

OA.No.170/00626/2017/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00626/2017

DATED THIS THE 28th DAY OF NOVEMBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V.SANKAR, MEMBER (A)

Sudatta Rahul
 S/o Netrapal Singh
 Aged about 29 years
 Working as Inspector of Central Excise
 Bangalore IV Commissionerate, HMT Bhavan
 Ganga Nagar
 Bangalore-560 032. ...Applicant

(By Advocate Sri B.S.Venkatesh Kumar)

Vs.

1. Union of India
 represented by Secretary to Government
 Ministry of Finance
 Department of Revenue
 North Block
 New Delhi-110 011.
2. The Commissioner
 Office of the Commissioner of Central Excise
 Bangalore IV Commissionerate
 HMT Bhavan, Ganga Nagar
 Bellary Road, Bangalore-560 024.
3. Shri Utpat Hrishikesh Kiran
 Assistant Commissioner/Enquiry Officer
 Office of the Assistant Commissioner of
 Central Tax: Division-7
 North Committee, 4th Floor, 16/1, SP Complex
 Lalbagh Road, Bangalore-560 027. ...Respondents

(By Advocate Sri Gajendra Vasu)

O R D E R (ORAL)

(PER HON'BLE DR.K.B.SURESH, MEMBER (JUDL.)

Heard. When the case was first taken up, it was assured before us that on the same elements and set of facts both the criminal case and the Departmental

Enquiry were sought to be proceeding together in the same lines. Thereafter, today, the Learned Counsel for the respondents produced the case status report and the order passed by the Hon'ble High Court at Allahabad in Application No.5926/2017 under Section 482 Cr.P.C. which we quote below:

Court No.-48

Case:- APPLICATION U/S 482 No. - 5926 of 2017

Applicant:- Sudatt Rahul

Opposite Party:- State of U.P. And Another

Counsel for the Applicant:- Amar Nath Singh

Counsel for Opposite Party:- G.A.Ajay Debey

Hon'ble Karuna Nand Bajpayee. J.

This application under Section 482 Cr.P.C. has been filed seeking the quashing of the entire proceedings of Case No. Nil of 2016, State vs. Sudatt Rahul, arising out of charge sheet dated 14.10.2016 submitted in Case Crime No.389 of 2016, under Sections 498A, 494, 466, 471, 120B, 323, 506 I.P.C. & 3/4 D.P. Act, Police Station Sikandra, District- Agra, pending in the court of A.C.J.M., Court No.8, Agra.

List has been revised. Despite repeated calls none has appeared on behalf of the applicant to press this application. Shri Amit Kumar Tiwari, learned counsel for the opposite party no.2 is present along with learned AGA. In the wake of heavy pendency of cases in this Court where dockets are already bursting on their seams there is no justifiable reason to further procrastinate the matter. This Court, therefore, deems it fit to proceed in the matter on the basis of the record and with the assistance of the learned AGA representing the State.

It seems that in order to explore the possibility of an amicable settlement between the parties, the matter was referred to undergo mediation proceedings. The report of Mediation Centre dated 18.5.2017 reveals that the aforesaid attempt could not succeed and did not bear any fruit for certain reasons.

According to learned A.G.A. failure of mediation process seems to be the obvious reason to explain the non appearance of applicant's counsel and ostensibly there is an attempt on behalf of the applicant to drag the proceedings in order to continue benefit of the interim protection.

The perusal of the grounds taken in the application, though not of much help, reveal that many of them relate to disputed questions of fact. The court has also been called upon to adjudge the testimonial worth of prosecution evidence and evaluate the same on the basis of various intricacies of factual details which have been touched upon on behalf of applicant. The veracity and credibility of material furnished on behalf of the prosecution has been questioned and false implication has been pleaded. The submissions raised in the application on behalf of the applicant call for adjudication on pure questions of fact which may be adequately adjudicated upon only by the trial court and while doing so even the submissions made on points of law can also be more appropriately gone into by the trial court in this case. This Court does not deem it proper, and therefore, cannot be persuaded to have a pre-trial before the actual trial begins.

The law regarding sufficiency of material which may justify the summoning of accused and also the court's decision to proceed against him in a given case is well settled. The court has to eschew itself from embarking upon a roving enquiry into the last details of the case. It is also not advisable to adjudge whether the case shall ultimately end in conviction or not. Only a *prima facie* satisfaction of the court about the existence of sufficient ground to proceed in the matter is required.

Through a catena of decisions given by Hon'ble Apex Court this legal aspect has been expatiated upon at length and the law that has evolved over a period of several decades is too well settled. The cases of (1) ***Chandra Deo Singh Vs. Prokash Chandra Bose AIR 1963 SC 1430***, (2) ***Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker AIR 1960 SC 1113*** and (3) ***Smt.Nagawwa Vs. Veeranna Shivalingappa Konjalgi 1976 3 SCC 736*** may be usefully referred to in this regard.

