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A. E. RANI

v.

V.S.R. SARMA AND ORS.

DECEMBER 14, 1994

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[S.C. AGRAWAL AND G.N. RAY, JJ.]

Code of Criminal Procedure, 1973: Section 482. High Court—Power to quash criminal proceedings—Private complaint under Section 395 IPC about forcible taking away of articles of self and husband—Police final report stating that no offence committed—Fresh complaint—Magistrate's order registering the case—Appellate Court ordering re-examination—Registration of case on re-examination of complainant and witnesses—High Court quashing criminal proceedings holding that dispute was of civil nature—Held High Court was not justified in quashing the proceedings.

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The appellant lodged a complaint in the XIth Court of Metropolitan Magistrate, Secunderabad under Section 395 of the Indian Penal Code, 1860, read with Section 6 of the Dowry Act, 1961 against the respondents—relatives alleging that they forcibly removed articles belonging to her and her husband. The appellant's case was that after the death of her husband, the respondents broke open the lock and took away all the valuable articles including household items and ornaments mentioned in the complaint.

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However, the police submitted a final report to the Magistrate stating that no offence under Section 395 has been committed and that the articles mentioned in the complaint were not dowry articles. Thereafter the appellant filed another complaint under Sections 173 and 156(3) read with Section 190 of the Criminal Procedure Code, 1973 contending that the police had not properly investigated the case. The Metropolitan Magistrate ordered that a case under Section 395 of the Indian Penal Code be registered against the respondents. The respondents preferred a Criminal Revision Petition before the Metropolitan Session Judge who directed the Metropolitan Magistrate to re-examine the case. Thereafter the respondent filed application for discharge on the ground that there was delay in registering the complaint but the same was dismissed. Pursuant to the order of Metropolitan Sessions Judge the Metropolitan Magistrate re-examined the appellant and her witnesses and on consideration of their evidence ordered that a case under Section 380 IPC should be registered against

the respondents. The respondents filed an application under Section 482 of the Code of Criminal Procedure before the High Court which quashed the criminal proceedings against the respondents on the ground that the dispute between the parties was of a civil nature; the appellant had issued a notice demanding partition of the properties but the respondent denied her right of partition. A

In appeal to this Court, it was contended on behalf of the appellant that the High Court erred in its conclusion inasmuch as consideration of the dispute regarding claim for partition of immovable properties was wholly extraneous to the consideration of maintainability of the criminal case for the offences as alleged by the complainant. B

On behalf of the respondents it was contended that the complaint was also liable to be quashed as the same was made at a belated stage and the same has resulted in the abuse of the process of law. C

Allowing the appeal and setting aside the order of the High Court, this Court D

HELD: 1. The High Court has proceeded on an erroneous assumption that on the basis of old depositions, the Magistrate took cognizance of the complaint and registered the case for the second time. The Magistrate, as a matter of fact, has taken such cognizance on re-examination of the complainant and her witnesses. Further the question of a civil dispute regarding the claim of share in immovable property has nothing to do with consideration of the complaint made by the appellant about forcible removal of movable articles belonging to the husband of the appellant. [601 F to E] E

2. In the circumstances of the case it cannot be held that on the score of lodging complaint at a belated stage, the complaint is liable to be quashed in *limine* by treating it stale. [602 A] F

3. The Magistrate after examining the appellant and her witnesses has become *prima facie* satisfied about the complainant's case and has registered the same for proceeding further in accordance with law. Therefore, it cannot reasonably be contended that the same is an abuse of the process of law and for ends of justice, such complaint is required to be quashed. [602 B] G

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 892 of 1994. H

A From the Judgment and Order dated 14.10.93 of the Andhra Pradesh High Court in Cr. P. No. 1572 of 1993.

M.N. Krishnamani and K.V. Mohan for the Appellant

B A.T.M. Rangaramanujam, P.N. Ramalingam and A.T.M. Sampath for the Respondents.

The Judgment of the Court was delivered by

G.N. RAY, J. Leave granted. Heard learned counsel for the parties.

C This appeal is directed against the judgment of the Andhra Pradesh High Court dated October 14, 1993 in CrI. M.P. No. 1572 of 1993. By the aforesaid order, the Andhra Pradesh High Court, in exercise of the power under Section 482 of the Code of Criminal Procedure, quashed the proceedings issued in CrI. M.P. No. 1626 of 1993 before the Metropolitan Magistrate, XIth Court, Secunderabad.

