

Non-Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

CONTEMPT PETITION (CIVIL) NO.444 OF 2020
IN
SPECIAL LEAVE PETITION (CRIMINAL) NO.10686 OF 2020

T.S.K. ASHWIN KUMAR ... PETITIONER(S)

Versus

TUBATI SRIVALLI & ORS. ...RESPONDENT(S)

WITH

DIARY NO. 17301 OF 2020

J U D G M E N T

V. Ramasubramanian, J.

1. While the Contempt Petition arises out of an order passed by this Court on 16.07.2019 by consent of parties in SLP(Cr)No.10686 of 2018, the Special Leave Petition arises out of an interim order

passed by the High Court for the State of Telangana at Hyderabad, staying the trial of a criminal complaint, during the pendency of a criminal petition arising out of an order of the Trial court refusing to reopen and recall PW-1 to PW-4.

2. We have heard Mr. Marlapalle, learned senior counsel appearing for the petitioner and Mr. Devadatt Kamat, learned senior counsel appearing for the 1st respondent.

3. The facts sufficient for the disposal of these proceedings are as follows:-

(a) The sole petitioner in the Contempt Petition (who is also the first petitioner in the SLP) is the husband of the 1st respondent in both these proceedings. They got married at Hyderabad on 07.12.2008 and a male child was born in the wedlock on 04.04.2010;

(b) After the marriage, the couple went to the United States of America and they came back to India in November, 2015;

(c) On 20.12.2015 the 1st respondent-wife filed a criminal complaint in Crime No.477 of 2015 against the 1st petitioner herein as well as his parents and other close relatives, for

alleged offences under Section 498A read with Section 120B and Sections 420 and 365 of the IPC;

(d) A charge-sheet was filed on 12.03.2017. A supplementary charge-sheet was also filed on 20.12.2017. However, the proceedings against persons shown as Accused Nos.4 to 6 were quashed by this Court by an order dated 21.08.2018 in Criminal Appeal No.1045 of 2018, on the ground that they are not the immediate family members of the 1st petitioner-husband, but distant relatives;

(e) In the meantime, the petitioner who was on bail by virtue of an order passed by the Trial Court on 29.12.2017, subject to the condition that he shall not leave the State of Telangana or the country without prior permission of the Court, approached the Trial Court for relaxation of the bail condition, so that he could travel to USA. But the said petition was dismissed by the Trial Court by an order dated 20.06.2018;

(f) Therefore, the 1st petitioner approached the High Court and the High Court, by an order dated 08.11.2018 passed in Criminal Petition No.11411 of 2018 granted relaxation of the bail conditions and allowed the 1st petitioner to go to USA after furnishing bank guarantee in a sum of Rs. 3,00,000/- (Three Lakhs Only), for his appearance as and when called upon to do so;

(g) Challenging the order of the High Court granting relaxation of the bail conditions, the 1st respondent-wife filed a Special Leave Petition in SLP (Crl) No.10686 of 2018;

(h) The SLP (Crl) No.10686 of 2018 was disposed of by this Court by an order dated 16.07.2019, by consent of parties. By this order this Court directed the Trial Court to conclude the trial of the criminal case within a period of two months;

(i) Though a period of 15 months has now elapsed from the date of the said order passed by this Court, the trial has not concluded;

(j) Blaming the 1st respondent-wife for adopting dilatory tactics and not allowing the trial to get completed within the period stipulated by this Court, the husband has come up with the Contempt petition. On 28.07.2020 notice was ordered in the Contempt Petition;

(k) It appears that in the meantime, the State, through the Assistant Public Prosecutor filed a petition before the Trial Court on 17.01.2020 to reopen the evidence and to recall PWs 1 to 4. The said petition was dismissed by the Trial Court by an order on 23.01.2020;

(l) Challenging the order of the Trial Court refusing to recall PWs 1 to 4 the 1st respondent-wife filed a criminal petition in

Criminal Petition No.896 of 2020 under Section 482 CrP.C. While entertaining the said petition, the High Court for the State of Telangana at Hyderabad granted interim stay of further proceedings in the criminal case. Though the High Court posted the criminal petition for final hearing on 06.03.2020, it could not be taken up for hearing. As a result, the stay of further proceedings got extended;

(m) Therefore, aggrieved by the stay of trial granted by the High Court in Criminal Petition No.896 of 2020 at the instance of the 1st respondent-wife, the husband and his parents have come up with the present SLP.

4. The grievance of the petitioner-husband in the Contempt Petition is that after having consented to cooperate in the conclusion of the trial within a period of two months, the 1st respondent-wife has been dragging on the matter under some pretext or the other. However, the 1st respondent-wife has filed a statement of objections claiming that she is not in any way responsible for the delay.

