



IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

DATED THIS THE 14<sup>TH</sup> DAY OF NOVEMBER 2018

BEFORE

**THE HON'BLE MR. JUSTICE N.K.SUDHINDRARAO**

**Crl. P. No. 102660/2017**

**BETWEEN:**

1. IRANNA S/O PADIYAPPA (SHIVABASAPPA)  
SHIVAYOGI, AGED 59 YEARS,  
OCC.: AGRICULTURE, R/O: KUDALASANGAM,  
TALUK HUNAGUND, DISTRICT BAGALKOT.
2. MAHANTESH S/O IRANNA SHIVAYOGI,  
AGED 31 YEARS, OCC.: AGRICULTURE,  
R/O: KUDALASANGAM, TALUK HUNAGUND,  
DISTRICT BAGALKOT.
3. SHRISHAIL S/O IRANNA SHIVAYOGI,  
AGED 29 YEARS, OCC.: AGRICULTURE,  
R/O: KUDALASANGAM, TALUK HUNAGUND,  
DISTRICT BAGALKOT.
4. TOTAPPA S/O PADIYAPPA (SHIVABASAPPA)  
SHIVAYOGI, AGED 49 YEARS,  
OCC.: AGRICULTURE, R/O: KUDALASANGAM,  
TALUK HUNAGUND, DISTRICT BAGALKOT.
5. SMT. LAXMIBAI @ ANNAKKA,  
W/O IRANNA SHIVAYOGI,  
AGED 49 YEARS, OCC: HOUSEHOLD WORK,  
R/O: KUDALASANGAM, TALUK HUNAGUND,  
DISTRICT BAGALKOT.
6. SMT. SUNANDA W/C TOTAPPA SHIVAYOGI,  
AGED 43 YEARS, OCC: AGRICULTURE,  
R/O: KUDALASANGAM, TALUK HUNAGUND,  
DISTRICT BAGALKOT.

- PETITIONERS

(BY SRI MALLIKARJUNSWAMY B. HIREMATH, ADVOCATE)

AND:

SMT. SHAILA W/O SANGAMESH SHIVAYOGI,  
AGED 30 YEARS, OCC PRIMARY SCHOOL  
TEACHER, R/O SIMIKERI, TALUK BAGALKOT.

- RESPONDENT

(BY SRI S.C. HIREMATH, ADVOCATE FOR  
SRI S.B. HEBBALLI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED U/S 482 OF CR.P.C. PRAYING TO SET ASIDE THE ORDER DATED 23.10.2017 BY THE LEARNED PRINCIPAL CIVIL JUDGE & JMFC, BAGALKOT, TAKING COGNIZANCE OF THE OFFENCES PUNISHABLE U/S 498A, 504 AND 506 OF IPC BESIDES SEC. 3 AND 4 OF D.P. ACT IN P.C. NO. 122/2016 NOW REGISTERED AS C.C. NO. 3625/2017 INsofar AS THE PETITIONERS HEREIN ARE CONCERNED & ETC.

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

**ORDER**

This Criminal Petition is presented u/S 482 of CR.P.C. praying to set aside the order dated 23.10.2017 passed by the learned Principal Civil Judge & JMFC, Bagalkot, taking cognizance of the offences punishable u/S 498A, 504 and 506 of IPC besides Sec. 3 and 4 of D.P. Act in P.C. No. 122/2016 Now registered as C.C. NO. 3625/2017 insofar as the petitioners herein are concerned.

2. The facts are that, cognizance is taken by the learned trial Judge against the petitioners herein and one Sangamesh, who is the son of petitioner no.1. The marriage between the complainant-Shaila and said Sangamesh was performed on 23.05.2010 at Kudalasangam as per Hindu rites and customs. The marital life is reported to be a failure as alleged by the complainant. It is stated that the complainant was harassed and tortured. Her life was made miserable. It is also stated that amount of gold, cash and other articles were received by her husband who is non petitioner-accused no.1.

