

Smt Asfia Hussaini vs State Of Karnataka on 20 August, 2024

Author: K.Natarajan

Bench: K.Natarajan

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NC: 2024:KHC:33404
CRL.P No. 2233 of 2024
C/W CRL.P No. 10377 of 2023
CRL.P No. 13275 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR JUSTICE K.NATARAJAN
CRIMINAL PETITION NO. 2233 OF 2024
(439(2)(Cr.PC)/483(3)(BNSS))
C/W

CRIMINAL PETITION NO. 10377 OF 2023
CRIMINAL PETITION NO. 13275 OF 2023

IN CRL.P.NO.2233 OF 2024

BETWEEN:

1. SMT ASFIA HUSSAINI
W/O SRI HARISH KUMAR N M
AGED 39 YEARS,
CURRENTLY R/AT 402 B SRINIDHI RESIDENCY,
APARTMENTS, 364/2, 4TH FLOOR,
BASAVANAGAR MARATHAHALLI COLONY,
BENGALURU-560037.

...PETITIONER

Digitally signed
by KHAJAAMEEN
L MALAGHAN
Location: High
Court Of
Karnataka

(BY SRI. P. P. HEGDE, SENIOR COUNSEL FOR
SRI. VENKATESH SOMAREDDI, ADVOCATE)
AND

1. STATE OF KARNATAKA
BY RAMAMURTHY NAGAR POLICE
STATION,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA
BENGALURU-560001.

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2. SRI. HARISH KUMAR N M
AGED ABOUT 41 YEARS,
S/O LATE NANDANAHALLI MAHESH,
PRESENTLY RESIDING AT 673,
1ST MAIN, BANNIMANATAP B LAYOUT,
MYSORE-570015.

...RESPONDENTS

(BY SMT: ANITHA GIRISH, HCGP FOR R1;
SRI. SIDDARTH SUMAN, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED U/S 439(2) CR.P.C.,
PRAYING TO CANCEL THE BAIL GRANTED TO RESPONDENT
NO.2 AS PER ORDER DATED 23.10.2021 AND ALSO THE ORDER
DATED 04.01.2022 MAKIN THE INTERIM ORDER OF BAIL AS
ABSOLUTE PASSED IN CRL.P 7205/2021 AND FURTHER
RESPONDENT NO.2 BE DIRECTED TO SURRENDER BEFORE THE
TRAIL COURT WITHIN THE TIME THAT MAY BE FIXED BY THIS
HON'BLE COURT IN THE INTEREST OF JUSTICE AND EQUITY.

IN CRL.P.NO.10377/2023

BETWEEN

SRI. HARISH KUMAR N.M.
AGED ABOUT 41 YEARS,
S/O LATE D. MAHESH,
PRESENTLY RESIDING AT NO 673,
1ST MAIN, BANNIMANTAP B LAYOUT,
MYSORE-570015

...PETITIONER

(BY SRI. SIDDHARTH SUMAN, ADVOCATE)

AND

1. THE STATE OF KARNATAKA
BY STATION HOUSE OFFICER,
RAMAMURTHY NAGARA P. S. POLICE STATION,

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BENGALURU-560005

REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
HIGH COURT BUILDING,
BANGALORE-560001

2. SMT. ASFIA HUSSAINI
AGED ABOUT 38 YEARS,
W/O SRI. HARISH KUMAR N M,
NO 402 B. SRINIDHI RESIDENCY APARTMENTS
364/2,4TH FLOOR,
BASAVANAGAR, MARATHALLI COLONY,
BENGALURU-560037

