

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 09TH DAY OF OCTOBER, 2019

BEFORE

THE HON'BLE MR.JUSTICE G.NARENDAR

CRL.P. NO.7196/2016

BETWEEN

SANTOSH KUMAR
S/O HANUMANTHAPPA,
AGED ABOUT 35 YEARS
AMR-8, III CROSS,
NANDHINI LAYOUT
BANGALORE-560 096

... PETITIONER

(BY SRI SRINIVAS RAO S S, ADV.)

AND

1. STATE OF KARNATAKA
MANDYA WEST POLICE STATION,
MANDYA.
2. SMT. ROHINI DEVI V. S.
W/O. NARESHKUMAR
SRI. NILAYA, 3RD CROSS,
CHAMUNDESHWARI NAGAR,
MANDYA - 571401

... RESPONDENTS

(BY SRI VIJAYA KUMARA MAJAGE, ADDL. SPP FOR R1,
SMT. PRAMILA NESARGI, SR. ADV. FOR
SRI H.K.SRIVASTHAVA & SMT. REKHA R R, ADVS. FOR R2.)

(CAUSE TITLE AMENDED VIDE COURT ORDER
DATED.23.01.2017.)

THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 12.08.2016 PASSED IN CRL.RP.NO.67/2016 PASSED BY THE IV ADDL.DIST AND S.J., MANDYA CONFIRMING THE ORDER DATED 03.05.2016 PASSED BY THE ADDL. C.J. AND J.M.F.C., MANDYA IN C.C.NO.316/2011 AND ALLOW THE APPLICATION FILED BY THE PETR. SEEKING DISCHARGE IN C.C.NO.316/2011 ON THE FILE OF ADDL. CIVIL JUDGE (JR. DN.) AND JMFC, MANDYA FOR THE OFFENCES P/U/S 498(A),323,504,506 R/W 34 OF IPC AND SEC. 3 AND 4 OF D.P. ACT.

THIS CRL.P COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Heard the learned counsel for the petitioner and the learned Addl. State Public Prosecutor and the learned senior counsel Smt. Pramila M. Nesargi on behalf of the second respondent-de-facto complainant.

2. Facts in brief are that a complaint has been filed by the wife of petitioner against her husband and her in laws for the offence punishable under Section 498 A, 323, 504, 506 read with Section 34 of IPC and Section 3, 4, 5 & 6 of DP. It is the contention of the accused No.2 to 4 that accused No.4 was working at Bangalore and went to Germany on 17.07.2008 and thereafter he came to India on 03.10.2008 for

his marriage. Again on 19.10.2008 he left India and returned to India on 30.08.2009. Thereafter, on 08.11.2009 he again went to Germany and came to India on 25.04.2010. Hence, the contention of the accused is that accused No.4 was not in the house of the accused No.1 as on the date of alleged incident. Further it is also contended that accused No.2 and 3 are parents of accused No.1 and are residing at Raichur District and they are not in a position to come to house of the accused No.1 and it is their contention that there was no material to frame charge against accused No.2 to 4.

3. The petitioner is before this court being aggrieved by the order passed by the court of Addl. Civil Judge (Jr. Divn.) and JMFC, Mandya in Crime No.175/2010 on the discharge application preferred by the petitioner. On perusal of the order passed by the court of the JMFC, it is seen that the court has not referred to any specific material but has merely made a general observation that on perusal of the entire material on record, there is a sufficient material of

harassment by respondent Nos.2 to 4 and in the same breadth it is further observed as follows:-

“At this stage participation of accused no.2 to 4 in the alleged offences can not be decided on the basis of material available on record”.

4. The reading of the said order would reflect non-application of mind by the learned JMFC. The application being one for discharge, it was incumbent on the court to state reasons with reference to the material on record on which reliance is placed by the court to formulate an opinion to reject the application for discharge. In the instant case, neither the court of the JMFC nor the revisional court have passed the orders with reference to any particular material which demonstrates a prima-facie case of non-application of mind.

5. Apart from the above, it is also seen that the revisional court has proceeded to place reliance on material produced by the applicants which is contrary to the settled law as held by the Hon'ble Apex Court in the case of *Yogesh @ Sachin Jagdish Vs. State of Maharashtra*, reported in AIR 2008

SC 2991, wherein it is held that disposal of a petition for discharge would postulate exercise of judicial mind which is conspicuously absent in the exercise rendered by both the courts below. Hence, on that short ground, the matter requires to be remitted back to the court of the JMFC for reconsideration within an outer limit of one month from the date of receipt of the certified copy of this order. Accordingly, the petition is **allowed**, the order dated 03.05.2016 is quashed. Consequently, the order in revision is also set-aside. The matter is remitted back to the court of the Addl. Civil Judge (Jr.Divn) and JMFC, Mandya for reconsideration of the application in accordance with law.

The reconsideration shall be within an outer limit of one month from the date of receipt of the certified copy of this order.

Sd/-
JUDGE

Chs*
CT-HR