

THE HON'BLE SRI JUSTICE R.RAGHUNANDAN RAO

CRIMINAL PETITION No.1958 of 2021

ORDER:

Petitioners are Accused Nos.1 to 4 in C.C.No.567 of 2019 on the file of the I Additional Junior Civil Judge, Narasaraopet for offences under Sections 498-A, 509, 506 r/w 34 of I.P.C.

2. The contents of the complaint and charge sheet are:

The de facto complainant and the 1st petitioner were married on 14.11.2013. Thereafter, they lived together in Vinukonda. The de facto complainant alleges that her husband-1st petitioner, her father-in-law-2nd petitioner, her mother-in-law-3rd petitioner and the sister of her husband, who is the 4th petitioner, had harassed her and mistreated her as if she was a maid servant in the house of her in-laws. The de facto complainant alleges that her husband had an inferiority complex as she was more educated than him. The harassment is said to have been carried out for the purpose of extracting money from her parents. The 1st petitioner's behavior did not change even after delivery of

her son on 05.09.2015 and she was sent away to her matrimonial home and neither her husband nor any of her in-laws had bothered to look after her or her son. A specific allegation is made that the son of the de facto complainant had some problems in his testicles and no assistance was given to the de facto complainant for the treatment of her son. The complaint states that the said problem had to be solved by a surgery which was done with the help of her parents.

3. The de facto complainant also further alleges that the 1st petitioner, to create an image of a good husband had filed an application before the Additional Senior Civil Judge, Narasaraopet, for restitution of conjugal rights but did not pursue the matter, allowing the petition to be dismissed for default. The petitioners had also rejected the attempts of elders to resolve these issues and in such circumstances, the complaint is said to have been filed before the II Town Police Station, Narasaraopet where the complaint was registered as Crime No.120 of 2019 for offences under Sections 498-A, 506, 354 r/w 34 of I.P.C.

4. After investigation and recording the statements of various list witnesses, a charge sheet was filed and the

same was taken cognizance by the I Additional Junior Civil Judge, Narasaraopet as C.C.No.567 of 2019 for offences under Sections 498-A, 509, 5-6, 354 r/w 34 of I.P.C.

5. The petitioners have approached this Court, by way of the present criminal petition for quashing C.C.No.567 of 2019.

6. Sri Raja Reddy Koneti, learned counsel for the petitioners submits that the allegations in the complaint are false and have been made only for the purpose of arm twisting the petitioners into accepting her demands. He would further submit that the complaint could not have been entertained as it has been filed beyond the period of limitation set out under Section 468 of Cr.P.C. He would further submit that the cognizance of the case itself is irregular and not in accordance with the requirements of law.

7. Sri Raja Reddy Koneti would also submit that the allegations made in the charge sheet as well as the depositions of the list of witnesses and the complainant do not make out any of the offences mentioned in the charge sheet.

8. Sri Raja Reddy Koneti would point out that the complaint was initially registered for offences under Sections 498-A, 354, 506 r/w 34 of I.P.C. The charge sheet was filed invoking Section 498-A, 509, 506 r/w 34 of I.P.C. That is offences under Section 354 of I.P.C were dropped and an additional provision namely, Section 509 of I.P.C was included in the charge sheet. However, the note put up before the trial Court, by it's office, stated that the charge sheet was filed for offences punishable under Sections 498-A, 354 and 506 r/w 34 of I.P.C. A proforma stamped order of cognizance recorded that the case was being taken on file under Section 498-A, 354 and 506 r/w 34 of I.P.C. The said order of cognizance, apart from being bereft of any reasons disclosing satisfaction of the Magistrate is also defective on account of a clear non application of mind by the Magistrate.

9. Sri Raja Reddy Koneti would submit that once Section 354 of I.P.C is excluded from the charge sheet, all the other offences do not attract a punishment of more than three years and the limitation for filing a complaint under these provisions would be three years from the date of offence. In this case, all the allegations are related to

offences prior to November, 2015 while the complaint was filed on 03.05.2019 which is clearly beyond the period of three years.

10. The de facto complainant has filed a counter affidavit denying all these allegations.

11. Smt. T.V.Sridevi, learned counsel appearing for de facto complainant would submit that the offences of Sections 498-A, 354, 506 r/w 34 of I.P.C are continuing offences and as such, the complaint is within limitation. She would further submit that the de facto complainant had been harassed even after she returned to her parental home on 22.11.2015 as the de facto complainant and her child were neglected and forced to live in the house of her parents despite the ill health of the de facto complainant and her child and the examples of harassment are the fact that none of the petitioners had performed or attended the Annaprasana function of her son or the tonsure ceremony of her son on the ground that she had not fulfilled their illegal demands. Apart from this, the harassment continued as no treatment was provided for the child of the de facto complainant and nobody visited at the time when surgery was performed in the year 2018.

