

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.3734 OF 2019

Between:

Mohammed Ahmedduddin Khan & 5 others ... Petitioners/Accused

And

1.The State of Telangana

2.Smt Syeda Waseem Fatima ...Respondents/ Complainant

Criminal Petition No.3738 OF 2019

Between:

Dr Mohammed Ameenuddin Khan ...Petitioner/A4

And

1.The State of Telangana

2.Smt Syeda Waseem Fatima ..Respondents/Complainant

DATE OF JUDGMENT PRONOUNCEMENT: 06.10.2023

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 their fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.P. No. 3734 of 2019

% Dated 06.10.2023

#Mohammed Ahmedduddin Khan & 5 others ... Petitioners/Accused

And

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2.Smt. Syeda Waseem Fatima ...Respondents/ Complainant

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Dr Mohammed Ameenuddin Khan ...Petitioner/A4

And

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2.Smt.Syeda Waseem Fatima ..Respondents/Complainant

! Counsel for the Petitioner: Sri Nageshwara Rao Pappu

^ Counsel for the Respondents: Public Prosecutor for R1

Sri Bonagudem Shyam for R2

1 (2022) 6 Supreme Court Cases 599

2 (2010) 7 Supreme Court Cases 667

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION NOS. 3734 & 3738 OF 2019****COMMON ORDER:**

1. Criminal Petition No.3734 of 2019 is filed by A2, A3, A5, A6, A7 and A8 and Criminal Petition No.3738 of 2019 is filed by A4 questioning criminal proceedings against them in CC No.39 of 2015 on the file of XIV Metropolitan Magistrate at L.B.Nagar, Ranga Reddy District.

2. The 2nd respondent/*defacto* complainant filed complaint alleging that her marriage was solemnized with A1 on 06.02.2011 and at the time of marriage, jahez articles worth Rs.5.00 lakhs, 10 thulas gold, furniture worth Rs.4.00 lakhs were given. For six months, they led happy marital life. Thereafter, the petitioners were harassing the *defacto* complainant for additional dowry of Rs.10,00,000/-. The *defacto* complainant gave birth to two sons. Since heavy money was spent at the time of marriage, the parents neither were unable to give any money to the accused nor fulfill their demand. For the said reason, ill-treatment increased. The accused Nos.3, 4 and 7 locked her in room, she was beaten mercilessly. Due to the ill-treatment, health condition of the *defacto* complainant

deteriorated and she was sent out of the house stating that unless Rs.10.00 lakhs was given, petitioners would perform marriage of A1 with another girl. In the private complaint, it is further alleged that all these petitioners were influential. On 29.06.2014 in the evening, when the complainant was in her parents' house, these petitioners along with supporters went to the house and beat her causing internal injuries. The neighbours and others helped her. Again on 25.07.2014 also, she was beaten up and threatened at Balanagar. Aggrieved by the said acts, complaint was filed on 30.07.2014, which was referred to the police for the purpose of investigation.

3. The police, having registered the crime, filed final report under Section 173 of Cr.P.C. In the said final report, the police found that the allegations leveled against all these petitioners/A2 to A8 were found to be incorrect on the basis of the evidence collected and there was no proof to sustain allegations against A2 to A8, as such, their names were deleted.

4. The *defacto* complainant preferred protest application, which was considered by the Court and by order dated 07.12.2016, the XIV Metropolitan Magistrate has taken cognizance against these petitioners.

5. Aggrieved by the said order, A4 preferred criminal revision No.59 of 2017 on the file of VIII Additional Sessions Judge, Ranga Reddy District at L.B.Nagar, which was dismissed upholding cognizance order against these petitioners by the Magistrate.

6. Sri Pappu Nageshwar Rao, learned Senior Counsel appearing for the petitioners would submit that the learned Magistrate had committed error in taking cognizance of the offence without examining any witnesses. In the event of the police filing final report excluding the names of the accused for any reason, the *defacto* complainant can only approach the concerned Court and file a private complaint. The procedure to be followed is under Section 200 Cr.P.C. He further submits that without examining any of the witnesses, only on the basis of the evidence collected during investigation, which are the statements of the *defacto* complainant and others, the Magistrate had taken cognizance which is contrary to the procedure. Accordingly, the Criminal Petitions have to be allowed and proceedings against the petitioners have to be quashed.