5. We do not wish to go into the nitty gritty, since it is a matrimonial matter. But we cannot desist from recording our

displeasure at the manner in which the proceedings before the Trial Court have dragged on for the past 15 months, after this Court passed an order on 16.07.2019 with the consent of the parties, for the conclusion of the trial within a period of 2 months. The order passed by this Court on 16.07.2019 in SLP (Crl) No.10686 of 2018 reads as follows:-

"After hearing learned counsel for the parties, the following order is passed by consent:

1. The Trial in case No. CC. 622/2018 before the Court of AJCJ-cum-XXV Metropolitan Magistrate, Cyberabad, Kukatpally, which was transferred and now pending before the Court of VIII Metropolitan Magistrate, Cyberabad, Kukatpally shall be concluded 2 expeditiously and in any case not later than two months from the date the appearance of the parties before the in Charge Court, since the Court of VIII Metropolitan Magistrate, Cyberabad, Kukatapply is reported to be vacant.
2. The parties are directed to appear before the In charge Court, Cyberabad, kukatapply on 22.07.2019.
3. This direction is given in view of the peculiar circumstances and status of the parties.
4. All other criminal cases between the parties in any other courts shall stand disposed of without any orders.
5. The parties are restrained from filing any case civil or criminal against each other or their respective Advocates during the pendency of the trial.

6. The passport application of respondent No. 2/husband may be considered by the passport authorities."

The special leave petition is disposed of accordingly.

Pending application stands disposed of."

6. Apart from the party/parties responsible for protracting the proceedings, it is unfortunate that the State, the Trial Court as well as the High Court have also omitted to take note of the time frame fixed by this Court. The State represented by the Prosecutor filed an application in CrI.M.P.No.56 of 2020 for recalling PW-1 to PW-4 for further examination and for the issue of summons to several other persons. This application was filed on the ground that a supplementary charge-sheet was filed later.

7. But the Trial Court dismissed the Application filed by the Prosecutor on 23.01.2020 on the ground that the supplementary charge-sheet related only to A-4 to A-6 and that in as much as the charges against A-4 to A-6 have been quashed, the reason for seeking recall was not convincing. The Trial Court also recorded

that PW-1 to PW-4 were supposed to speak about their grievances at length even when they were examined in the first instance and that therefore the petition filed by the prosecution was only an attempt to delay the proceedings.

8. As against the well-considered order of the Trial Court, the 1st respondent-wife moved a petition before the High Court under Section 482 Cr.P.C. This petition was entertained by the High Court and stay of further proceedings was granted. The High Court should not have granted such a stay on 07.02.2020, in the teeth of the order passed by this Court on 16.07.2019 for the disposal of the proceedings within two months.

9. It is relevant to point out that the 1st respondent-wife was PW-1 and she was examined in chief on 09.10.2019 and 15.10.2019 long after the filing of the supplementary charge-sheet. She was cross-examined on 18.11.2019, 20.11.2019 and 28.11.2019. After conclusion of such extensive cross-examination, the prosecution reported no re-examination.

10. Similarly, the 1st respondent's mother was examined as PW-2. Her chief examination took place on 22.10.2019 and her cross-examination took place on 09.12.2019. There was no re-examination. The father of the 1st respondent was examined as PW-3 and the brother of the 1st respondent was examined as PW-4. These two witnesses were also examined during the very same period of time namely October – December, 2019.

11. It appears that after the recording of evidence of all prosecution witnesses was over, the trial court closed the evidence on the side of the prosecution on 08.01.2020 and posted the case for questioning under Section 313, Cr.P.C on 17.01.2020. On 30.01.2020, the questioning under Section 313 was also over.

12. Therefore, it is surprising that the prosecution filed an application in CrI.M.P.No.56 of 2020 for recalling PW-1 to PW-4, on the basis of the supplementary charge-sheet. PW-1 to PW-4 are not strangers or 3rd parties. All of them are aggrieved persons and hence they should have spoken about all the facts even in the first instance. After having prevented the 1st petitioner-husband from

travelling to USA, by inviting an order on consent before this Court, neither the parties nor the prosecution should give any room for suspicion that they are protracting the proceedings.

13. Our attention was drawn to the certified copies of the deposition of PW-1, PW-2 and PW-4, where the Trial Court has recorded the demeanour of these witnesses. We do not wish to make any observation regarding the same, lest it may prejudice the outcome of the trial.

14. Suffice it to point out that any attempt to overreach an order of this Court passed by consent should be discouraged and deprecated. Therefore, the order of stay granted by the High Court is liable to be vacated and the trial directed to be proceeded. The Contempt Petition, in our considered view can be closed without going into the rival claims.

15. Accordingly, the Special Leave Petition and the Contempt Petition are disposed of to the following effect: -

- (i) The Contempt Petition is closed without going into the rival contentions;
- (ii) The Special Leave Petition is allowed and the order of stay of further proceedings, granted by the High Court in Criminal Petition No.896 of 2020 is set aside;
- (iii) The Trial Court is directed to proceed further with the trial of the criminal case, from the stage where it got struck due to the stay order of the High Court. The Trial Court may endeavour to dispose of the matter within a period of two months.

.....CJI
(S.A. BOBDE)

.....J.
(A.S. BOPANNA)

.....J.
(V. RAMASUBRAMANIAN)

New Delhi
November 06, 2020