D The relevant facts of the case of the appellant are that the appellant was married to one Sri V. Raja Rao under the Special Marriage Act on March 18, 1983 and the appellant and her husband lived together up to November 16, 1983. Thereafter, the husband of the appellant went to Saudi Arabia and was working there. He returned in February 1986, but on the ill-advice of the respondents, the husbands' attitude towards the appellant changed and the said husband started consuming liquor heavily. The husband of the appellant thereafter went to Dubai and returned to India some time in September, 1988 and after a short stay for about seven days, he again left for Saudi Arabia and returned to India in January, 1989. The husband of the appellant on every occasion of his return from the Gulf Countries., brought valuable articles including household items and ornaments. The respondents used to take away most of those items from the petitioner's husband forcibly. On November 15, 1989, the appellant's husband attempted to commit suicide and ultimately died on November 19, 1989. After the death of the husband of the appellant, the respondents took away all the articles belonging to the appellant and her husband by breaking open the lock of the door. The appellant filed a complaint on June 12, 1990 under section 200 of the code of Criminal Procedure in the XIth Court of Metropolitan Magistrate, Secunderabad. The said complaint was lodged under section 395 I.P.C. and also under section 6 of the Dowry Act against 8 persons including the respondents. The learned Metropolitan Magistrate XIth Court forwarded the said complaint for investigation and report by the police under section 156(3) of the code of Criminal Procedure. On such

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direction, the Station House Officer, Police Station Bowenbally, Secunderabad, registered F.I.R. No. 106 of 1990 on June 18, 1990 and commenced investigation. The Police conducted a search at the residences of Sri V. Chalapathy Rao, father of the appellant's husband and Smt. B. Sarojini Devi, and seized certain articles found in their houses. Another search was conducted by the Police at the residence of Sri V. Srihari, but no article was seized. The Police, however, submitted a final report before the learned Metropolitan Magistrate XIth Court to the effect that no offence under section 395 I.P.C. had been committed and the articles alleged in the complaint were not the dowry articles. On February 11, 1991, the appellant filed a complaint under section 173 and Section 156(3) of the Code of Criminal Procedure read with Section 190 of Code of Criminal Procedure contending that the Police had not properly investigated the case. The learned Metropolitan Magistrate ordered to post the said complaint for enquiry under Section 202 Cr.P.C. The appellant's case is that during the course of investigation, it was revealed that the husband of the petitioner, while working at Saudi Arabia had purchased various articles during the span of six years. Because of the ill-treatment and harassment of the appellant in the hands of respondents, the husband of the petitioner became frustrated and attempted to commit suicide and ultimately died. After the death of the husband, the respondents broke open the lock and took away all the valuable articles mentioned in the complaint petition from the house where the appellant used to live with the deceased husband. The learned Metropolitan Magistrate on the basis of the facts revealed from the investigation, *prima facie* found that A-1 to A-6 have committed offence under Section 395 I.P.C. Accordingly, a criminal case was ordered to be registered.

Such order was challenged by the appellant before the learned Metropolitan Sessions Judge. On May 4, 1992, the Additional Metropolitan Sessions Judge, IIInd Court, set aside the order passed by the Metropolitan Magistrate XIth Court, by allowing the Criminal Revision Petition. The learned Additional Sessions Judge directed that the witnesses cited by the appellant should be examined and thereafter on taking into consideration of the depositions, the learned Magistrate would proceed further.

On May 4, 1993, the respondents filed an application before the learned Metropolitan Magistrate XIth Court *inter alia* praying for discharging the respondents alleging enormous delay in registering the complaint. Such application was, however, dismissed by the learned Metropolitan Magistrate XIth Court on June 28, 1993.

A The learned Metropolitan Magistrate XIth Court thereafter re-examined the complaint and her witnesses and after taking into consideration of such deposition, he again registered the case under Section 380 I.P.C. against accused No. A-2 to A-4.

B The respondents moved the High Court under Section 482 of the Criminal Procedure Code for quashing the proceedings issued in Criminal Misc. Petition No. 1626 of 1993 registering the complaint filed by the appellant. The High Court by the impugned judgment dated October 14, 1993, allowed the said application under Section 482 Code of Criminal Procedure in CrI. Misc. Petition No. 1572 of 1993 and quashed the said criminal proceedings arising out of the complaint made by the appellant
C before the learned Metropolitan Magistrate XIth Court.