....RESPONDENTS

(BY SMT. ANITHA GIRISH HCGP FOR R1;
SRI. P. P. HEGDE, SENIOR COUNSEL FOR
SRI. VENKATESH SOMAREDDY, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED U/S 482 CR.P.C.,
PRAYING TO QUASH THE FIR REGISTERED BY THE
RAMAMURTHY NAGAR P.S., DATED 16.07.2021 IN
CR.NO.246/2021 FOR THE OFFENCE PUNISHABLE UNDER
SECTION 506, 420 PENDING ON THE 10 TH ADDL. CMM
AGAINST THE PETITIONER I.E. ANNEXURE-A II) THE CHARGE
SHEET FILED BY THE RAMAMURTHY NAGAR POLICE STATION
DATED 18.10.2021 IN C.C.NO.56243/2021 PENDING ON THE
FILE OF THE X ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE, MAYO HALL UNIT, BENGALURU FOR THE
OFFENCE PUNISHABLE UNDER SECTION 354, 504, 506 OF IPC
I.E ANNEXURE-C, III) THE ORDER DATED 28.10.2021 PASSED
BY THE COURT OF THE HON'BLE X ADDITIONAL CHIEF
METROPOLITAN MAGISTRATE, MAYO HALL UNIT BENGALURU
IN C.C.NO.56243/2021 TAKING COGNIZANCE OF THE
OFFENCES PUNISHABLE UNDER SECTIONS 354,504,506 OF IPC
AGAINST THE PETITIONER I.E ANNEXURE-D PENDING BEFORE
THE HON'BLE X ADDITIONAL CHIEF METROPOLITAN

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MAGISTRATE, MAYO HALL UNIT, BENGALURU IN
C.C.NO.56243/2021.

IN CRL.P. NO 13275 OF 2023

BETWEEN

SRI HARISH KUMAR N M
AGED ABOUT 42 YEARS,
S/O LATE D. MAHESH,
PRESENTLY R/AT NO.673,
IST MAIN,
BANNIMANTAP LAYOUT,
S.S.NAGAR,
BANNIMANTAP,
MYSORE-570015

...PETITIONER

(BY SRI.SIDDHARTH SUMAN, ADVOCATE)
AND

SMT. ASFIA HUSSAINI
AGED ABOUT 39 YEARS,
W/O SRI. HARISH KUMAR N M,
NO.402, B. SRINIDHI RESIDENCY APARTMENTS,
364/2, 4TH FLOOR, BASAVANAGAR,
MARATHALLI COLONY,BENGALURU-560037

...RESPONDENT

(BY SRI. P. P. HEGDE, SENIOR COUNSEL FOR
SRI. VENKATESH SOMAREDDI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C.,
PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN
CRL.MISC.NO.156/2023 PENDING BEFORE THE HON'BLE
METROPOLITAN MAGISTRATE TRAFFIC COURT - I, BENGALURU
UNDER SECTION 12 OF PROTECTION OF WOMEN FROM

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DOMESTIC VIOLENCE ACT (HEREINAFTER REFERRED TO AS
THE PWDVA) I.E. ANNEXURE-A AGAINST THE PETITIONER.

THESE CRIMINAL PETITIONS HAVING BEEN RESERVED
FOR ORDERS ON 24.07.2024, COMING ON FOR
PRONOUNCEMENT THIS DAY, MADE THE FOLLOWING..

CORAM: HON'BLE MR JUSTICE K.NATARAJAN

CAV ORDER

Crl.P.2233/2024 is filed by the defacto/complainant

under Section 439 (2) of Cr.P.C. for cancellation of the bail granted to the accused/husband by this Court in Crl.P.No.7205/2021 vide order dated 23.10.2021 arising out of Crime No.246/2021 of Ramamurthy Nagar police station, Bengaluru.

2. Crl.P.10377/2023 is filed by the accused/husband under Section 482 of Cr.P.C. for quashing the Criminal proceedings in CC No.56243/2021 pending on the file of the X ACMM, Bangalore arising out of Crime No.246/2021 registered by the Ramamurthy Nagar police station, Bengaluru and charge sheeted for the offences punishable under Sections 354, 504 and 506 of IPC.

