

Telangana High Court

Guruvoju Naresh vs State Of Telangana on 26 April, 2023

Bench: K.Surender

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

Criminal Petition No.1792 OF 2023

Between:

Guruvoju Naresh and 4 others ... Petitioners

And

The State of Telangana,
Rep. by its Public Prosecutor,
High Court for the State of Telangana
and another. ... Respondents

DATE OF JUDGMENT PRONOUNCED: 26.04.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

K.SURENDER, J

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* THE HON'BLE SRI JUSTICE K. SURENDER

+ CRL.P. No. 1792 of 2023

% Dated 26.04.2023

Guruvoju Naresh and 4 others

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Rep. by its Public Prosecutor,
High Court for the State of Telangana
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... Respondents

! Counsel for the Petitioner: Sri P.Prabhakar Reddy

^ Counsel for the Respondents: Sri S.Sudershan
Additional Public Prosecutor for R1

>HEAD NOTE:

? Cases referred

1

(2001) 6 Supreme Court Cases 181

2

(2010) 12 Supreme Court Cases 254

3 (2013) 6 Supreme Court Cases 348

4

AIR 2020 Supreme Court 2573

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THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.1792 OF 2023

O R D E R:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') by the petitioners/A1 to A5 to quash the proceedings against them in P.R.C.No.12 of 2022 on the file of Judicial First Class Magistrate, Thungathurthy and also subsequent proceedings after committal of the case to Sessions Court at Suryapet. The offences alleged against the petitioners are under Sections 498-A, 304 (B), 201 r/w.34 of the Indian Penal Code.

2. Heard both sides and perused the record.

3. Briefly, the case of the prosecution is that on 17.08.2019, the daughter of the 2nd respondent who was married to 1st petitioner died by committing suicide. On the very same day, a complaint was registered under Section 174 of Cr.P.C. as suspicious death and registered as Crime No.93 of 2019. On 17.08.2019 inquest panchanama was held and the father of the deceased informed that the

deceased committed suicide for the reason of acute stomach pain.

4. On 18.10.2019 the body was exhumed by the Tahasildar, Maddirala by conducting exhumation panchanama, for the reason of the 2nd respondent expressing doubt about the death and suspected that accused might have committed murder and later hanged the deceased. The team of doctors conducted Post-mortem examination and gave opinion that the death was on account of hanging.

5. On 12.06.2021 a private complaint which was filed by the 2nd respondent was referred for the purpose of investigation. The said private complaint was registered as crime No.70/2021 of Maddirala Police Station and the police started investigation. During the course of investigation, the Police found that these petitioners were in fact responsible for the death of the deceased and it is a dowry death. For the said reason, charge sheet was filed for the offence under Sections 498-A, 304-B, 201 r/w.34 of the Indian Penal Code.

6. On the basis of the crime registered subsequently, the Police found that the marriage was performed on 31.03.2019 and at the time of marriage Rs.3 lakhs cash was given as dowry on the demand made by these petitioners. One month after the marriage, the husband-A1 started harassing the deceased for not giving sufficient dowry. The parents of the deceased gave cash of Rs.6.5 lakhs to A1, however, A1 continuously harassed her. The deceased went to her house for 'Rakhi' festival and celebrated festival with her cousins and returned to her in-laws house. On 17.08.2019, information was received that the deceased committed suicide.

7. Learned Counsel appearing for the petitioners would submit that the proceedings have to be quashed as registration of the second FIR on the basis of the complaint filed is contrary to procedure and law laid down by the Honourable Supreme Court. Since the crime was initially registered for suspicious death, any subsequent statement made by any of the witnesses to the incident should be considered as statement under Section 161 of Cr.P.C and cannot be registered again.

8. He relied on the Judgments of the Honourable Supreme Court in T.T.Antony v. State of Kerala 1, Babu Bhai v. State of Gujarat 2, Amitbhai Anilchandra Shah vs. Central Bureau of Investigation 3 and Santa Naidu v. State of Madhya Pradesh 4.

(2001) 6 Supreme Court Cases 181 (2010) 12 Supreme Court Cases 254 (2013) 6 Supreme Court Cases 348 AIR 2020 Supreme Court 2573

9. The law laid down in the aforesaid Judgments is that there cannot be second FIR for the very same occurrence and only if the case pertains to two different incidents then the second FIR is permissible. It was further held in Babubhai's case (supra 2) that when two FIRs are registered, test of sameness has to be applied and see whether the FIR subsequently registered is one and the same or not. It was held by the Honourable Supreme Court in the Judgment of Samata Naidu's case (supra 4) that when core allegations in the two complaints which were made are same, the second complaint would not be maintainable.