3. In the peculiar circumstances of the case, instead of stating the facts of the case, it appears to be better to extract the entire complaint and it is as under:

1) *That the complainant is the legally wedded wife of the accused No:1 and their marriage took place at Koodalasangam, Tq: Hunagund of Bagalkot District on: 23-05-2010 as per custom and usage of their community.*

2) *The family members of A-1 are (2) Iranna s/o Padiyappa (father of A-1), 3) Mahantesh s/o Iranna*

Shivayogi (A1 brother), 4) Srishail s/o Iranna Shivayogi (A1 brother), 5) Totappa s/o Padiyappa Shivayogi (A1 Uncle), 6) Smt. Laxmi bai @ Annakka w/o Iranna Shivayogi (A1 mother), 7) Smt. Sunanda w/o Totappa Shivayogi (A1 aunt).

3) Prior to the marriage, Betrothal ceremony was held on 20.04.2007 at Koodalasangam village in presence of elders of Seemikeri and Koodalasangam villages and "Lagnad Yadi" (Marriage Deed) was written on the same day and it was signed by both village elders. Wherein Rs.5 Lakh and one thousand to be paid to bridegroom, 2) 41 grams of Gold, 3) Rs.10,000/- were to be given for varopchar including watch and cloths to bride groom at the time of marriage. In addition to it, 4) Sofa set W. Rs.25,000/-, 5) Pedal fan of W.Rs.2000/-, 6) Fridge W. Rs.12,000/-, 7) Teakwood double cot with bed & bed sheets of W.Rs.12,000/-, 8) Iron treasury W.Rs.10,000/-, 9) Steel utensils and silver "Arathi" set in all W.Rs.50,000/- was also given to Accused No:1 at the time of marriage. This was given by my parents and relatives for the purpose of smooth sailing of our married life.

4) In this way all the above materials, money, ornaments including Gold, Silver and steel utensils will fall within the definition of Sec. 2 of Dowry Prohibition Act, 1961. Similarly all Gold ornaments and other valuable articles will become "Stridhan" of complainant. Accused 1 has no right, title over Stridhan property of the complainant. Accused is only the custodian of Stridhan of the complainant. Since the complainant kept the articles and utensils in the house of accused and on the safer side, complainant is absolute owner of stridhan referred above and can deal with it in any manner she likes. Accused No.1 has no right to question the

complaint on the points of its use. Complainant alone got authority, how to use **her stridhan property**. Taking advantage of that Gold and other costly articles which were kept in the house of accused. The accused violated trust of the complainant by his conduct in this case. If the accused dishonestly misappropriate or refuses to give back the stridhan property referred above to complainant, then accused certainly will be guilty of criminal breach of trust and there can be no escape from the legal consequences. Stridhan referred above of the complainant. Even if it is placed in the custody of accused or in-laws they would be deemed to be trustees and bound to return the same as and when demanded by the complainant. Hence accused committed an offence U/s 498A, 504, 506 & u/s 4, 6(2), 7(2) of Dowry Prohibition Act.

5) The complainant was working as primary school teacher, prior to her marriage. After the marriage which took place on 23.05.2010 when complainant went to bride grooms house at Koodalsangam, accused was working as S.I. at Kavital Police Station. She was made to stay at Koodalsangam only. Even after lapse of 4 to 5 months accused A1 did not take complainant to Kavital where he was working. When that was questioned by complainant, accused No:1 said that complainant father did not give money and gold to the satisfaction of accused No:1 as per his status and dignity. Therefore accused No.1, compelled & made her to stay at Koodalasangam along with accused No:1 parents and relatives who all were staying together in joint family under one roof. When accused No:1 did not take complainant with him at the place of his work all the family members referred above used to tease the complainant every

now and then, saying complainant father did not give Rs. 50 Lakhs and sufficient gold as per the status and standard of accused No:1 who is Sub. Inspector. Complainant went on bearing all the torture and harassment thinking that they will realize sooner or later. Complainant was made to work like maid servant, doing all house work alone. This torture was brought to the knowledge of complainant father who visited Koodalasangam during stay. His advice also did not bring any change in their attitude and behavior. Complainant was also made to stop working as primary school teacher as per wish of accused No:1. Complainant did not go to school and remained absent.

