NC: 2024:KHC:8485
CRL.P No. 7432 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF FEBRUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY

CRIMINAL PETITION NO.7432 OF 2023

BETWEEN:

MR. VIVEK ANANTHA NAYAK,
S/O SUJIR ANANTHA NAYAK,
AGED ABOUT 51 YEARS,
R/AT NO. 209, BLOCK 2, HARSHA LANDMARK,
11TH MAIN ROAD, BRINDHAVAN LAYOUT,
HOYSALA NAGAR,
HORAMAVU, BENGALURU - 560 043.

...PETITIONER

(BY SRI. AJAY PRABHU M., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY MANGALORE WOMEN POLICE STATION,
REPRESENTED BY LEARNED
STATE PUBLIC PROSECUTOR,
HIGH COURT BUILDING,
BANGALORE - 560 001.

2. MR. S.R. KAMATH,
S/O LATE S.N.V. KAMATH,
AGED ABOUT 78 YEARS,
R/AT USHA NILAYA, ANEGUNDI ROAD,
BEJAI, MANGALURU - 575 004.

...RESPONDENTS

(BY SMT. K.P. YASHODHA, HCGP FOR R1;
R2 SERVED)

Digitally signed by V KRISHNA
Location: High Court of Karnataka

THIS CRL.P IS FILED U/S.482 OF CR.P.C PRAYING TO QUASH THE FIR IN CR.NO.36/2023 REGISTERED FOR THE OFFENCE P/U/S 498A AND 406 OF IPC AND SEC.3,4 OF D.P ACT ON THE FILE OF THE COURT OF III JUDICIAL MAGISTRATE FIRST CLASS COURT MANGALURU AS PER DOCUMENT NO.1 AND ALL FURTHER INVESTIGATION PURSUANT TO DOCUMENT NO.1.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner who is arraigned as accused in Crime No.36/2023 registered by Mangaluru Women Police Station, Mangaluru, D.K, for the offences punishable under Sections 498A & 406 and Sections 3 & 4 of Dowry Prohibition Act, 1961 is before this Court under Section 482 of Cr.P.C, with a prayer to quash the entire proceedings in the said case, which is pending against him before the Court of III JMFC, Mangaluru.

2. Heard learned counsel appearing for the petitioner and learned HCGP appearing for respondent No.1. Respondent No.2 - complainant, who is served in the matter has remained unrepresented.

3. FIR in Crime No.36/2023 was registered by Mangaluru Women Police Station on the complaint of respondent No.2 herein dated 19.05.2023. In the typed complaint dated 19.05.2023 lodged by respondent No.2 herein, who is the father of petitioner's wife Smt. Savita Kamat, it is alleged that, after the marriage of the complainant's daughter, she was not properly taken care in her matrimonial house and it is also alleged that at the time of marriage, the complainant had given dowry to the petitioner herein and in spite of the same, a demand was being made for payment of additional dowry. It is also alleged that the accused had misused the gold jewellery of his wife. The pan card of the complainant's daughter has been manipulated by the petitioner and the same is used by the accused as identity proof of his wife and for other financial transactions and therefore according to the complainant, the accused had committed criminal breach of trust. Challenging the FIR registered by the Mangaluru Women Police Station in Crime No.36/2023, the petitioner is before this Court.

4. Learned counsel appearing for the petitioner having reiterated the grounds urged in the petition submits that, undisputedly the petitioner's wife is residing in her parents' house from the year 2016 onwards. The petitioner and his wife Savita Kamat have filed two separate matrimonial cases before the jurisdictional family Court at Mangaluru for dissolution of their marriage. No allegations which are now found in the complaint are made in the matrimonial case filed by Savita Kamat. The complainant had earlier approached the police on 15.05.2023 and had lodged a complaint which was closed by the police after recording the statement of respective parties. Even in the said complaint, no such averments which are now made in the present complaint were made. He submits that, only with an intention to harass and coerce the petitioner for settling the demand made by Savita in her matrimonial case for payment of permanent alimony of Rs.2,50,00,000/-, the present complaint is filed.

5. Learned HCGP has opposed the petition. She submits that reading of averments made in the complaint *prima-facie* attracts the alleged offences. Investigation with regard to allegations made in the complaint is necessary. Accordingly, she prays to dismiss the petition.

6. The marriage of the petitioner with Savita Kamat who is the daughter of the complainant was solemnized on 29.04.2002. The material on record would go to show that since the petitioner's wife was suffering from depression, she was taken to Mangaluru for the purpose of treatment and ever since then she is in her parents' house. The complainant's daughter has filed a petition in M.C.No.563/2022 before the jurisdictional Family Court under Section 13(1),(ia),(ib) of the Hindu Marriage Act, 1955 with a prayer for dissolution of her marriage with the petitioner on the ground of cruelty and desertion and in the said proceedings, she also has prayed to award a permanent alimony of Rs.2,50,00,000/-. In the petition filed by Savita Kamat before the Family Court,

there is no such allegation which is now made in the complaint by her father.

7. The complainant had earlier approached the police on 15.05.023 and had lodged a complaint. In the said complaint, he has stated that his daughter had approached the Family Court for divorce and also had initiated proceedings under the domestic violence act and the accused-petitioner was unnecessarily dragging the case without paying any maintenance or medical expenses since the year 2017 and therefore a request was made to do the needful in the matter. Except the same, there is no other allegation in the earlier complaint. The police after recording statement of both the parties have closed the said case. It is only thereafter the present complaint is filed making allegations against the petitioner, which are not found either in the petition filed by Savita before the Family Court seeking divorce or in the complaint filed by the complainant before the police on 15.05.2023.

8. Under the circumstances, a serious doubt arises with regard to genuineness and correctness of the allegations made in the complaint. The fact remains that the complainant's daughter Savita Kamat has been residing separately in her parents' house from the year 2016 onwards and the same is not in dispute. Under the circumstances, I find some force in the arguments addressed on behalf of the petitioner that within an intention to wreak vengeance and arm twist the petitioner and coerce him for the purpose of consenting to pay permanent alimony to complainant's daughter, the present criminal proceedings has been initiated. Therefore, I am of the view that, continuation of criminal proceedings not only amounts to causing harassment to the petitioner who is practicing chartered accountant, but it would also amount to abuse of process of law.

9. Accordingly, the following:-

ORDER

The Petition is ***allowed***.

The entire proceedings in Crime No.36/2023 registered by Mangaluru Women Police Station, Mangaluru, D.K, for the offences punishable under Sections 498A & 406 of IPC and Sections 3 & 4 of Dowry Prohibition Act, 1961 is hereby ***quashed***.

Sd/-
JUDGE

NMS
List No.: 1 Sl No.: 91
CT:SNN