

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

-

Criminal Petition No.8935 of 2014

ORDER:

This is a Criminal Petition under Section 482 of the Code of Criminal Procedure ('the CrPC', for brevity) by the petitioners, who are the respondents in D.V.C.No.77 of 2014, requesting to quash the proceedings against them in said D V case on the file of III Metropolitan Magistrate, Erramanzil, Hyderabad.

2. I have heard the submissions of the learned counsel for the petitioners, the learned counsel for the 2nd respondent/applicant in the DV Case and the learned Public Prosecutor representing the 1st respondent-State. I have perused the material record. The parties in this criminal petition shall hereinafter be referred to as the petitioners and the respondent as they are arraigned in these proceedings for convenience and clarity.

3. The introductory facts, in brief, are as follows:

The 1st petitioner is the husband of the 2nd respondent. Their marriage was performed on 02.03.2012. The petitioners 2 and 3 are the parents-in-law of the 2nd respondent. After the marriage, the 2nd respondent had joined the 1st petitioner/her husband at the matrimonial home at Kalyani and stayed with the 1st petitioner-her husband and her in-laws, the petitioners 2 and 3 herein, up to 16.04.2012. However, on 18.03.2012, the 1st petitioner had left for his work place, i.e., Noida in Ghaziabad District of Delhi. Later, there was total estrangement and the 2nd respondent started living with her parents. While so, she had filed, apart from other cases, the present D V case No.77 of 2014 against the petitioners. In the said petition, she had *inter alia* stated as follows: 'During the short period of stay at the place of her parents-in-law, she was denied proper food and she was forced to eat stale food, which was kept in the Refrigerator for more than four days. On eating such food, which did not fit her body, she became sick; and when she had

pleaded that she cannot eat such stale food, the petitioners 2 and 3 had abused her stating that she cannot expect better food because she did not bring dowry. They had further stated that they had committed a great blunder in performing the marriage of the 1st petitioner with her and that the 1st petitioner would have got a dowry of Rs.10 lakhs had he married any other woman. When the 2nd respondent had pleaded that her father is a retired person and that it is not proper on their part to torture her after the marriage, all the petitioners grew violent and had abused her. When she was bed ridden after eating stale food, she came down to Hyderabad on 16.04.2012. When she was seriously ill, the petitioners 2 and 3 did not provide any treatment and had totally neglected her. They had further stated that getting her treated is a waste of money. They were cruel. The 1st petitioner had abused and coerced the 2nd respondent for taking a high paying job and had stated that no more money would be given to her in the future. Having stayed with her father and recouped her health from 16.04.2012 to 17.07.2012, the 2nd respondent called on the petitioners. However, they had abused her and had stated that because of their fate they have got the 2nd respondent in their house. On 18.07.2012, the 2nd respondent and her brother, Mukherjee, went to Delhi and she had joined the 1st petitioner. After the 2nd respondent joined the 1st petitioner at Noida, Delhi, her brother, who had stayed along with them for four days, was ill-treated. The 1st petitioner did not talk to the brother of the 2nd respondent and asked the 2nd respondent as to whether her father had sent any money. The 2nd respondent had felt very sad on account of the cruel treatment meted out to her brother. During her stay with the 1st petitioner at Noida she was humiliated and tortured and was beaten on several occasions by the 1st petitioner for the reason that her father did not pay any additional dowry and did not give costly gifts to the 1st petitioner at the time of the marriage. The 1st petitioner had demanded a sum of Rs.10 lakhs as dowry. He had stated that her father should at once sell the only plot held in the name of the brother of the 2nd respondent in Srikakulam and pay

the sale proceeds to him. He had further stated that if the same is not done, he would further harass her; and thus he used to regularly abuse her in filthy language. The 1st petitioner sent the 2nd respondent to Kalyani, where her parents-in-law are residing since he had to leave for UK. The 2nd respondent had left for Kalyani as directed by the 1st petitioner. On return of the 1st petitioner from UK, the situation turned very ugly at Kalyani. She had stayed with her parents-in-law up to 15th August 2012. During that period, they had shown hell on the earth to the 2nd respondent. She was not given food and was tortured and abused regularly and the 1st petitioner called her on phone and had abused her and asked her as to when her father would arrange Rs.10 lakhs additional dowry. She was on the verge of committing suicide for lack of peace of mind. She could not go to her father as she was unwilling to become a burden on him even after the marriage. The 1st petitioner had filed a matrimonial case for restitution of conjugal rights in MAT suit No.1080 of 2012 before the Fast Track Court, at Kalyani, West Bengal. She had filed a transfer petition before the Supreme Court and had obtained stay. The 1st petitioner called her on phone and threatened her that he will destroy her passport and educational certificates and will not return her gold. After filing of the criminal petition 9295 of 2013 before this court, the original certificates, passport, Adhar card were returned to the 2nd respondent. She was deprived of seeking a job for 16 months and she became totally bankrupt and jobless. She had to depend upon her father during the said period. On 19.02.2013 at about 12.10 hours, the 1st petitioner had called the 2nd respondent on her mobile and had stated that he had recorded their bedroom activities and that he would circulate the same through CDs and other portals and that he would destroy her life to teach her a lesson. Thus, the 2nd respondent was thrown out of the matrimonial home on 16.08.2012 and since then, she is residing with her father. She had filed a criminal complaint before the CCS, Women Police Station, Nampally, Hyderabad and the same was registered as a case in Crime No.82 of 2013 against the petitioners herein for the offences punishable under Sections 498-A of the IPC and Sections 3 and 4 of the

