

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL PETITION No.7647 of 2009

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.454 of 2009 on the file of the XIII Additional Chief Metropolitan Magistrate-cum-Mahila Court, Hyderabad, registered for the offences punishable under sections 3, 4 & 6 of Dowry Prohibition Act and under Section 406 r/w.Sec.34 IPC.

2. Heard the learned counsel appearing for the petitioners/A1, A2, A4 & A5, learned counsel appearing for the 2nd respondent/*de facto* complainant and the learned Additional Public Prosecutor, representing the State.

3. The petitioners are Accused Nos.1, 2, 4 & 5. The non-petitioner/A3, who is mother of A1 died. The 1st petitioner/A1 is a software employee in USA, the 2nd petitioner/A2 is his father, Petitioners/A4 & A5 are the brother and married sister of A1. The 2nd respondent/*de facto* complainant filed a private complaint against all the accused alleging that he gave his daughter by name Veena in marriage to the 1st petitioner/A1 and the marriage took place on 21.06.2003 at Kakinada. At the time of alliance, the petitioners/accused demanded dowry of Rs.10 lakhs in cash, 40 kasula gold ornaments, one kg of silver articles and Rs.50,000/- cash towards Adapadachu lanchanam, for which, the 2nd respondent agreed. As demanded by the petitioners/accused, before the marriage, the 2nd respondent paid Rs.8,50,000/- in cash to Accused No.2, who is the father of A1, and at the time of marriage, gave remaining amount of Rs.1,50,000/- and other silver and gold jewelry to the accused. One day after the marriage, on

the eve of Ashadamasham, the daughter of 2nd respondent was sent to his house. After completion of Ashadamasham, the 2nd respondent took his daughter to her matrimonial home, then the accused stated that the dowry given by him is not sufficient and he has to pay additional dowry of Rs.10 lakhs, for which, the 2nd respondent agreed to pay some amounts and accordingly he paid an amount of Rs.1,50,000/- to the accused, but the accused have not satisfied with that amount. It is stated by the 2nd respondent that all the accused started harassing his daughter for additional dowry and subjected her to cruelty. It is stated that the daughter of 2nd respondent became pregnant. It is further alleged by the 2nd respondent that the 1st petitioner/A1 without taking his daughter Veena along with him to USA, A1 alone went to USA on 09.09.2003 and sent back his daughter to his house on the same day, even though she was pregnant. The daughter of the 2nd respondent gave birth to a male child on 04.05.2004, on receiving information the parents of A1 visited the house of the 2nd respondent and further they demanded additional dowry of Rs.10 lakhs and threatened him that if he failed to comply with their demands, they would not take back his daughter to the matrimonial home and further threatened that they would marry A1 with another woman. It is stated that the daughter of 2nd respondent gave a police report against the petitioners/accused on 17.07.2005 before Sarpavaram Police and the same was registered as a case in Cr.No.134/2005 under Section 498-A r/w.34 IPC against the petitioners/accused. The grievance of the 2nd respondent/*de facto* complainant is that the dowry amount, gold and silver jewelry given to the accused were not returned to his daughter and they are being misappropriated by the accused.

4. The learned counsel appearing for the petitioners/accused submitted that the case filed by the daughter of the 2nd respondent/*de facto* complainant was numbered as CC.No.717/2005 on the file of the IV Additional Judicial Magistrate of First Class, Kakinada for the offence under section 498-A r/w.Sec.34 of IPC. It is further contended that the said CC.No.717/2005 was re-numbered as CC.No.136/2008 and tried before the V Additional Judicial Magistrate of First Class, Kakinada. It is further contended that during pendency of the said criminal case, the mother of A1 died and the case against her was abated, and after full-fledged trial, the learned Magistrate, dismissed the said criminal case and acquitted accused, who are petitioners herein, vide judgment dated 13.11.2009. It is further contended that during course of trial in the said case, the 2nd respondent herein filed the present private complaint. It is further contended on reference under Sec.156(3) Cr.P.C. the police filed final report on 22.09.2008 stating that there is no necessity to file charge sheet as already a case is pending against the accused under section 498A IPC before the IV Additional Judicial Magistrate of First Class, Kakinada. It is further contended that after waiting more than one year, the 2nd respondent filed protest petition and the learned Magistrate, in a mechanical manner, took cognizance of the said complaint. The learned counsel further contended that in view of dismissal of complaint filed by the daughter of the 2nd respondent under Sec.498A IPC and in view of admissions of the 2nd respondent made in the complaint that the dowry amount given by him amounting Rs.8,50,000/- was lying under fixed deposit in the name of his daughter in APCOB Main Branch, Troop Bazar, Hyderabad, no offence is made out against the petitioners/accused and continuing the proceedings against the petitioners/accused is