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3. Crl.P.No.13275/2023 is filed by the accused/husband u/s 482 of Cr.P.C. for quashing the criminal proceedings on the file of the Metropolitan Magistrate Traffic Court-1 (MMTC-1), Bangalore in Crl.Misc.No.156/2023 filed by the complainant/petitioner/wife U/s 12 of the Protection of Women From Domestic Violence Act, 2005(herein after referred to as D.V. Act).

4. Heard the arguments of learned counsel for the petitioner in Crl.P.No.13275/2023, 10377/2023 and senior

counsel appearing for the petitioner in Crl.P.No.2233/2024 and learned counsel for the respondent as well as learned High Court Government Pleader appearing for the state.

5. The case of the petitioner Harish Kumar N.M. in Crl.P.No.10377/2023 is that the respondent No.2 Smt.Asfia Hussaini filed a complaint to the Ramamurthy Nagar police station on 16.07.2021, which was registered in Crime No. 246/2021 alleging that the petitioner had

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cheated the complainant. The accused belongs to Hindu community and respondent No.2 is a Mohammedan. The accused told her that he is in love with her. Subsequently, both of them had love affairs between them from 2005 onwards. Later, in November 2005, at about 11:00 a.m., the accused with a false promise of marriage had sexual intercourse with defacto-complainant and again he had intercourse with her on 26.06.2021 at 3:00 p.m. Subsequently, he has failed to marry her on the ground that she is a Muslim and his family members are not accepting the marriage. He is said to have assaulted her by outraging the modesty on 26.05.2020 and abused her in filthy language and also cheated her. Hence, she has filed the complaint before the police and the police during the investigation arrested the accused petitioner and he

was remanded to judicial custody.

6. The bail petition of the petitioner was rejected by the Trial Court. Hence, he approached this Court by filing a petition under Section 439 of Cr.P.C. in
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Crl.P.No.7205/2021 and this Court heard the arguments.

During the argument, the counsel for the petitioner submitted that the accused is ready to marry the defacto-complainant. Therefore, this Court had granted interim bail and two months time was granted for the purpose of marriage and to produce the marriage certificate. Accordingly, the accused was released on bail. He subsequently, married the complainant and submitted the affidavit and marriage certificate before the Court on 04.01.2022. Accordingly, this Court made the interim bail as absolute.

7. Subsequent to the marriage, once again a dispute arose between the husband and the wife, that the accused said to be informed the defacto-complaint to withdraw the complaint against him. But, she refused to withdraw the complaint on the ground that she wants to wait for some more time to take decision of withdrawing the case and

she wants to wait for the change of behavior of the

accused/husband. Therefore, the accused-husband is
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before this Court by filing the petition for quashing the criminal proceedings, as he has already married the respondent. Therefore, the allegation of false promise and cheating does not arise, in view of petitioner/accused marrying the defacto-complainant. Therefore, continuing the criminal proceedings is nothing of abuse of process of law. Hence, he prays for to quash the criminal proceedings against him.

8. Whereas, the Crl.P.No.2233/2024 is filed by the wife/defacto-complainant for cancellation of the bail granted to the petitioner/accused on the ground that the accused only for the purpose of getting out of the jail for only bail had made false representation and came out on bail. Subsequently, he has married the petitioner. It is alleged that soon after the marriage, the accused-husband forcefully thrown the complainant/wife out of the matrimonial home under the guise of Dhanurmasa month and even after completion of the said month, when she asked the accused to take her back to the matrimonial

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home, the accused refused to take her back. When the complainant went to the elder sister of the accused and informed about the accused, for that the sister of the accused filed a false complaint against the wife/defacto-complainant and FIR was registered against her.