Dowry Prohibition Act.’ Pleading so in the DV case, the 2nd respondent had claimed the reliefs viz., monthly maintenance of Rs.40,000/-, medical expenses of Rs.35,000/-, compensation of Rs.3,00,000/- towards mental torture and emotional distress caused by the petitioners, Rs.15,000/- per month towards rent for alternate accommodation, return of her gold jewellery etcetera, Rs.25,00,000/- towards permanent settlement in her life besides other reliefs and a protection order prohibiting the respondents therein from committing acts of domestic violence.

4. Now, the case of the petitioners for quashing the proceedings in DV case, in brief, is this: ‘The marriage of the 2nd respondent and the 1st petitioner admittedly took place on 02.03.2012. She had lived with the parents-in-law at West Bengal and Noida, U.P up to 30.07.2012. Her total stay in matrimonial home is only for five months. Out of these five months, she had lived with her husband only for 28 days. She is claiming Rs.28,75,000/-. She had also filed M.C.No.391 of 2013 before the Additional Family Court, Nampally claiming Rs.40,000/- per month towards maintenance. She had filed a criminal case in Crime No.82 of 2013 against all the petitioners. She had also filed O.P.No.1602 of 2013 for divorce against her husband before the Additional Family court, City Civil Courts, Hyderabad. The 2nd respondent had abused the beneficial provisions of law meant for the benefit of the really aggrieved women. She had deserted the matrimonial home on 30.07.2012. The DV case was filed on 11.06.2014, i.e., after about two years from the date of desertion. The Act provides for punishment of one year imprisonment for breach of protection order under Section 468 of CrPC. When the punishment is one year, the limitation for filing the complaint is one year. The petitioners 2 and 3 are aged persons and heart patients living in West Bengal. They were implicated falsely in this case to harass them. No relief is claimed against them and they are not necessary parties to the DV case.’

5. At the time of hearing, the learned counsel for the petitioners while reiterating the pleadings in the petition had submitted that the 2nd respondent

had hardly lived with the 1st petitioner for about less than a month and with the parents-in-law for about five months and that on her own, she had deserted the matrimonial home on 30.07.2012 and that even according to her own pleading in the DV case, she was thrown out of the matrimonial home on 16.08.2012 and that she had filed a maintenance case, a criminal case and a divorce petition against her husband; and, not having been satisfied with all these cases, she had filed the present DV case in April 2014, i.e., almost about two years after the desertion and that the present petition is only intended to harass her husband and also her parents-in-law, who are residents of Kalyani of West Bengal and that the petition is barred by the law of limitation and that the continuation of the proceedings against the petitioners is an abuse of process of Court.

6. On the other hand, the learned counsel for the 2nd respondent had submitted that mere delay in approaching a court of law is not itself a ground for dismissing the case and that the plea based on bar of limitation is not a pure question of law and it is a mixed question of fact and law and that even if the plea of bar of limitation has to be considered, it has to be considered as a relevant circumstance at the time of reaching the final verdict but, not at this stage and that on the ground of bar of limitation, a case under the provisions of the Act cannot be dismissed at the threshold and that if the DV case is dismissed at the threshold, irreparable injury would ensue to the 2nd respondent and that the plea of limitation being a mixed question of fact and law, the DV case cannot be thrown out at the threshold and hence, there is no merit in the petition of the petitioners. The learned counsel for the 2nd respondent had also submitted that the inherent power under Section 482 of the CrPC has to be exercised sparingly with circumspection in rarest of rare cases and that if at this stage, the DV case is dismissed, it would amount to scuttling justice at the threshold and that no time limit is fixed for filing proceedings under the special Act and that the averments in the petition of the 2nd respondent would show that she is the aggrieved person and that she had admittedly lived together in a shared household with all the petitioners at

the relevant time.