Mr. Krishnamani, learned senior advocate appearing for the appellant has contended that the High Court has quashed the said criminal proceedings entirely on erroneous premises inasmuch as the High Court wrongly assumed that although, the order of the learned Magistrate taking
D cognizance of the complaint and registering the same without examining all the witnesses of the complainant was set aside and he was directed to consider the question of registering the case after examination of the prosecution witnesses, the learned Magistrate again took cognizance of the complaint and registered the same on consideration of the earlier
E depositions. Such finding is factually erroneous. Mr. Krishnamani has submitted that after the matter was sent back to the learned Metropolitan Magistrate, the complainant and the witnesses were examined and on consideration of such evidence the complaint was registered by the learned Metropolitan Magistrate. Mr. Krishnamani has also submitted that for
F quashing the said criminal proceedings, the High Court has considered irrelevant facts. One of the reasons indicated by the High Court for quashing the criminal case is that the appellant had issued a notice demanding partition of properties to which the respondents replied by denying the
G appellant's right for partition. The High Court has held that even if the allegations of the appellant are held to be true, the dispute is of a civil nature and there was no requisite *men srea* for committing an offence under Section 380 I.P.C. Mr. Krishnamani has submitted that the dispute
H relating to claim for partition of the immovable properties held by the husband of the appellant may be a civil dispute but such dispute has nothing to do with the complaint made by the appellant about forcibly taking away the moveables belonging to the husband and the appellant by breaking open the lock of the room in her absence, after the death of the husband. The learned counsel has submitted that such consideration of the dispute

regarding claim for partition of immovable properties was wholly extraneous to the consideration of maintainability of the criminal case for the offences as alleged by the complainant. A

The learned counsel for the respondent, has, however, submitted that the respondents are respectable persons held in esteem in the society. The said complaint was made at a belated stage only for the purpose of maligning them and to create pressure on them for some material gain. He has submitted that the appellant may seek declaration of her alleged share as an alleged heir of her husband in respect of the properties left by the husband in a civil court but institution of a false complaint of forcibly taking away valuable articles belonging to her and her husband in order to bring disrepute to the respondents, is an abuse of the process of Court and the High Court is justified in quashing such false criminal case instituted with malice and in gross abuse of the judicial process. As such criminal proceeding is liable to be quashed for ends of justice even if some of the findings of the High Court may be open to criticism, no interference against the judgment is called for by this Court. B C

We are, however, unable to accept the submissions made by the learned counsel for the respondents. In our view, Mr. Krishnamani is justified in contending that the question of a civil dispute regarding the claim of share in immovable property has nothing to do for consideration of the complaint made by the appellant about forcible removal of moveable articles belonging to the husband of the appellant. It appears to us that the learned Magistrate, merely on the basis of the complaint, did not take cognizance. After examination of the witnesses and consideration of the evidences, such cognizance has been taken by the learned Metropolitan Magistrate. The High Court has proceeded on an erroneous assumption that on the basis of old depositions, the learned Magistrate took cognizance of the complaint and registered the case for the second time. The learned Magistrate, as a matter of fact, has taken such cognizance on re-examination of the complainant and her witnesses. D E F

The submission of learned counsel for the respondents that the complaint is also liable to be quashed as the same was made at a belated stage and the same has resulted in the abuse of the process of law should not be accepted. It appears to us that the appellant previously made complaint against the respondents by alleging that they forcibly took away valuable articles belonging to her husband and herself. When the police submitted a final report, the appellant has again filed a complaint before the learned Metropolitan Magistrate XIth Court for initiating criminal case. In G H

- A the aforesaid facts, we are not inclined to hold that on the score of lodging complaint at a belated stage, the complaint is liable to be quashed in limine by treating it stale. We may indicate here that the application for discharging the respondents on the ground of delay was dismissed by the learned Magistrate. It is not necessary at this stage to consider whether the complaint made by the appellant is likely to be upheld on trial. The learned
- B Magistrate after examining the appellant and her witnesses has become *prima facie* satisfied about the complainant's case and has registered the same for proceeding further in accordance with law. In the aforesaid facts, it cannot reasonably be contended that the same is an abuse of the process of law and for ends of justice, such complaint is required to be quashed. Even, the High Court has not come to such finding.

C We, therefore, allow this appeal, set aside the impugned order of the High Court. The learned Metropolitan Magistrate is directed to proceed with the criminal case and conclude the same as expeditiously as practicable.

D T.N.A.

Appeal allowed.