

*IN THE COURT OF THE CHIEF METROPOLITAN
MAGISTRATE, BENGALURU CITY*

Dated this the 30th day of November 2017

PRESENT:

Sri S.Nataraj, B.A.L., L.L.B.,
CMM, Bengaluru

C.C. No.6926/2016

Complainant : State by Madivala Police,
Bengaluru City

(By Sr.APP)

-V/s-

Accused : 1. Sharath Krishnan
s/o P.G.Kurup, 28 yrs,

2. Gopala Krishna Kurup
s/o Krishna Kurup,

3. Leela Kurup,

(All are R/at Shivam, Nethayi Kodam
Road, Pallari Vottam, Cochin - 25)

(By Siji Malayil Associates)

*Orders on Application filed under Section 239 of
Cr.P.C. on behalf of Accused No-2 and 3*

This application is filed by accused No-2 and 3,
seeking for their discharge from the alleged offences in
this case.

2. The learned Sr.APP has filed objections to the
above application.

3. Heard arguments.

4. The only point that arises for my consideration
is-

*Whether the accused No-2 and 3
made out sufficient grounds to show
that the offences alleged against
them are groundless and entitled for
discharge?*

5. My answer to the above point is in the *Negative* for the following-

REASONS

6. On perusal of the records, it is seen that on 11-03-2016, cognizance of the offences punishable under Section 498(A) R/W 34 of IPC and Section 3, 4 of D.P. Act was taken against accused No.1 to 3, on the basis of charge sheet. The accused No-2 and 3 have filed the instant application on 06-10-2017 contending that this case is registered against accused No-2 and 3, on the basis of false and frivolous complaint given by complainant. CW2 to 4 are the blood relatives of complainant, wherein the statements made by them are verbatim. CW5, 6 are the stock witnesses and CW7 to 9 are the police witnesses. After the marriage, complainant and accused No-1 were staying separately at Bengaluru i.e., away from accused No-2 and 3, who are the permanent residents of Kerala. The allegations

of complaint are concocted stories cooked up by the complainant, only to harass them. Accused No-2 and 3 are senior citizens suffering from old age ailments and are innocent of the alleged offences. Hence, for the above and among other grounds, the accused No.2 and 3 pray to discharge them from the alleged offences.

7. In the objections, the Sr.APP has contended that the IO has collected documentary evidence as well as oral evidence of the witnesses, which prima facie shows the involvement of accused persons in the alleged offences. The prosecution has to establish its case by leading the oral evidence of witnesses and producing the documents. The reasons assigned in the application are not having any strength and the application is premature. On these grounds, the learned Sr.APP prays to reject the above application and frame charges against accused persons.

8. It is pertinent to note here that while considering the Application under Section 239 of Cr.P.C. for discharge, the court has to consider the materials as placed by the I.O. It is not obligatory for the court to consider in any detail and weigh in a sensitive balance whether the facts, if proved would be incompatible within the innocence of accused or not. On the other hand, the court has to look into the facts alleged and sought to be proved by the prosecution prima-facie disclose the commission of offence. Further, in the charge sheet, if the material allegations on the face of it are groundless, the accused is entitled for discharge.

9. Keeping in mind the above, I have carefully perused the prosecution papers, wherein it is alleged in the charge sheet that the marriage of CW1 Smitha.S.S. with accused No.1 was solemnized on 27-08-2010 and they were leading matrimonial life at Flat

No.151, Block A, Mahaveer Marvel Apartment, Kodichikkanahalli Road, Bengaluru. After six months, the accused persons started to give physical and mental harassment to CW1 by abusing in filthy words and assaulting with hands and insisted her to get half share in the property belonging to her father CW3 Sashidharan Nair through gift deed, even though the parents of CW1 had given 101 savaran gold ornaments to CW1 and a gold chain, gold ring, cash amount of Rs.1,00,000/- to accused No-1, at the time of marriage. It is also alleged that the accused No-1 had doubted about the character of CW1 and during June 2014, the accused persons had threatened CW1 saying that only if she brings half share in the property, the accused No-1 will lead matrimonial life, or else a divorce case will be filed. Thereby it is alleged that the accused persons committed the offences punishable under Section 498(A) R/W 34 of IPC and Section 3, 4 of D.P.Act.

10. I have carefully gone through the contentions taken by accused, as well as the allegations of charge sheet. The relationship is admitted. It appears that after marriage, CW1 led marital life with accused No-1. In the complaint, as well as the statements of witnesses i.e., the parents and close relatives, they have stated about the payment of gold jewelry, cash amount at the time of marriage. They have also stated about the demand of half share in the property of CW1's father by the accused. That after marriage, the accused persons caused physical and mental harassment, even though cash and gold jewelry were taken by accused persons at the time of marriage.

11. Apart from the above, in the complaint there is specific allegations against accused No-2 and 3 at para No.7, 9 and 11 regarding the physical and mental harassment given by them to CW1, demanding the complainant to get half share from her father. The

witnesses have also stated in their statements about the role of accused No-2 and 3 in the harassment and demanding half share from the complainant's parents.

12. In the considered opinion of court, the veracity of witnesses and complainant has to be tested only during trial. At this stage, there are no grounds to throw away the prosecution case, when there are prima-facie sufficient materials against accused No-2 and 3 for the alleged offences. There is no strong material placed by the accused No-2 and 3, to consider that the offences alleged against them are groundless, by ignoring the entire investigation conducted by the IO and material evidence collected by the IO against them during investigation. No convincing grounds are assigned by accused No-2 and 3 for discharging them at this stage. The grounds urged by accused No-2 and 3 for their discharge are the matters of defence and it cannot be entertained at this stage. The said accused

persons are at liberty to take appropriate defence and contest this case on merits. In the result, I answer the point raised for my consideration in the Negative and proceed to pass the following-

ORDER

The Application dated 06-10-2017 filed by accused No-2 and 3 under Section 239 Cr.P.C. is hereby rejected.

(Dictated to the Stenographer on Computer. The computerized print out taken by steno is revised, corrected and then pronounced by me in the open court on this day i.e., 30-11-2017)

(S.Nataraj),
Chief Metropolitan Magistrate,
BENGALURU.

30-11-2017

(Orders pronounced vide separate sheets)

ORDER

The Application dated 06-10-2017 filed by accused No-2 and 3 under Section 239 Cr.P.C. is hereby rejected.

Chief Metropolitan Magistrate,
Bengaluru.