

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR.JUSTICE K.SOMASHEKAR

CRIMINAL PETITION NO. 6051 OF 2016

Dated:01-12-2020

Mukunda K.G. and Others vs. State

O R D E R

This is a petition filed by the petitioners / Accused Nos.1 to 4 challenging the order dated 26.07.2016 passed by the Court of the Prl. District and Sessions Judge, Davanagere in S.C.No.73/2012 allowing the application filed under Section 216 read with Section 221 of the Cr.P.C, and thereby seeking to set aside the same.

2. Heard the learned counsel Shri Shashidhara H.N. who appears through video conferencing and the learned HCGP for the State who is present before court physically.

It transpires that charge-sheet was laid by the I.O. against the accused relating to the case in S.C.No.73/2012 for the offences punishable under Sections 498A, 302, 304B, 114 read with Section 34 of the IPC, 1860, besides Sections 3 and 4 of the Dowry Prohibition Act, 1961. Subsequent to laying the charge-sheet by the Investigating Agency, the case has been committed to the Sessions Court for trial. Accordingly,

the case in S.C.No.73/2012 has been assigned before the Court of the Prl. District and Sessions Judge, Davanagere. Subsequent to assigning that case for trial, charges were framed against the accused on 9.6.2015. The plea was also recorded by the Trial Court. Subsequent to framing of charges, the case has been set down for trial. Consequently, the trial has open and the prosecution has subjected to examination several witnesses in S.C.No.73/2012 and so also had marked several documents in order to prove the guilt of the accused. Subsequent to closure of the evidence of the prosecution, the case was set down for hearing arguments on the part of the prosecution as well as on the part of the defence counsel, but in this petition, by order dated 16.09.2016, this Court has passed a restraint order restraining the court below from passing the judgment until further orders, which indicates that the entire case of the prosecution has been closed after recording the incriminating statements of the accused as contemplated under Section 313 Cr.P.C. Thereafter, the case has been set down for arguments and thereafter set down for rendering a judgment in S.C.No.73/2012.

In the meanwhile, when trial was on in S.C.No.73/2012, the prosecution had filed an application

under Section 216 read with Section 221 of the Cr.P.C. vide Annexure-“C” seeking to invoke the provisions of Section 306 of IPC relating to the death of the deceased Latha, who committed suicide as indicated in the substance of the charge-sheet laid by the I.O. against the accused.

3. Whereas the learned counsel for the petitioners has taken me through the objection filed by the defence counsel to resist the application filed by the prosecution wherein it is contended that the charges were framed against the accused in respect of the major offences under Section 498A, 302, 114, 304B read with Section 34 of the IPC, besides Sections 3 and 4 of the Dowry Prohibition Act, 1961. The offences indicated in the charge-sheet has been framed by the Trial Court. Thereafter, the evidence of the prosecution was led in order to prove the guilt of the accused. But it is stated that the entire family of Smt. Latha were suffering from mental disorder and depression. PW-1 had been subjected to examination on the part of the prosecution, wherein he has stated that their son-in-law namely Mukunda was by avocation a driver in a private bus. He had left the house for attending work in the morning and he used to return home in the night but it was alleged that he had given some sort of harassment

to their daughter deceased Latha, as there were some disputes in between the wife and husband regarding the aspect that her husband was having an illicit intimacy with another woman. It is in evidence in certain portion of PW-1 and also elucidation in the cross-examination of PW-1. But it is only on the appreciation of the evidence which is the domain vested with the Trial Court and even other witnesses also. Whereas the learned counsel has mainly taken contention and also emphasised that there is no iota of evidence on the part of the prosecution against Accused Nos.1 to 4 to charge them under Section 306 of the IPC, 1860. Therefore, at a belated stage, the prosecution filing an application under Section 216 read with section 221 of the Cr.P.C. does not arise and deserves to have been dismissed at the threshold. On all these grounds, the learned counsel for the petitioners seeks to allow this petition by setting aside the order passed by the Court of the Prl. District & Sessions Judge, Davanagere in S.C.No.73/2012 dated 26.07.2016 allowing the application invoking the offence under Section 306 IPC for framing of a charge and proceeding with the case for trial.

4. Per contra, learned HCGP for the State has taken me through the application filed by the prosecution under Section 216 read with Section 221 of the Cr.P.C. seeking framing of an additional charge under Section 306 IPC. Deceased Latha had died in her matrimonial home due to physical as well as mental harassment in the hands of her husband and so also in the hands of the other accused.

