

IN THE COURT OF THE VI ADDITIONAL CHIEF METROPOLITAN MAGISTRATE BENGALURU CITY			
PRESENT	:		RAGHAVENDRA VAIJANATH B.A., LL.B. (NEW) VI ADDL.C.M.M. BENGALURU
DATED	:		30 TH DAY OF DECEMBER, 2021
C. C. NO.	:		<u>20498/2015</u>
COMPLAINANT	:	01.	THE STATE BY MICO LAYOUT P.S., BENGALURU.
			(Represented by Ld. SR. A. P. P.)
			//VERSUS//
ACCUSED	:	01.	SUJEESH PILLAI S/O GOPALAKRISHNA, Aged 32 Years, R/o No.B-19, Classic Paradise Layout, 11 th A Cross, Opposite P.K. Kalyana Mantapa, Beguru Road, Bengaluru.
		02.	GOPALAKRISHNA PILLAI S/O LATE RAGHAVAN PILLAI, Aged 62 years, R/o No. C-502, Ganga Erika Apartment, Opposite Ganga Eastoria Apartment, Kadnagar, Udri, Pune, Maharashtra.
		03.	SATHYA G. PILLAY W/O GOPALAKRISHNA PILLAY, Aged 60 years, R/o No.C-502, Ganga Erika Apartment, Opposite Ganga Eastoria Apartment, Kadnagar, Udri, Pune, Maharashtra.
I.A. NO._____/2021			

APPLICANTS/ APPLICANTS/ ACCUSED No.2 AND 3.	:	01.	GOPALAKRISHNA PILLAI S/O LATE RAGHAVAN PILLAI AND ANO.,
			(Represented by Shri. H. R. K, Advocate)
			//VERSUS//
OPPONENT/ RESPONDENT/ COMPLAINANT.	:		THE STATE BY MICO LAYOUT P.S., BENGALURU.
			(Represented by Ld. SR. A. P. P.)

**ORDER ON DISCHARGE APPLICATION FILED BY
ACCUSED NO.2 AND 3 UNDER SECTION 239 OF Cr.P.C.**

The applicants/accused no.2 and 3 have filed the instant application under Section 239 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) for their discharge from the case, inter alia on the premise that no case for framing of charge has been made out, on the grounds mentioned therein.

- 02.** The Learned SR. A.P.P. filed objections and prayed for rejecting the application on the grounds stated therein.
- 03.** Heard the submissions of the prosecution and the accused no.2 and 3, at length, on the record of the case as filed by the prosecution and documents submitted therewith.
- 04.** Considered the police report and the documents sent with it under Section 173 of Cr.P.C.
- 05.** The following points arise for my consideration:

01. Whether the accused no.2 and 3 have made out a case for discharge under Section 239 of Cr.P.C.?

02. What Order?

06. My answer on the above points is as under;

Point No.1: In the Negative.

Point No.2: As per the final order
for the following;

REASONS

07. POINT NO.1: Upon referring the complaint of the complainant, against the accused no.1 to 3, to the Mico Layout Police under Section 156(3) Cr.P.C. the said police have registered a case in Crime No.1074/2014 for the offence punishable under Section 498-A and 506 of Indian Penal Code, 1860 and under Section 3 and 4 of The Dowry Prohibition Act, 1961. In the course of the investigation, the police have recorded the statements of C.Ws.2 to 6, prepared spot mahazar, collected wound certificate, marriage invitation card and photographs, bills/receipts for having purchased gold ornaments for the marriage of C.W.1 with accused no.1 and ultimately upon completion of investigation, the Investigating Officer placed a charge sheet for the offences punishable under Sections 498-A and 506 R/w Section 34 of Indian Penal Code, 1860 and under Section 3, 4 and 6 of The Dowry Prohibition Act, 1961 against accused no.1 to 3. Copy of police report and other documents, in compliance of Section 207 of Cr.P.C., is furnished to the accused no.1 to 3.