7. In the case on hand, not only the relationship but the fact that there is estrangement between the spouses is admitted. And, even according to the pleadings of the 2nd respondent, she is living with her father at Hyderabad from 16.08.2012 and subsequently, there is no reunion. Apart from other cases filed, she had filed the present DV case in April, 2014. Therefore, admittedly, the DV case is filed about two years after the estrangement between the spouses. Even according to the case of the 2nd respondent, she had not lived together in a shared household with any of the petitioners after 16.08.2012. Therefore, the main allegation that on 19.02.2013 about 12.10 hours, the 1st petitioner called on the 2nd respondent on her mobile and threatened by saying that he had recorded the bed room activities and that he would circulate the same through CDs and would destroy her life and teach a lesson, cannot be countenanced, more particularly, when the said allegation is an omnibus allegation without any details of numbers of mobile phones. Even from that date, i.e., 19.02.2013, the DV case is not filed within one year.

8. The learned counsel for the petitioners had placed reliance on **Inderjit Singh Grewal v. State of Punjab and another**^[1]. In this cited case, the facts are as under: 'The appellant and the 2nd respondent got married on 23.09.1998 according to their caste customs and that out of their lawful wedlock, a son was born on 05.10.1999 and being unable to pull on well together because of the temperamental differences, divorce was obtained under Section 13-B of the Hindu Marriage Act, 1955 and the marriage was dissolved by mutual consent on 19.09.2007. The wife had filed a complaint against her husband alleging that they had obtained divorce by playing fraud upon the court. The husband had filed before the High Court an application under Section 482 of the CrPC for quashing the complaint No.87/02/09 dated 12.06.2009 filed by the 2nd respondent under Section 12 of the Act. The High Court had dismissed the said petition. Therefore, the husband/appellant had filed a criminal appeal.' In the above stated factual background, the Hon'ble

Supreme Court had held as follows:

24. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 CrPC, that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the Act 2005 read with Rule 15(6) of The Protection of Women from Domestic Violence Rules, 2006 which make the provisions of CrPC applicable and stand fortified by the judgments of this Court in *Japani Sahoo v. Chandra Sekhar Mohanty* 2007 (2) ALD (CrI.) 596 (SC) SC = AIR 2007 SC 2762 and *Noida Entrepreneurs Association v. Noida and Ors.* (2011) 6 SCC 508.

25. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the Act 2005 is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an offence, the court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same.

Per contra, the learned counsel for the 2nd respondent had placed reliance on a decision of the High Court of Bombay in **Ritesh Ratilal Jain v. Sandhya**^[2]. The facts of the cited case show that a proceeding was filed for quashing and setting aside the proceeding which is filed for some reliefs under the provisions of the DV Act by the 1st respondent therein. The High Court of Bombay held that no time limit is fixed for filing of such proceedings, provided the complainant is the aggrieved person as defined under the Act.

The learned counsel for the 2nd respondent had also placed reliance on the following decisions in support of the contentions on the issue of limitation and the inherent powers of this Court: **Som Mittal v. Govt. of Karnataka**^[3], **Japani Sahoo v. Chandra Sekhar Mohanty**^[4], **The Assistant Collector of the Customs, Bombay v. L.R.Melwani**^[5] and the decision of the Privy Council in **Alexander Rodger, Charles Carnie and another v. The Comptoir D'Escompte De paris and another**^[6]. The learned counsel for the 2nd respondent had contended that if the period of limitation is to be

counted from the date of desertion, a wife like the 2nd respondent would be denied an opportunity of seeking reliefs even in a case of economic abuse. In reply, the learned counsel for the petitioners had submitted that when the right to claim a relief under the Act is barred by law, in case of any requirement of money, the wife can always seek remedies under the provisions of the other beneficial enactments like the Family Courts Act or Maintenance legislations or the Code of Criminal Procedure or under the common civil law and that therefore, there is no merit in the contention advanced on behalf of the 2nd respondent-wife.

9. Having regard to the admitted facts and the ratio laid down in the decision of the Hon'ble Supreme Court, this Court is of the well-considered view that the DV case, which is filed about two years after the accrual of the cause of action is barred by the law of limitation and therefore, continuation of proceedings against the petitioners is an abuse of process of Court. In **State of Haryana v. Bhajan Lal** ^[7], the Hon'ble Supreme Court had held that 'Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party the inherent power under section 482 of the CrPC can be exercised by this Court in quashing the proceedings.

10. Viewed thus, this Court finds that this is a fit case to grant the relief to prevent the abuse of the process of the Court.

11. In the result, the Criminal Petition is allowed and the proceedings against the petitioners in DVC No.77 of 2014 on the file of III Metropolitan Magistrate, Erramanzil, Hyderabad, are hereby quashed.

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

19th January 2015
RAR

[\[1\]](#) 2012(1) ALD (CrI.) 496 (SC)
[\[2\]](#) 2013 CrI.L.J 3909
[\[3\]](#) AIR 2008 SUPREME COURT 1126
[\[4\]](#) AIR 2007 SUPREME COURT 2762
[\[5\]](#) AIR 1970 SUPREME COURT 962 (1)
[\[6\]](#) Vol.III Cases in the Privy Council 465
[\[7\]](#) 1992 Cr.L.J 527