Whenever accused No.1 visited Koodalasangam all the accused used to carry tails to accused No:1. Hearing this accused No:1 used to abuse in filthy language and also assaulted complainant once, twice when all this was unbearable the complainant had written a letter to her father narrating the harassment. When complainant was unable to meet out their demand of Rs. 50 lakh and Gold ornaments she was driven out of Accused No:1 house on: 22.08.2012.

Complainant with the help of 'Mahila Sangh' she secured back her teachers post and joined at Govt. Primary School at Mudugal. Accused No:1 with an intention to harass the complainant managed to get himself transferred to Mudugal police station and started harassing her by sending goondas. Accused No:1 used to phone her and abuse the complainant. This was also informed by the complainant to her father by writing a letter.

Since complainant is a Govt. Employee, her father made a written complaint to Superintendent of Police,

*Raichur, on 28.04.2014 directly, thinking, since complaint is against S.I. working at Mudgal P/S. will not register the case against himself. A copy of complaint to I.G. NER Gulbarga and I.G.P. & D.G.P. Bangalore, was also sent. But, no action was taken against accused. Copy of complaint was also sent to Home Minister then Sri K.G. George, Sri. Jagadish Shettar, Opposition Party Leader. Now a written complaint is also sent to present Home Minister Dr. Parmeshwar. With all this efforts no case is registered and no action is initiated from the Law enforcing authority. Thus there is no option for the complainant to approach this Hon'ble Court.*

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It was filed before the learned JMFC, Bagalkot on 20.07.2016.

4. Sri Mallikarjunswamy B. Hiremath, learned counsel for the petitioners would submit that there has been indiscriminate roping of the petitioners into the criminal case registered for the offences punishable u/S 498A, 504 and 506 of IPC besides Sec. 3 and 4 of D.P. Act, in fact, which is registered against the petitioners herein, later cognizance was also taken by the learned JMFC. He would further submit that the private

complaint came to be filed by the complainant, she examined herself as P.W.1 and her father as P.W.2.

5. Learned counsel for the complainant would submit that it is not a complaint without basis. The complainant was harassed, neglected and cruelty was meted out to her by all the accused persons and the complaint is filed without any bias on the part of the complainant.

6. As reflected from the written complainant and heard from the learned counsel, the petitioners' stand at the following relationship to the non petitioner-accused No.1-Sangamesh.

Petitioner No.1-Eranna, aged 59 years	Father of accused no.1
Petitioner No.2-Mahantesh	Natural brother of accused no.1
Petitioner No.3-Shrishail	Natural brother of accused no.1
Petitioner No.4-Totappa	Paternal uncle of accused no.1 (brother of petitioner no.1-Eranna)
Petitioner No.5-Laxmibai @ Annakka	Mother of accused No.1
Petitioner No.6-Sunanda	Maternal aunt or wife of petitioner no.4-Totappa



7. The cognizance taken by the learned Magistrate as per the order dated 23.10.2017 is as under:

*The cognizance of the offence punishable U/Sec. 498A, 504 and 506 of IPC and U/Sec. 3 and 4 of Dowry Prohibition Act is taken against the accused No.1 to 7.*

*Office to register the complaint as Criminal Case against accused No.1 to 7 in Criminal Reg. No. III and issue summons to accused No.1 to 7.*

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8. No doubt whenever a right is recognized, there must be a remedy as stated *ubi jus ibi remedium*. The married lady, whether educated or not, has every right to raise her voice against the harassment, torture or violence by her husband or his relatives and others irrespective of their relationship, i.e., u/S 498A of IPC. Insofar as payment of dowry is considered to be an offence and whatever is received, is to be returned to the wife as per the calculation spelt out u/S 6 of the D.P. Act.

