

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Criminal Petition No.15183 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioners/A2 to A5 seek to quash the proceedings in C.C.No.283 of 2013 on the file of XIII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.

2) It may be noted that petition so far as 2nd petitioner/A3—Smt.Manjula Chawda is withdrawn and hence dismissed. Thus, we are concerned with petitioners/A2, A4 and A5 only. A1 is the husband of *defacto* complainant. Petitioners 1, 3 and 4/A2, A4 and A5 are the father, brother and married sister of A1 respectively.

3) On the report given by *defacto* complainant the police of WPS, CCS, DD, Hyderabad registered Cr.No.151 of 2013 against A1 to A5 and after investigation laid charge sheet for the offences under Sections 498A, 406 r/w 34 IPC and Sections 4 and 6 of Dowry Prohibition Act. Briefly stating, the marriage between *defacto* complainant and A1 is a love marriage and it is an inter-caste marriage also. A1 is a Gujarathi and the *defacto* complainant is a Telugu girl. A1 is doing business at USA. The FIR, charge sheet and 161 Cr.P.C. statements would give a vivid narration of sufferings and travails undergone by complainant in the hands of A1 even after two children were born.

4) Be that it may, the submission of learned counsel for petitioners is that even if the prosecution case is uncontroverted, there is absolutely no case against the present petitioners who are the father, brother and married sister of A1 and hence continuation of proceedings against them would amount to sheer abuse of process of law and cause severe hardship to them to attend the Court as accused. Learned counsel, reading out the allegations contained in the prosecution record, tried to convince that no case was made out against the petitioners. Learned counsel relied upon several

judgments to buttress his argument.

5) Per contra, learned counsel for 2nd respondent/complainant and learned Additional Public Prosecutor would submit that FIR, charge sheet and 161 Cr.P.C. statements would clearly show the harassment meted out by the petitioners against the complainant and hence they do not deserve quashment of the proceedings. However, learned counsel for 2nd respondent/complainant fairly conceded that there are no specific overtacts against the 3rd petitioner/A4—Vasudev Chawda—the brother of A1 and left the matter to the discretion of the Court.

6) In the light of above rival arguments, the point for determination in this petition is:

“Whether there are merits in this petition to allow?”

7 a) **POINT:** The precedential jurisprudence on the inherent power of High Court under Section 482 Cr.P.C. is to the effect that the said power has to be exercised with great circumspection. When in the discretion of the Court, even if the entire prosecution case laid through FIR, 161 Cr.P.C. statements and charge sheet is accepted uncontroverted, does not disclose any offence against a particular accused, then the Court can quash the proceedings against him holding that continuation of the proceedings against the said accused would be nothing but sheer abuse or process of law. Keeping this guideline in view, the entire record placed by learned Additional Public Prosecutor is perused.

b) As already stated supra, the record placed by the prosecution shows the cruel treatment meted out by A1 to complainant and her children at USA and also in India. So far as 1st petitioner/A2 who is the father of A1 is concerned, the allegations against him as per the FIR and charge sheet are that when the complainant came from USA to India on 26.11.2011 and went to her in laws house, A1 also came down to India on the fear that she may report about his cruel treatment in USA to his parents and when the complainant informed

about the behaviour of A1 to his parents, A2 proclaimed that his son is a man and he can do anything. This is the allegation made against A2 as per FIR and charge sheet. However, in 161 Cr.P.C. statement of L.W.1 we do not find such allegations against A2. Be that it may, in 161 Cr.P.C. statement LW3—Dr. Sunil Bablu—brother of complainant has stated as if several times the father, mother, sister and brother of A1 threatened that they would kill the complainant if she does not give additional dowry. However, in 161 Cr.P.C. statement of complainant we do not find such a threat allegedly offered by 1st petitioner/A2.

c) Sofaras 3rd petitioner/A4 who is the brother of A1 is concerned, there was absolutely no overtacts of cruelty and ill-treatment alleged against him. However, as stated supra, LW3 in his statement stated as if the parents, sister and brother of A1 threatened the complainant to kill her if she does not give additional dowry. But this type of statement was surprisingly not made by *defacto* complainant who is the real victim.

d) Sofaras A5 who is the sister of A1 is concerned, in the FIR it is alleged that after marriage the complainant joined the matrimonial home. The family members of A1 displayed hostile attitude towards her and none of them talked to her and she was treated like a total stranger with contempt. She further alleged, her mother-in-law and sister-in-law tortured her physically and mentally on the ground that the amount given by her father is a paltry sum and she should get more money from her father to help A1 to set up his business. Most importantly, she alleged that they beat her mercilessly and abused her in filthy language. In that backdrop, her husband left India for USA in July, 2002. From then till December, 2002 when she joined him under dependant visa, her husband did not speak to her and she literally lived in fear of being abandoned and socially stigmatized on account of silence of her husband.

e) So, when the allegations against A2, A4, A5 are intensely analyzed, there is absolutely no allegation against 3rd petitioner/A4

as already mentioned supra. The allegations against A2 are concerned, they would disclose as if A2 proclaimed that their son is a male and he would behave as he like. Except that no overtacts of ill-treatment or cruelty is alleged against him. However, 4th petitioner/A5 is concerned, specific overtacts of cruelty and ill-treatment are made out against her and her mother (A3) also. So, in the ultimate analysis, this Court is of the considered view that continuation of the proceedings against A2 and A4 would amount to sheer abuse of process of law as there is no tangible material to sustain the charges.

8) In similar case, the Apex Court in ***Geeta Mehrotra v. State of UP*** observed thus:

“19. Coming to the facts of this case, when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.”

So, in the instant case also this Court does not find any tangible material showing active involvement of A2—the father and A4—the brother of A1. Hence, the proceedings against them can be expunged. However, 4th petitioner/A5 is concerned, since specific overtacts are attributed against her, she has to face trial and prove her innocence.

9) In the result, this Criminal Petition is partly allowed and proceedings in C.C.No.283 of 2013 on the file of XIII Additional Chief Metropolitan Magistrate, Nampally, Hyderabad are quashed sofaras A2—*Arvind Morarji Chawda* and A4—*Vasudev Chawda* are concerned. The Criminal Petition is dismissed sofaras 4th petitioner/A5—*Radhika Gohil* is concerned.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 10.04.2015

Murthy