The Apex Court decisions given in the case of **R.P.Kapur Vs. State of Punjab AIR 1960 SC 866** and in the case of **State of Haryana Vs. Bhajan Lal 1992 SCC(Cr.) 426** have also recognized certain categories by way of illustration which may justify the quashing of a complaint or charge sheet. Some of them are akin to the illustrative examples given in the above referred case of ***Smt.Nagawwa Vs. Veeranna Shivalingappa Konjalgi 1976 3 SCC 736***. The cases where the allegations made against the accused or the evidence collected by the Investigating Officer do not constitute any offence or where the allegations are absurd or extremely improbable impossible to believe or where prosecution is legally bared or where criminal proceedings is malicious and malafide instituted with ulterior motive of grudge and vengeance alone may be the fit cases for the High Court in which the criminal proceedings may be quashed. Hon'ble Apex Court in Bhajan Lal's case has recognized certain categories in which Section-482 of Cr.P.C. or Article-226 of the Constitution may be successfully invoked.

Illumined by the case law referred to herein above, this Court has adverted to the entire record of the case.

A threadbare discussion of various facts and circumstances, as they emerge from the allegations made against the accused, is being purposely avoided by the Court for the reason, lest the same might cause any prejudice to either side during trial. But it shall suffice to observe that the perusal of the F.I.R. and the material collected by the Investigating Officer on the basis of which the charge sheet has been submitted makes out a *prima facie* case against the accused at this stage and I do not find any justification to quash the charge sheet or the proceedings against the applicant arising out of them as the case does not fall in any of the categories recognized by the Apex Court which may justify their quashing.

The prayer for quashing the same is refused as I do not see any abuse of the Court's process either.

The interim order, if any, is vacated.

In view of the peculiar facts and circumstances of the case, it is directed that in case after surrendering in the court below an application for bail is moved on behalf of the accused within two months from today, the same shall be considered and decided in accordance with law.

In the aforesaid period or till the date of appearance of the accused in the court below, whichever is earlier, no coercive measures shall be taken or given effect to.

It is clarified that this order has been passed only with regard to the accused on behalf of whom this application u/s 482 Cr.P.C. has been moved in this Court.

With the aforesaid observations this application is finally disposed off.

Office is directed to communicate this order forthwith to the lower court concerned.

Order Date:- 14.8.2018

2. With the help of both the Counsels, we had heard both the Counsels in great length and in extenso, we have gone through the charge sheet. It appears that only one element in the charge sheet has got a minor juncture of the criminal case. The effect or not of bigamy but the basic case in the criminal case is regarding dowry harassment, physical assault, criminal intimidation and other consequential issues. Whether he had been married before or not is therefore not of great significance in the criminal trial. Even if the applicant has to face being on bigamy or not bigamy, it will not affect his defence in the criminal case because even if a dowry harassment case has been made out against the applicant and it will not be taken up by the Trial Court now so it does not ensure that an element of cross-examination in that case and the DE would be similar and the same because of the divergent nature of charges in the DE as well as Trial Court. The dowry harassment has been filed by the alleged second wife and the case related to bigamy has been filed by the alleged first wife. Therefore, there is no juncture between two. Therefore, the OA will not lie. Dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)
/ps/

(DR.K.B.SURESH)
MEMBER (J)

Annexures referred to by the applicant in OA.No.170/00626/2017

OA.No.170/00626/2017/CAT/Bangalore Bench

- Annexure A1: Copy of impugned charge memorandum dtd.6.4.2017
- Annexure A2: Copy of High School Pass Certificate with English Translation
- Annexure A3: Copy of Intermediate Pass Certificate with English Translation
- Annexure A4: Copy of BSc course certificate
- Annexure A5: Copy of MA course certificate
- Annexure A6: Copy of prescription of family physician dt.2.3.2016
- Annexure A7: Copy of medical record of People Tree Hospital
- Annexure A8: Copy of medical record of Nayati Hospital, Mathura
- Annexure A9: Copy of complaint and closure report with English Translation
- Annexure A10: Copy of order dtd.22.2.2017 and status report
- Annexure A11: Copy of representation dtd.5.10.2017

Annexures with reply statement:

- Annexure-R1: Copy of Leave Sanction Order dtd.5.4.2016
- Annexure-R2: Copy of Arya Samaj Wedding Certificate No. 331 dtd.29.04.2013
- Annexure-R3: Copy of the letter dtd.07.06.2016 of Smt.Vinita Singh
- Annexure-R4: Copy of the Chargesheet filed by the Investigating Officer

Annexures with rejoinder:

- Annexure-A12: Copy of RTI Application submitted by the father of the applicant with English translation
- Annexure-A13: Copy of reply dtd.27.1.2018 with English translation
- Annexure-A14: Copy of enclosure 1 of reply dtd.27.1.2018 along with English translation
- Annexure-A15: Copy of enclosure 2 of reply dtd.27.1.2018 with English translation

Annexures with additional reply:

-NIL-

Annexures with additional rejoinder:

-NIL-