In view of the physical as well as mental harassment meted out by the petitioners, she has committed suicide, as indicated in the substance of the charge-sheet laid by the I.O. The prosecution has put on trial of the case even for offences under Sections 498A, 302, 304B and 114 of the IPC, besides Sections 3 and 4 of the DP Act, 1961. Though the charges were framed against the accused in respect of the aforesaid offences, but the deceased Latha had died due to depression and mental disorder. However, this was elicited in the cross-examination. But it is the domain vested with the Trial Court to appreciate the evidence only after completion of trial and also the documents which were got marked. Latha had died by committing suicide due to physical as well as mental harassment meted out at the hands of her husband and also in the hands of other accused, wherein her husband was said to be having illicit affair with some other woman. It caused her mental depression, which has led her to commit suicide. Therefore, Section 306 of the IPC has been invoked and additional charge has been framed. If not, certainly there shall be some miscarriage of justice on the part of the prosecution in securing the ends of justice. On all these grounds, learned HCGP for the State is seeking for dismissal of this petition and thereby to affirm the order passed by the Court of the Prl. District & Sessions Judge, Davanagere in S.C.No.73/2012 dated 26.07.2016 allowing the application filed by the prosecution and under Section 216 read

with Section 221 of the Cr.P.C.

5. In the context of the contentions, it is relevant to refer to Section 216(1) of the Cr.P.C., which reads thus:

"216. Court may alter charge.

(1) Any Court may alter or add to any charge at any time before judgment is pronounced.

...."

Hence, it is true that any court may alter or add to any charge at any time before the judgment is pronounced.

6. But in the instant case, the charges were initially framed against the accused for the offences under Sections 498A, 302, 304B, 114 read with Section 34 of the IPC besides Sections 3 and 4 of the DP Act. There is no dispute relating to the well-established principles of law that when major offence has been lugged against the accused and the charges were framed, it is the domain vested with the Trial Court to arrive at a conclusion, which is based upon the evidence facilitated by the prosecution and also marking of documents with regard to proving the charges levelled against the accused. But it is only on appreciation of evidence and also appreciation of the material documents which were got marked on the part of the prosecution. However, in the instant case, the petitioners / accused being gravamen of the charges levelled

against them, they have to face trial for the offences for which charges have already been framed by the Trial Court and then proceed with the case for recording the 313 statements of the accused and set down for judgment. But in the meanwhile, the prosecution has made use of the provisions of Section 216(1) Cr.P.C. Merely because any court may alter or add any charge before the judgment is pronounced, the word 'may' is implied that the Trial Court has to exercise the power in a *stricto sensu* keeping in view the object and scope of Section 216(1) of the Cr.P.C. for altering or adding any charge where the accused requires to face trial. But admittedly, the deceased Latha died in her matrimonial home. It is noted here that the entire case has been set down for trial and also recording the incriminating statements appearing against the accused. Subsequently, to hear the arguments on the part of the prosecution and also on the part of the defence. Then, it would be set down for pronouncement of the judgment. The same indicates in this petition, whereby the stay has been granted relating to challenging the impugned order passed by the Trial court. Therefore, it is said that when there are major offences lugged against the accused and charges are framed and also the prosecution has set down for trial and closed the prosecution case, then the case has been set down for pronouncement of the judgment in S.C.No.73/2012, in the meanwhile merely because the law provides, the Trial Court cannot alter or add any charge at any time before the judgment is pronounced. At this juncture making an application by the

prosecution for invoking other offences to frame a charge and proceed with the case for investigation, will only come in the way of the trial of the prosecution. But in the instant case, the charges are framed on 9.6.2015 and the accused have been facing trial even for the allegation made that they had given physical as well as mental harassment of the deceased Latha and also for offences under Section 302 of the IPC. Merely because she has died within seven years from the date of her marriage, offences under Sections 3 and 4 of the DP Act, 1961 have been invoked and so also other offences as reflected in the charges framed by the Trial Court against the accused.

7. Therefore, it is said that when once the case is set down for rendering judgment based upon the evidence facilitated by the prosecution and also marking of documents secured by the I.O. during the course of investigation, it is a domain vested with the Trial Court to appreciate the evidence and render a judgment, in accordance with law. Therefore, at this stage, prosecution making an application under Section 216 read with Section 221 of the Cr.P.C. for invoking and framing additional charge under Section 306 of the IPC, does not arise. Consequently, the contention taken by the learned counsel for the petitioners being justifiable, intervention is warranted. If not, certainly there shall be miscarriage of justice and abuse of process of law, wherein gravamen of

the accused would suffer in case of allowing the application filed under Section 216 Cr.P.C. at this stage of the proceedings.

8. In view of the aforesaid reasons, I am of the considered opinion that this petition deserves to be allowed. Accordingly, I proceed to pass the following:

ORDER

The petition filed by the petitioners / accused under Section 482 Cr.P.C. is hereby allowed. Consequently, the order passed by the Court of the Principal District & Sessions Judge, Davanagere in S.C.No.73/2012 dated 26.07.2016 is set aside. Consequence upon setting aside the impugned order, the application filed by the prosecution under Section 216 read with Section 221 Cr.P.C. stands rejected.

Whatever observation made in this order shall not influence the mind of the Trial Court for disposal of the case in S.C.No.73/2012 which is pending against the petitioners / accused.

Registry of this court is directed to forward a copy of this order to the Court of the Prl. District and Sessions Judge, Davanagere wherein the case in S.C.No.73/2012 is pending either for trial or is set down for pronouncement

of the judgment, for compliance in accordance with law.