12. A perusal of the record shows that the complaint was originally filed under Section 498-A, 354, 506 r/w 34 of I.P.C. After investigation, the investigating officer has filed a charge sheet dropping the charge under Section 353 of I.P.C while including Section 509 of I.P.C. However, the trial court took cognizance under Sections 498-A, 354, 506 r/w 34 of I.P.C. There is no reason recorded, by the Magistrate, as to why cognizance was being taken under Section 354 of I.P.C when the investigating officer had dropped the said provision and why cognizance was not taken under Section 509 of I.P.C when the investigating officer had included the said provision in the charge sheet. Further, the Magistrate has not recorded even a brief note setting out his satisfaction for taking cognizance. In view of the clear non application of mind, this Court would have to set aside the said order of cognizance. However, setting aside the order of cognizance would only result in a remand of the case to the Magistrate and the issues raised by the petitioners would remain unanswered. In that view of the matter, the objections raised by the petitioners and the rebuttals of the de facto

complainant are being considered to ascertain whether the said C.C.No.567 of 2019 requires to be quashed.

13. Section 354 of I.P.C reads as follows:

Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years and shall also be liable to fine.

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term which may be less than five years, but which shall not be less than two years.

14. None of the allegations in the complaint or the charge sheet make out any case of the de facto complainant being assaulted or criminal force being used against the de facto complainant. There are also no allegations that such criminal force has been used or an assault had been made against the de facto complainant with the intention of outraging the modesty of the de facto complainant. The investigating officer had rightly dropped the said provision and cognizance of section 354 of I.P.C by the Magistrate, is clearly not in accordance with law and would have to be quashed on that short ground.

15. This would leave only the provisions of Section 498-A and 506 r/w 34 of I.P.C. Even if Section 509 of I.P.C is taken into account, the period of limitation would be restricted to three years from the date of the offence.

16. It is the case of the petitioners that the de facto complainant left the company of the 1st petitioner on 22.11.2015 when she went back to the house of her parents. This fact is accepted by the de facto complainant in her counter filed before this Court. A perusal of the allegations in the complaint filed by the de facto complainant and the allegations in the charge sheet would show that allegations relate to incidents of harassment up to the time she went back to the house of her parents. The gap between the date on which the de facto complainant went back to the house of her parents and the date on which she filed her complaint is more than three years. This would result in the complaint under Sections 498-A, 509 or 506 of I.P.C being barred by limitation.

17. However, the de facto complainant has taken the stand there were further incidents of harassment which make the offences continuing offences and in any event the

complaint would not be outside limitation as the latest incident of harassment was in the year 2018 when nobody come forward to consider the wellbeing of the child of the de facto complainant who had undergone a surgery.

18. The specific allegation in relation to the event which took place after 22.11.2015 as contained in the complaint are that, firstly, no money was given by her husband or her in-laws for the treatment of her son despite being asked. Secondly, the petitioners had misbehaved with the elders who sought to reconcile the de facto complainant and her husband after she had been pushed out of the matrimonial home by her husband and Thirdly, the Annaprasana and other functions connected to the son of the de facto complainant and the 1st petitioner were boycotted by the petitioners to coerce the de facto complainant to bring money and dowry. The allegations in the charge sheet are a replica of the allegations in the complaint. Section 468 of Cr.P.C prescribed the period of limitation in which the complaints have to be filed in relation to offences prescribed under that provision.

19. This leaves the question of whether the further incidents mentioned alleged by the de facto complainant which have also been reiterated in the charge sheet, would amount to such acts of harassment which would result in the period of limitation being extended. The allegations in relations to the later period are allegations of neglect and refusal to visit or meet the de facto complainant or her child. It would have to be seen whether this behaviour would attract any of the provisions contained in the charge sheet.

20. Section 506 of I.P.C stipulates punishment for the offence of criminal intimidation which is defined in Section 503 of I.P.C as follows:

Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

19. Section 509 of I.P.C reads as follows:

Whoever, intending to insult the modesty of any woman, utters any words, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, [shall be punished with simple

imprisonment for a term which may extend to three years, and also with fine.

21. The allegations made against the petitioner, for neglect and refusal to take up responsibility for the treatment of the child of the de facto complainant would not fall under either of these provisions.

22. Section 498-A reads as follows:

498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

- (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

23. These actions of neglect would not fall within ambit of Section 498-A of I.P.C.

24. In the circumstances, it would have to be held that the complainant, filed by the de facto complainant, is beyond the period prescribed under Section 468 of Cr.P.C.

25. Sri Raja Reddy Koneti would also rely upon the Judgment of the Hon'ble Supreme Court in the case of **Kamlesh Kalra vs Shilpika Kalra & Ors.**, dated 24.04.2020 in crl.A.No.416 of 2020 to contend that complaints filed beyond the period of limitation prescribed under Section 468 of Cr.P.C would have to be quashed. A perusal of the said Judgment would show that the Hon'ble Supreme Court after reviewing the earlier Judgments on this subject, had held that a complaint filed more than three years after separation of the couple would have to be held to be barred by limitation.

26. In the circumstances, this Criminal Petition is allowed and C.C.No.567 of 2019 on the file of the I Additional Junior Civil Judge, Narasaraopet is hereby quashed.

Miscellaneous petitions, pending if any, shall stand closed.

JUSTICE R.RAGHUNANDAN RAO

Date : 28.03.2023

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