nothing but abuse of process of law and hence the proceedings in CC.No.454/2009 on the file of the XIII Additional Chief Metropolitan Magistrate-cum-Mahila Court, Hyderabad are liable to be quashed.

5. Learned Counsel appearing for the respondent/complainant submits that the two offences namely the one under Section 498-A of IPC., and Sections 3, 4 and 6 of the Dowry Prohibition Act are quite distinct and the embargo that is imposed under Section 300 IPC., cannot apply to the facts of the present case. It is therefore submitted that the learned Magistrate was justified in taking cognizance against the petitioner/accused and the proceedings cannot be quashed.

6. The point for consideration is as to whether the present proceedings against the petitioner/accused are liable to be quashed in view of their previous trial for the offence under Section 498-A of IPC.?

7. The admitted facts are that Veena, the daughter of the 2nd respondent herein was married to the petitioner/A.1 on 21-06-2003 and they are blessed with a son. It is also a fact that the said Veena filed a complaint alleging offence punishable under Section 498-A of IPC., against the petitioners/accused herein and the same was registered as Cr.No.134 of 2005 and it was numbered as C.C.No.717 of 2005 on the file of the IV-Additional Judicial Magistrate of First Class, Kakinada, which was however subsequently re-numbered as C.C.No.136 of 2008 on the file of the V-Additional Judicial Magistrate of First Class, Kakinada. It is also fact that by Judgment dated 13-11-2009, the petitioners herein, who were accused in that case, have been acquitted. It is also fact that during the pendency of the said criminal case, the 2nd respondent herein, who was one of the witnesses (PW.2), filed another complaint with WPS, CCS, Hyderabad, alleging offences

punishable under Sections 3, 4 and 6 of DP Act and Section 406 IPC. The said private complaint was referred to police and the same was registered as Cr.No.9/2008. After investigation, a final report has been filed on 22-09-2008 dropping further action in view of the fact that previously charge sheet is laid in Cr.No.134 of 2005 under Section 498-A r/w 34 IPC., on the file of the Court of IV-Additional Judicial Magistrate of First Class, Kakinada. The 2nd respondent filed a protest petition on 24-08-2009 and after recording the sworn statement of the 2nd respondent herein on 28-08-2009, the learned Magistrate took cognizance of the case for the offences punishable under Sections 3, 4 and 6 of the DP Act and Section 406 IPC.

8. There is no quarrel with the legal proposition that in view of the provisions of Section 300(1) Cr.P.C., no one can be prosecuted and punished for the same offence more than once. It is also fact that even if the same set of facts makes out another offence, even then, the person who was tried previously cannot be tried again. In **KOLLA VEERA RAGHAV RAO v. GORANTLA VENKATESWARA RAO (AIR (SC) 2011-0-641)**, the Supreme Court held that Section 300(1) of Cr.P.C., is wider than Article 20(2) of the Constitution, that while Article 20(2) of the Constitution only states that 'no one can be prosecuted and punished for the same offence more than once', Section 300(1) of Cr.P.C., states that no one can be tried and convicted for the same offence or even for a different offence but on the same facts.

9. In C.C.No.717 of 2005/C.C.No.136 of 2008, the allegations were that the petitioners herein have demanded and accepted a dowry of Rs.10,00,000/-. Out of which, Rs.8,50,000/- was deposited in the name of the *de facto* complainant namely Veena, and Rs.1,50,000/- was taken by the accused persons for the

marriage expenses. The further allegation therein is that after some time, the accused therein/petitioners herein started demanding additional dowry and when they were not being paid, they have subjected the wife Veena to harassment and cruelty and hence they were prosecuted for the offence punishable under Section 498-A of IPC.

