

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2232 OF 2011

(ARISING OUT OF SLP (CRIMINAL) NO.648 OF 2010)

W.KALYANI

...APPELLANT

VERSUS

STATE TR.INSPECTOR OF POLICE & ANR.

...RESPONDENTS

WITH

SPECIAL LEAVE PETITION (CRIMINAL) NO.3856 OF 2010

AND

SPECIAL LEAVE PETITION (CRIMINAL) NO.2450 OF 2010

J U D G M E N T

Aftab Alam, J.

1. Delay condoned in special leave petition (criminal) No.3856 of 2010.

2. The Andhra Pradesh High Court by its judgment and order dated November 2, 2009 quashed the proceedings arising from a criminal complaint in respect of accused nos. 5, 6 and 9 but declined to interfere in favour of

accused No.8 in the complaint. These three Special Leave Petitions arise from the same judgment. SLP (Crl.) Nos.2450/2010 and 3856/2010 are filed by the complainant who is aggrieved by the order insofar as it quashed the proceedings against accused Nos. 5, 6 and 9 and SLP (Crl.) No.648 of 2010 is filed by accused no. 8 whose petition for quashing was dismissed by the High Court.

3. On hearing counsel for the parties and on going through the materials on record, we find no merit in SLP (Crl.) Nos.2450 of 2010 and 3856 of 2010. These two special leave petitions are dismissed.

4. Leave granted in SLP (Crl.) No.648 of 2010 filed by accused No.8 in the complaint.

5. Gummadi Sailaja filed a complaint against nine accused under Sections 498-A, 386, 341 read with Section 34 of the Indian Penal Code. Accused no. 1 is her husband and accused no.2, her mother-in-law. Accused No.3 is the younger brother of her husband and

accused No.9 is his wife. Accused No.4 is the maternal uncle of the husband of the complainant. Accused No.6 and accused No.5 are husband and wife and they along with accused No.7 are said to be close friends of the complainant's husband who actively participated in her marriage with her husband. Accused No.8, the appellant, is described in the complainant as the girl friend of the complainant's husband with whom he had illicit sexual relations.

6. It is stated in the complaint that the complainant came in contact with accused No.1 through a matrimonial site on the internet. At that time accused No.1 was a software engineer working in the US and she had herself done M. Phil. They agreed to marry and accused No.1 promised that he would not ask for any dowry. However, when his mother, accused No.2, came to know of the proposal she demanded a sum of Rs.10,00,000/- (Rupees Ten Lacs only) and 50 sovereigns of jewellery as dowry. The complainant and her people did not wish to miss her match with accused No.1 and she also believed that

accused No.1 was not aware of the demand made by his mother. She, therefore, agreed to meet the demand of accused No.2 and their marriage took place in the night of February 3-4, 2007. After marriage they stayed together in his house at Visakhapatnam. After a few days she was taken to Tirupati for 'darasanam' of Lord Venkateswara. Accused No.8 also accompanied them and it is further alleged that her husband and accused No.8 moved together very freely as if they were spouses. The specific allegations against accused No.8 in the words of the complainant are as follows:

"Along with them one Kalyani also followed to Tirupathi with whom the A1 moved very freely as if she were his wife. Kalyani said to be the girl friend of A1, moved with A1 very freely as if they were wife and husband and used to sleep in one cot keeping the complainant outside the room."

The complaint goes on that her husband, accused No.1, took her to Florida, USA where she was subjected to great harassment and cruelty. In January 2008 he lost his job in the US and came back to Hyderabad. Here again there is a long narrative of the cruelty meted

out to the complainant in connection with the demand for further dowry and to get her consent for divorce under duress and coercion and physical assault. What is however, significant to note is that in the latter part of the complaint there is no mention of accused No.8 and she seems to figure only during the visit to Tirupathi.

7. The police after investigation submitted charge-sheet against all the accused. In the police charge sheet the different accused are charged differently. So far as the appellant is concerned, she is charged under Sections 341 and 497 of the Penal Code. Section 497 deals with the offence of adultery and provides as follows:

"Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor."

The provision is currently under criticism from certain quarters for showing a strong gender bias for it makes the position of a married woman almost as a property of her husband. But in terms of the law as it stands, it is evident from a plain reading of the Section that only a man can be proceeded against and punished for the offence of adultery. Indeed, the Section provides expressly that the wife cannot be punished even as an abettor. Thus, the mere fact that the appellant is a woman makes her completely immune to the charge of adultery and she cannot be proceeded against for that offence.

8. As regards Section 341 of the Penal Code, on the basis of the allegation made in the complaint, we fail to see how the charge of wrongful restraint can be made out against the appellant.

9. All the allegations in the complaint taken on their face value do not make out any case against the

accused. We are, therefore, satisfied that the proceedings against the appellant are equally fit to be quashed and the High Court was in error in not allowing the quashing application filed by the appellant. We, accordingly, set aside the order of the High Court and quash the proceedings of CC No.482 of 2008 on the file of the First Additional Judicial First Class Magistrate, Amalapuram, East Godavari District, arising out of Crime No.80 of 2008 of Ainavilli Police Station insofar as the appellant, accused No.8 is concerned.

10. In the result, the appeal is allowed.

.....J.
(Aftab Alam)

.....J.
(R.M. Lodha)

New Delhi,
December 1, 2011.