon'ble Supreme Court in the case of Priyanka Srivastava (supra). In the case of Babu Venkatesh and Others vs. State of Karnataka and Another reported in AIR Online 2022 SC 175, the Hon'ble Supreme Court has quashed the complaint for non filing of the affidavit.

11. Now, the question arises for this Court whether the judgment of the Hon'ble Supreme Court in the case of Priyanka Srivastava (supra) is applicable to the case on hand or not. Since the complaint

and the charge sheet came to be filed prior to the judgment delivered by the Hon'ble Supreme Court in the case of Priyanka Srivastava (supra), wherein the judgment was delivered on 19.03.2015. The learned Senior counsel has contended that the guidelines issued by the Hon'ble Supreme Court is a law of the land regarding procedure and Hon'ble Supreme Court has not stated in the judgment that it has given prospective effect and if there is no observation by the Hon'ble Supreme Court regarding the effect of the judgment, then it is always having retrospective effect. In support of his contention, the learned Senior counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of P.V.George and Others vs. State of Kerala and Others reported in (2007) 3 SCC 557, the Hon'ble Supreme Court has considered the law of precedent and the pronouncement of the judgment regarding prospective effect or retrospective effect held at paragraph No.29 which is as under:

"29. Moreover, the judgment of the Full Bench has attained finality. The special leave petition has been dismissed. The subsequent Division Bench, therefore, could not have said as to whether the law declared by the Full Bench would have a prospective operation or not. The law declared by a court will have a retrospective effect if not otherwise stated to be so specifically. The Full Bench having not said so, the subsequent Division Bench did not have the jurisdiction in that behalf."

12. In another judgment, in the case of Yakub Abdul Razak Memon vs. State of Maharashtra and connected matters reported in (2015) 9 SCC 552 in similar circumstances, the Hon'ble Supreme Court has held at paragraph No.59 which is as under:

"59. Thus viewed, it would become a declaration of law under Article 141 of the Constitution and unless the Court says it is prospectively applicable, it would always be deemed to be applicable. However, it is also to be seen what is the purpose and purport behind the said principle and whether that would affect the issuance of death warrant in this case."

13. By relying upon the judgment of the Hon'ble Supreme Court, the Uttarkhand High Court also held in the case of Anil Kumar Joshi vs. State of Uttarkhand & another in CrI.Mis.No.1613/2015 has taken the similar view by relying upon the judgment of Priyanka Srivastava (supra) and held that a law made by the Court always has a retrospective effect unless specifically stated in the ruling itself since it has not been stated that the ruling will have prospective effect.

14. Therefore in my considered view, the Hon'ble Supreme Court has not stated in the judgment delivered on 19.03.2015 in the case of Priyanka Srivastava (supra) that the judgment will have only prospective effect. Therefore, when there is nothing stated by the Hon'ble Supreme Court, it is always has a retrospective effect.

15. The Hon'ble Supreme Court has laid down the law in respect of procedure that the complainant required to approach the Magistrate and to file the private complaint under Section 200 of Cr.P.C. for the purpose of referring the same to the Police under Section 156 (3) of Cr.P.C. and has categorically held that without approaching the Police under Section 154 of Cr.P.C., the complainant cannot approach the Magistrate and refer the complaint under Section 156(3) of Cr.P.C. and it is

also held that the complainant required to file affidavit along with the complaint regarding compliance of Section 154 of Cr.P.C. Therefore, it is mandatory on the part of the complainant to approach the Police at initial stage and if they are not taken any action, then to file the complaint to the Magistrate as per Section 2(d) of the Cr.P.C. and later the learned Magistrate in his discretion may take the cognizance and enquire with the complainant by recording the sworn statement or the witnesses, then issue process or else, the complaint can be referred to the Police for investigation under Section 156(3) of Cr.P.C., therefore, the complaint filed by the complainant-respondent No.2 without compliance of the procedure, the very complaint, registering FIR and charge sheet is not sustainable under the law.

16. The Hon'ble Supreme Court in the case of State of Orissa and Another vs. Mamata Mohanty reported in (2011) 3 SCC 436 held at paragraph No.37 which is as under:

"37. It is a settled legal proposition that if an order is bad in its inception, it does not get sanctified at a later stage. A subsequent action/development cannot validate an action which was not lawful at its inception, for the reason that the illegality strikes at the root of the order. It would be beyond the competence of any authority to validate such an order. It would be ironic to permit a person to rely upon a law, in violation of which he has obtained the benefits. If an order at the initial stage is bad in law, then all further proceedings consequent thereto will be non est and have to be necessarily set aside. A right in law exists only and only when it has a lawful origin. (Vide Upen Chandra Gogoi v. State of Assam, Mangal Prasad Tamoli v. Narvadeshwar Mishra and Ritesh Tewari v. State of U.P.)"

17. In another judgment of the Hon'ble Supreme Court in the case of State of Punjab vs. Devinder Pal Singh Bhullar reported in (2011) 14 SCC 770 has held at paragraph No.107 which is as under:

"107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim *sublato fundamento cadit offensa* punishable under Section meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case."

18. In view of the judgments of the Hon'ble Supreme Court in the above said two cases, when the initial inception of the complaint itself is not in accordance with law, therefore, the subsequent proceedings has no bearings. When the very foundation itself is wrong and not in accordance with law, the very complaint and investigation suffer from infirmities and it goes to the root of the case. Therefore, continuing the process against the petitioners is abuse of process of law and liable to be quashed.

19. Accordingly, both the petitions are allowed. The criminal proceedings against the petitioners-accused Nos.1 to 5 in C.C.No.32748/2014 in respect of Crime No.386/2013 registered by Thilaknagar Police Station, Bengaluru, pending on the file of the XXXVII Additional CMM,

Bengaluru are hereby quashed.

Sd/-

JUDGE GBB