9. It is further alleged that due to the harassment made by the accused-husband, she has filed a petition under the DV Act, where interim order is also passed and she was permitted to reside in the matrimonial home at Mysore. But, the accused did not allow her to reside in the house. Hence, she has filed application before the Magistrate to break open the door and reside in the matrimonial home. But, the accused did not provide the wife/defacto-complainant access to the bathroom situated inside the house. The accused also filed petition for quashing the criminal proceedings under the DV Act as well as complaint filed by her before the police. Therefore, she was constrained to file a petition for canceling the bail granted to the accused-husband.

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10. Crl.P.No.13275/2023 is filed by the husband for quashing the DV proceedings in Crl.Misc.No.156/2023

wherein the wife/defacto-complainant filed the application u/s 12 of the DV act, before the MMTC-1 contending that the accused/husband is committing domestic violence in the nature of physical, economic, verbal and psychological abuse. After the marriage dated 10.12.2021, she has narrated the love affairs between them. Accused-husband refused to marry her, thereafter filing the complaint and releasing on bail, he married the complainant and later started avoiding the complainant and sent her out of the house and failed to take her back and not allowing her in matrimonial house. On various contentions taken by her in the petition, she is seeking for monitory relief of Rs.50,000/- per month as maintenance, damages and Rs.50 lakhs towards fraud caused by the accused/husband. Being aggrieved by the petition filed by her, the husband is before this Court seeking for quashment of the proceedings under the DV act.

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11. Learned senior counsel for the petitioner/husband has seriously contended that the petitioner is innocent of the alleged offences. The allegation is that he has cheated the respondent No.2 after they had a lover affair and made false promise of marriage. But, in view of accused

marrying the respondent No.2, the question of cheating does not arise. Therefore, once the marriage has performed, the false promise of marriage does not arise. Therefore, the criminal proceedings against the petitioner shall be quashed.

12. Learned counsel for the petitioner has also contended in DV Act case that she has suppressed the petition filed for restitution of conjugal rights. Hence, the proceeding before the Magistrate under Section 12 of the DV Act is illegal. In the DV proceedings, the ex-parte order has been passed, permitting the respondent to reside in the house of the accused. Such an order can be passed under Section 17 of the DV Act. The respondent has

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misused the provisions of law. The marriage to be successful, a certain dimension of trust should exist and be maintained between husband and wife. There is a lack of trust, existing in the marriage of the petitioner with respondent No.2. The restitution of conjugal rights has been filed to live with the petitioner, but, she is not coming to the house and she is attempting to harass the petitioner, by filing the petition. Absolutely, there is no case made out against the petitioner. Hence, prayed for quashing the DV proceedings before the Magistrate.

13. Per contra, learned counsel for the respondent No.2 has objected the petition, contending that the accused/husband has cheated the wife/defacto-complainant with the false promise of marriage. He has sexually assaulted her and hence, the complaint came to be filed. He had undertaken to marry the respondent No.2 and came out on bail and married the respondent No.2. But, subsequently, started harassing the respondent No.2, for withdrawing the complaint and when, she refused to

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withdraw the complaint, he has harassed her and thrown out from the house. Therefore, she has approached the Magistrate under the D.V. Act, and also obtained the order for shared house. Therefore, it is contended that the accused violated the conditions of the bail. Hence, bail should be cancelled and he should be tried for the complaint filed by the respondent. Hence, prayed for dismissing the petition filed by the accused and allowing the petition filed by her for canceling the bail.

14. Having heard the arguments and perused the records, the point that arises for my consideration are:-

- i. Whether the petition filed by the accused/husband under Section 482 of Cr.P.C. can be allowed, in

view of the petitioner having married the respondent?

- ii. Whether respondent wife/defacto-complainant made out sufficient ground to cancel the bail granted by this Court?
- iii. Whether the petitioner/husband is entitled for relief for quashing the

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proceedings under the D.V. Act.
filed by the respondent/wife?