7. On the other hand, learned counsel appearing for the *defacto* complainant would submit that no error was committed

by the Magistrate in taking cognizance against the petitioners. Since prima facie case was found from the evidence of complainant, it would suffice to issue summons. The events narrated make out a case against the petitioners and their innocence or otherwise can be ascertained by the trial Court after examining the witnesses.

8. Learned Magistrate ought to have examined the witnesses before issuing summons to these petitioners. The necessity to examine witnesses as contemplated under section 200 Cr.P.C would arise since the complainant has filed a protest petition questioning the deletion of names of petitioners. There is no provision for filing a protest petition under Cr.P.C., however such protest petition can be treated as a complaint filed under section 190(1)(a) Cr.P.C. For taking cognizance on a complaint filed under section 190(1)(a) Cr.P.C, procedure prescribed under section 200 of Cr.P.C has to be followed. The word used in section 200Cr.P.C, is 'shall' for examining witnesses before taking cognizance.

“190. Cognizance of offences by Magistrates.

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a police report of such facts;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub- section (1) of such offences as are within his competence to inquire into or try.

200. Examination of complainant:

A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate; Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses,

- (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or
- (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192:
Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.”

9. The learned Magistrate has not followed procedure contemplated. Cognizance can be taken against accused who were either deleted from the array of accused or any other person as accused following the procedure prescribed under section 200 Cr.P.C. The complainant also had the option of

invoking section 319 Cr.P.C. Accordingly the cognizance order against the petitioners is set aside.

10. In **Kahkashan Kausar @ Sonam and others v. State of Bihar** [(2022) 6 Supreme Court Cases 599], the Hon'ble Supreme Court held that unless there are specific and distinct allegations against the accused, the proceedings can be quashed. Under Section 482 of Cr.P.C, the Court should be careful in proceeding against relatives who are roped in on the basis of vague and omnibus allegations.

11. The Hon'ble Supreme Court in the case of **Preeti Gupta v. State of Jharkhand** [(2010) 7 Supreme Court Cases 667] held that the Courts have to scrutinize the allegations made with great care and circumspection, especially against husband's relatives who were living in different cities and rarely have visited or stayed with the couple.

12. In the complaint, it is mentioned that these petitioners were harassing the complainant for additional dowry of Rs.10.00 lakhs and two dates were given which are 29.06.2014 and 25.07.2014 stating that all the petitioners have beaten her severely. Apart

from the said allegations, there are no other allegations against these petitioners.

13. There is no evidence that is produced by the complainant having filed the protest petition except her statement to substantiate that these petitioners had beaten her up on those two dates. As alleged, if the *defacto* complainant had received such severe injuries, the name of the Doctor where she was treated is not mentioned. Assuming that she did not approach the Doctor, it is necessary that independent evidence is adduced regarding the alleged beating on those two dates. No reason is given as to why on those two dates all these petitioners went to the parents' house and beaten her on the first date and on the next date, after she was shifted to Balapur.

14. Vague allegations are made that some of the petitioners beat her on 25.07.2014. The said bald and omnibus allegation cannot be made basis to continue with the prosecution of these petitioners. Further, in view of the observations of the Hon'ble Supreme Court in the above Judgments, on facts also the proceedings are liable to be quashed. In the result, the proceedings against petitioners/A2 to A8 in CC No.39 of 2015 on

the file of XIV Metropolitan Magistrate at L.B.Nagar, Ranga Reddy District, are hereby quashed.

15. Accordingly, both the Criminal Petitions are allowed. Consequently, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date: 06.10.2023

Note: L.R copy to be marked.

kvs

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NOs. 3734 & 3738 OF 2019

Dt. 06.10.2023

kvs