10. The present complaint, however, is with regard to the events that took place prior to the marriage viz., the allegation is that the petitioners/accused demanded dowry of Rs.10,00,000/- and accepted the same and thereafter when called upon to return, they refused to do so and hence they are guilty of having committed the offences under the provisions of the Dowry Prohibition Act and also Section 406 IPC.

11. Section 498-A of IPC., provides for punishment of the husband or his relatives of a woman for subjecting her to cruelty or where a woman is subjected to harassment with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security.

12. The provisions of Sections 3, 4 and 6 of the DP Act provides for punishment for the acts of giving or taking dowry, demanding dowry and refusing to return the same or transfer it to the wife.

13. As noticed above, if out of the same set of facts, two distinct offences are made out and if the person is tried for one offence on the same set of facts, they cannot be tried subsequently. This is clearly prohibited under the provisions of Section 300 Cr.P.C. However, in the instant case, the facts in the previous case are quite distinct from the facts alleged in the present case. Even though, in the previous complaint, a reference is made about the demand and acceptance of the dowry of Rs.10,00,000/- at the time of the marriage, but the main allegation therein was about the

alleged harassment and cruel treatment meted out to a wife for not fulfilling the demand for additional dowry.

14. In the present complaint, the allegations are that before and at the time of the marriage, the 2nd petitioner herein/A.2 demanded and accepted a dowry of Rs.10,00,000/- and thereafter misappropriated the same.

15. Therefore, not only the offences that are alleged to have been attracted in both the complaints are distinct but the facts are also separate and different. While, previous case deals with the alleged acts of the petitioners/accused in demanding additional dowry and subjecting the wife to cruelty some time after the marriage, the present complaint deals with the alleged acts of the 2nd petitioner/A.2 in demanding and accepting the dowry at the time of marriage. Merely because, the *de facto* complainant herein, who is the father of the wife, gave evidence in the previous case, does not mean that the petitioners/accused herein were tried in the previous case for the alleged acts of the petitioner/A.2 for having demanded and accepted the dowry and thereafter failed to appropriate the same.

16. However, while the previous complaint was against all the petitioners herein viz., the husband, the father-in-law, mother-in-law and other relations of the husband, what is noticed from the present complaint is that the allegations are only against the petitioner/A.2 and the petitioners/A.1, A.4 and A.5 cannot be said to have committed the offences alleged in the present complaint. It is also on record that the petitioner/A.3 being the mother of A.1 died and the petitioners/A.4 and A.5 are the brother and sister of the husband/A.1. Therefore, the proceedings in the present C.C. insofar as they are against the petitioners No.1, 4 and 5 who are A.1, A.4 and A.5 are liable to be quashed. There is sufficient

material *prima facie* to proceed against the petitioner No.2/A.2 for the offences alleged. At the stage of considering the petition under Section 482 Cr.P.C., what is all that is required to be seen is as to whether there is *prima facie* material to proceed against the petitioner/accused. As already stated, insofar as the petitioner No.2/A.2 is concerned, there is material which can be said to be *prima facie* sufficient for proceeding with the trial for the offences alleged under Sections 3, 4 and 6 of the Dowry Prohibition Act and Section 406 of IPC. Therefore, the petition is liable to be partly allowed.

17. In the result, the Criminal Petition is allowed in part quashing all further proceedings insofar as the allegations against the petitioners No.1, 4 and 5/A.1, A.4 and A.5 in C.C.No.454 of 2009 on the file of the XIII-Additional Chief Metropolitan Magistrate-cum-Mahila Court, Hyderabad is concerned. The learned Magistrate shall proceed with C.C.No.454 of 2009 only against the petitioner No.2/A.2. The learned Magistrate however shall dispose of C.C.No.454 of 2009 uninfluenced by any of the observations made herein.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.S.K.Jaiswal, J

October, 2015

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