9. It is not uncommon that members of the husband's family prior to marriage, may form a group in some cases against the new comer to the family to feel life miserable. Very often the matter gets aggravated and very often even suicides are committed, for which, all the abettors are liable. But the fact of the matter is, the allegations made not require proof or when taking cognizance. What is required is there must be probability to hook the accused or the relative to the offences or the circumstances prevalent renders it probability of commission of offences by all or the incident whether reported or not, have a bearing on the welfare.

10. In this connection there are statutes which stand by the side of a lady who is affected. Having said that, any provisions of law cannot be misused.

11. A complainant is having every liberty to project her grievance. At the same time, she has to ensure the

persons-relatives whom she accuses shall not be jeopardized when they are innocent.

12. The complainant cannot be made to look artificial in terms of roping the accused persons. When such things happen, even in genuine cases, when she suffers, also likely to be polluted because of the instances or exaggeration or glorification.

13. In the present case, what I find is the relationship of petitioners 1 to 6 herein in the reference to husband is narrated above. On meticulous reading of the complaint, it tells nine out of ten times that there are no allegations against the other members, be it the parents, brothers, uncle and aunty of the accused. The roping of the family members may not be a good example and that tendency has to come down. Filing of the complaint against the husband cannot be an occasion to set his score to his relatives, which invariably include parents, brothers and sisters.

14. The Hon'ble Supreme Court in **Bhaskar Lal Sharma Vs. Monika** {(2009) 10 SCC 604} has held:

*“the allegations of harassment should be of such nature and extent so as to coerce the wife to meet any unlawful demand of dowry or any other unlawful conduct on part of the accused of a nature which is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health. Closely examining the allegations in the instant FIR, these elements as well as the degree of seriousness in the allegations could be said to be in wanting.*

*The tendency to rope in all the family members in the FIR speaks for themselves and in such circumstances, the requirements of alleging specific role for each of the members becomes necessary, for which the indispensable aspects that all should stay together. The Supreme Court has viewed with suspicion the conduct of disgruntled complainant in bringing into picture the entire family and the family members to level allegations under section 498A against all of them.”*

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15. The daughter-in-law, no doubt, hopes for a better life in the matrimonial house. Her hopes that may not be satisfied in principle. The tendency of shattering her hopes cannot be the order of the day. Her leaving the parental home to join the marital house cannot be to make her to develop depressive attitude. No doubt, when the family consists of number of persons, it is expected that there shall be a reasonable compromise from both the old members and the new female member, which increases fragrance of affection but shall not plant it. Seeds of enmity, grudges and a tendency of mutual curses. Here a classic approach rather guideline is presented by Their Lordships in ***Bhaskar Lal Sharma's case*** stated supra.

16. The allegations or the pin-prix claimed are to be of such a type that causes perilous atmosphere either for the daughter-in-law or the others and shattering of vested rights on any of them.

17. Insofar as the present case is concerned, the complainant has given evidence as P.W.1 and her father P.W.2. The complaint and the complainant version must inspire confidence of the Court. This cannot happen by a lengthy and unnecessary paras in the complaint or other exaggeration during the oral testimony of the complainant. This shows the complainant might have impleaded the petitioners out of anger but not on legal basis. It is not a sin to live jointly along with accused no.1 or there is no presumption that when once the husband is made accused, all the family members connecting the accused no.1 are to be made the accused. I find the complaint is exaggerated, situations are exaggerated and the grievance or complaint against the husband is distributed against the other relatives, who are the petitioners herein.

In this case I find that the petitioners have made out a ground to dislodge them from the list of accused. Hence, I pass the following order.

ORDER

Petition is allowed. Consequently, the order dated 23.10.2017 passed by the learned Principal Civil Judge & JMFC, Bagalkot, taking cognizance of the offences punishable u/S 498A, 504 and 506 of IPC besides Sec. 3 and 4 of D.P. Act in P.C. No. 122/2016 Now registered as C.C. NO. 3625/2017 insofar as the petitioners herein are concerned, is hereby quashed. However, this order is not concerned insofar as accused no.1 is concerned. The said case shall be continued as against accused No.1, in accordance with law.

**SD  
JUDGE**

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