15. Learned counsel for the accused/husband has contended that the complaint came to be filed by the wife/defacto-complainant alleging that he has cheated her by sexually assaulting her under the false promise of marriage. It is contended that hence, the accused has already married respondent No.2, the question of cheating does not arise. Therefore, the criminal proceedings arising out of Crime No. 246/2021 shall be quashed. The same is objected by the wife/defacto-complainant, mainly on the ground, the charge sheet is filed for 354, 504 and 506 of IPC. Even though the accused married the wife/defacto-complainant No.2, the offence was being committed continuously from the year 2005, till 26.06.2021. Hence, he cannot be exonerated and even otherwise, the accused after the marriage once again has reverted back and left the company of the wife/defacto-complainant and thrown her out of the house. By considering the facts and

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circumstances of the case, of course, the allegation against the accused/husband was that he has cheated the complainant without marrying her. He is said to be outraged her modesty and had sexual intercourse with her and after registering the FIR and filing the charge sheet, he was arrested by the police and while considering the bail, the accused has stated that he is ready to marry the respondent. Accordingly, an interim bail was granted and he has married the respondent No.2 and the bail was made absolute. But, the criminal proceedings will not evaporate automatically, the offence once committed will not be exonerated, subsequently after filing charge sheet. It is nothing but, once the complaint of theft is made and if the stolen property was recovered from the accused, he cannot be exempted from criminal prosecution automatically. Therefore, once at the time of complaint, there was offence already committed by the accused and subsequently, even though he married the complainant, until the wife/defacto-complainant comes before the Court and withdraws the complaint by submitting no objection

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for quashing the complaint, the complaint and criminal proceedings will not be exonerated automatically.

16. That apart, the accused married her only for the purpose of getting bail. Subsequently, he has thrown out the complainant from the house and she was forced to approach the Magistrate for the shared house and seeking compensation. Therefore, I am of the view that the criminal proceedings initiated against the petitioner in Crime No.246/2021 cannot be quashed.

Therefore,

answer to point No.1 is in negative.

17. As regards to the cancellation of bail, Crl.P.No.2333/2024 filed by the wife/defacto-complainant against the accused/husband on the ground of violation of the conditions. Of course, the respondent No.2 has already married the accused, as per the undertaking given before the Court. Therefore, once he has married the wife/defacto-complainant and complied the order, there is no violation of bail order or condition in order to cancel the

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bail. Absolutely, there is no ground made out for cancellation of the bail. Even otherwise, the offence is not punishable with death or imprisonment of life and the offence is triable by Magistrate. Therefore, the petitioner

has not made out the case for cancellation of bail. Hence,
Point No.2 is answered in negative.

18. As regards point No.3, to the quashing the order passed by the Magistrate under the DV Act, where it is stated there is ex-parte order passed by the Magistrate for shared house. Hence, prayed for quashing the same. By looking into the facts and circumstances of the case and dispute between the both of them, prior to the marriage and after the marriage, this Court not be inclined to quash the proceedings initiated by the wife under the DV Act.

19. Accused/husband should approach the same Court for recalling the order or else he can file appeal under Section 29 of the DV Act, before the Magistrate and at this stage, this Court cannot quash the criminal

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proceedings in the D.V.Act. Hence, answer to point No.3 is
in negative.

20. Accordingly, the following order:

ORDER

I. Crl.P.No.10377/2023 filed under Section 482 of Cr.P.C. for quashing the Criminal proceedings in CC No.56243/2021 pending on the file of the X ACMM, Bangalore is hereby dismissed.

II. Crl.P.No.2233/2024 filed by the wife/defacto-

complainant under Section 439(2) of Cr.P.C. for cancellation of bail granted to accused/husband is hereby dismissed.

III. Cr.P.No.13275/2023 filed by the petitioner/husband for quashing the criminal proceedings on the file of the Metropolitan Magistrate Traffic Court-1 (MMTC-1), Bangalore in CrI.Misc.No.156/2023 under the DV Act is hereby dismissed.

Sd/-

(K.NATARAJAN) JUDGE NJ