10. For the reason of the Police registering second FIR, when the investigation in the first FIR was pending, the subsequent FIR which is not the subject matter of the charge sheet, applying the principles laid down in the above decisions, the charge sheet has to be quashed.

11. On the other hand learned Additional Public Prosecutor appearing for the State submits that there are serious allegations of dowry harassment, for which reason the deceased had committed suicide. It is for the trial Court to conclude whether the death was on account of demand for dowry or not. Delay in lodging the complaint cannot be made basis to quash the proceedings.

12. Admittedly, FIR was registered initially on the basis of suspicious death under Section 174 of Cr.P.C. by the Maddirala Police. The said crime was pending investigation, according to the learned counsel for the petitioners. In the said complaint, the father of the deceased had stated that the deceased was suffering from severe stomach pain and the reason for suicide is her suffering. He did not have suspicion on son-in-law or anyone else. No final report is filed in the said crime. However, the 2nd respondent who is the mother of the deceased preferred the private complaint making allegations of demand for dowry and the cause of death was the constant demand made by the husband and his relatives who are the petitioners herein for additional dowry.

13. The 2nd respondent had initially suspected that the deceased might have been killed by the husband and in-laws for which reason, body was exhumed and post mortem was conducted by a team of doctors who gave an opinion that the death was on account of suicide. Murder was ruled out in the said postmortem examination after exhuming the body on 18.10.2019. The 2nd respondent, however not being satisfied about the outcome of investigation of the deceased death, preferred to file a private complaint before the Magistrate. The learned Magistrate referred the complaint to the Police, Maddirala which was registered as a crime, investigated into and charge sheet was filed.

14. The decisions cited by the learned counsel for the petitioners would not be applicable in the peculiar facts of the present case. Though, the reason for registration of both crimes is the death of the deceased, the first FIR was registered under Section 174 of Cr.P.C. and the father of the deceased had informed that the death was on account of stomach pain that the deceased was suffering from and unable to bear the pain, she had hanged herself. The father further informed the Police that he had no suspicion whatsoever on the husband and the in-laws. The private complaint which was preferred by the mother of the deceased had allegations in the complaint narrating the demand made at the time of marriage and dowry of Rs.3 lakhs being given, subsequently additional amount of Rs.6.5 lakhs was also given for the reason of there being a demand. The 2nd respondent further stated that she was happy when she had visited their house for 'Rakhi' festival and after tying 'Rakhi' to her cousins, she went back. Thereafter the deceased committed suicide.

15. Applying the test of sameness, the versions given in both the FIRs are totally different. In the first FIR as already stated there was no suspicion of any kind of these petitioners and later the second FIR was registered. Though the Honourable Supreme Court held in T.T.Antony's case (supra 1) that on the very same occurrence, second FIR was not maintainable, in the peculiar facts of the present case when totally two divergent versions were given, the registration of second FIR cannot be found fault with in the facts of the present case. The petitioners had not questioned the FIR when

it was registered but after filing of charge sheet. The police ought to have altered the penal provisions in the earlier FIR having received the complaint.

16. However no prejudice is caused to the petitioners if the second FIR was registered, which was done on the basis of the direction of the learned Magistrate. When the first FIR was still pending investigation, the Police ought to have altered the provisions. However, second FIR was registered and investigated into by the very same Police where the earlier crime was pending. The subsequent registration of the FIR and investigation has no adverse effect or prejudice that is caused to these petitioners. Merely on the technical ground that second FIR should not be registered, the proceedings cannot be quashed.

17. In the present facts of the case, when the second registration was not questioned by these petitioners and further the reason for registration of both the FIRs was two divergent versions, I do not find any infirmity with the registration of second crime and consequent filing of the final report. There are no grounds and accordingly the Criminal Petition is dismissed.

Miscellaneous applications pending, if any, shall stand closed.

_____ K.SURENDER, J Date: 26.04.2023 Note: L.R.copy to be marked tk THE HON'BLE SRI JUSTICE K.SURENDER CRIMINAL PETITION No.1792 OF 2023 Dt. 26.04.2023 tk