08. The background, in brief, is that informant was married to accused on 23.05.2013 at Geetham Auditorium, Adoor, Kerala State. Allegedly, before and at the time of marriage accused no.1 to 3 demanded and accepted dowry in kind and after marriage during the stay of informant with accused no.1 to 3 in Pune and even during her

stay with accused no.1 in Bengaluru they subjected her to physical and mental cruelty in connection with their unlawful economic demands. Since the complainant was allegedly ill-treated, complainant, therefore, has lodged a complaint on 16.12.2014 against the accused no.1 to 3 before this Court in P.C.R. No. 19474/2014 which was referred to the Mico Layout Police for investigation under Section 156 (3) Cr.P.C. and upon completion of investigation a charge sheet for the offences punishable under Sections 498-A and 506 R/w Section 34 of Indian Penal Code, 1860 and under Section 3, 4 and 6 of The Dowry Prohibition Act, 1961 was filed against accused no.1 to 3.

09. Shri. H.R.K., Advocate, the learned counsel appearing on behalf of the accused No.1 and 2 would submit that the evidence which the prosecution proposes to produce to prove the guilt of the accused no.2 and 3, even if fully accepted before it is challenged by the cross-examination or rebutted by the defence evidence, if any, cannot show that the accused no.2 and 3 have committed the offences alleged against them. Hence, prays to allow the application.
10. The Ld. Sr.APP has submitted that the material collected by the prosecution/investigating agency creates a very strong and serious suspicion about the complicity of the accused no.1 to 3 in the crime to frame a charge.
11. This is a warrant case filed on a police report. Therefore, the provisions of Sections 238 to 243, Cr.P.C. would apply, for the purpose of determining whether the accused no.2 and 3 deserves to be discharged.
12. Various points were raised on behalf of both sides, touching the merits of the case, but it is unnecessary to enter into all those points on merit at this stage, I say so because, Section 240 Cr.P.C. does not

contemplate of giving reasons for framing of a charge or for writing a detailed order, since the question of giving reasons would arise only if accused is to be discharged. This view of this Court receives support from the law declared by the Hon'ble Supreme Court of India in the case of Kanti Bhadra Shah Vs. State of W.B., reported in (2000) 1 SCC 722. Therefore, I refrain myself from discussing in detail and recording any finding on the points urged by both sides while deciding this application at this stage or else the same would cause prejudice to the parties concerned while facing the trial on merits.

13. I have been taken through the complaint, statements recorded by the police during the course of investigation and the other material available on record.
14. The material portion in the complaint which is prima facie sufficient to attract Sections 498-A and 506 R/w Section 34 of Indian Penal Code, 1860 and under Section 3, 4 and 6 of The Dowry Prohibition Act, 1961 is to be found in paragraph 2, 5, 6 and 11 of the complaint.
15. Complaint, statement of witnesses and documents filed along with the charge sheet, show prima facie material to frame charge. The disputed question of intimidating and subjecting the informant for both physical and mental cruelty in connection with illegal demand and acceptance of dowry cannot be appreciated at this juncture against the accused persons.
16. Upon considering the overall facts and circumstances of the case and in the light of the police report and the documents sent with it under Section 173 of Cr.P.C. by the prosecution in support of the accusations made against the accused persons which prima facie attract the ingredients of the offences charged against the accused

persons. Therefore, I am of the opinion that a prima facie case against the accused persons for trial has been made out as there is sufficient material and ground for presuming that the accused persons have committed alleged offences which are exclusively triable by this Court and which can be adequately punished by this court. Accordingly, with these observations, I answer point No.1 in the negative.

17. For the foregoing reasons, I proceed to pass the following;

ORDER

The discharge application dated 07.10.2021 filed by the accused no.2 and 3 under Section 239 Cr.P.C. is rejected.

(Typed by me directly on computer, corrected and then pronounced by me in the open court on this the 30th Day of December, 2021.)

**RAGHAVENDRA VAIJANATH
VI ACMM BENGALURU**