

*** THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

+W.P.No.26562 of 2008

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% 9-2-2015

Mohd. Abdul Qavi Abbassi and others.

Petitioners

Vs.

\$ State of A.P., rep. by its Prl. Secretary,
Home Department, Secretariat, Hyderabad & another.

Respondents

! Counsel for the Petitioners: Sri D.GOVERDHANA CHARY

Counsel for the Respondent No.1: G.P. FOR HOME

Counsel for the Respondent No.2 : Sri ALI FAROOQ

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> Head Note:

? Cases referred:

1. (2008) 14 SCC 1
2. AIR 2002 SC 3551
3. 2003(1) ALD (CrI.) 736 (AP)
4. (2008) 14 SCC 1
5. 1992 Supp. (1) SCC 335

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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ORDER:

This is an application filed under Article 226 of the Constitution of India, seeking Writ of Certiorari to call for the records relating to the charge sheet filed in C.C.No.55/2006 on the file of the Court of the XIII Additional Chief Metropolitan Magistrate, Hyderabad and to quash the same.

2. The marriage of the 1st petitioner with the 2nd respondent took place as per Muslim Rites and Customs on 30.7.2003. According to the petitioner, 2nd respondent, at the instigation of her parents started, harassing the petitioner and wanted a separate family home to be set up away from the petitioner's parents, which the petitioner did not accede and 2nd respondent aggravated the situation and 2nd respondent lodged a complaint against the petitioner and his parents and sisters, alleging harassment and the Women Police Station, South Zone registered Crime No.12/2005 under Sections 498-A read with 34 IPC and also under Sections 4 & 6 of the Dowry Prohibition Act. Police filed charge sheet in C.C.No.55/2006 on the file of the Court of the XIII Additional Chief Metropolitan Magistrate, Hyderabad for the offences punishable under Sections 498A r/w section 34 IPC and Sections 4&6 of D.P. Act against A1, A2, A3 and A6, who are the petitioners herein and deleted the names of A4 & A5.

3. In the above back ground, the present writ petition came to be filed by A1 to A3 & A6 praying this Court to quash C.C.No.55/2006. This Court issued rule nisi on 22.12.2008 and granted interim stay in W.P.M.P.No.34775/2008. Responding to the rule nisi, counter affidavit is filed by 2nd respondent, denying the averments and the allegations in the writ affidavit and in the direction of justifying the charge sheet and the allegations contained therein.

4. Heard Sri D.Goverdhana Chary, learned counsel for the

petitioners and learned Government Pleader for Home for Respondent No.1 and Sri Ali Farooq, learned counsel for Respondent No.2, apart from perusing the material available on record.

5. Contentions/submissions of the learned counsel for the petitioners:

(1) The very initiation and continuation of the prosecution against the petitioners by filing charge sheet is a patent abuse of process of law and opposed to the very spirit and object of the provisions of Sections 498A, 34 IPC and Sections 4 & 6 of the Dowry Prohibition Act.

(2) Marriage took place on 30.7.2003 and the petitioner obtained divorce on 21.12.2004 and 2nd respondent lodged the complaint on 15.1.2005.

(3) The 2nd respondent received all her articles and acknowledged the receipt of the same on 15.3.2004 and 1st petitioner deposited the dower amount of Rs.54,000/- with Qazi and 2nd respondent also received the same on 17.5.2006.

(4) The 2nd respondent contacted another marriage on 15.10.2008.

(5) The only independent witness of the prosecution i.e., L.W.4 died on 14.10.2007, as such the further continuation of prosecution would be a futile exercise.

(6) Complaint should not be for the purpose of wrecking vengeance against the petitioners and should be bonafide one.

To bolster his submissions and contentions, learned counsel for the petitioner, places reliance on the judgment of the Hon'ble Apex Court in **Rukmini Narvekar v. Vijaya Satardekar and others**^[1].

6. Contentions/submissions of counsel for 2nd respondent:

(1) In view of specific allegations of harassment made against the petitioners and as the same are required to be enquired into by way of full fledged trial and enquiry, the present writ petition is not maintainable.

(2) The veracity or otherwise of allegations cannot be gone into under Article 226 of the Constitution of India.

(3) The alleged offences took place prior to the divorce obtained by the 1st petitioner, as such subsequent developments or aspects cannot be the basis for the petitioners to ask for quashing.

(4) The receipt of the articles is disputed and no original receipt, evidencing payment of dower amount is filed.

(5) There is no intimation of divorce and the divorce certificate by itself does not effect the rights of a Muslim Women unless the same is communicated.

(6) The alleged offences are the offences against the society and the public at large.

(7) The death of L.W.4 is of no consequence at all.

In support of his case, the learned counsel for 2nd respondent places reliance on the following judgments.

(1) **Shamim Ara v. State of U.P. and another** ^[2].

(2) **Syed Ali Azam v. Station House Officer, Banjara Hills Police Station, Hyderabad and others** ^[3].

(3) **Rukmini Narvekar v. Vijaya Satardekar and others** ^[4].

7. The offences alleged in the present case as per the charge sheet filed by the Police are under Sections 498-A and 34 IPC and Sections 4 & 6 of the Dowry Prohibition Act and the said offences are the social evils and are the offences against the public at large. One of the greatest

features of our Indian Culture is joint family system. So many difficulties which we come across in our day to day life and also of great magnitude can be successfully got over and averted with the strength in the joint family system. We can safeguard our culture and civilization by having good and strong joint families. Strong joint families are possible only when the relations between the husband and wife who are the two wheels of a family chariot are harmonious and peaceful. Therefore, our efforts should necessarily be in the direction of protecting the family system by necessary legislations. The provisions of 498-A and 4 & 6 of the Dowry Prohibition Act are intended for protecting the women from the hands and clutches of unscrupulous elements in our society. At this juncture a great saying of Aryans, "*Yethra Naaryanthu Poojyanthe Ramanthe Tatradevetha*", which means "*Where Women are respected there the Gods reside*" cannot be lost sight of.

8. The issue in the present writ petition is required to be considered in the light of the above aspects also. In the instant case the marriage between the 1st petitioner and the 2nd respondent took place on 30.7.2003 as per the Muslim Rites and Customs. As per the petitioners, the 2nd respondent started harassing them at the instigation of her parents for having a separate family home away from her parents-in-law and as the 1st petitioner did not agree for the same, 2nd respondent lodged the complaint only for the purpose of harassing the petitioners. The principle contentions of the petitioners in the present writ petition are that the 1st petitioner obtained divorce on 21.12.2004 and the 2nd respondent received her articles on 15.3.2004 and lodged the complaint on 15.1.2005 and 2nd respondent received the dower amount on 17.5.2005 and contacted another marriage on 15.8.2008.

9. At this juncture, it may be highly appropriate and apposite to refer to the allegations in the charge sheet filed by the Police against the petitioners herein. It is alleged in the charge sheet that as per the demand of defacto complainant's husband and parents-in-law, her

parents paid Rs.1.00 lakh prior to marriage and on the day of marriage Jahez articles worth Rs.2.00 lakhs and 20 tolas of gold were given to her husband. The charge sheet further alleges as follows:

“Her parents also arranged a dinner for 800 guests by spending huge amount on the demand of her husband and in laws. After the marriage, she joined the company of her husband and in laws with the above said jahez articles. She was treated well for about 3 months thereafter her husband on the instigation of her in laws started harassing and ill treating her to bring additional dowry.

On 2.12.2004 her husband once again on the instigation of her in laws demanded the remaining amount of additional dowry Rs.1,50,000/-, when she refused to get the said amount her husband brought a Revolver and threatened her to kill if she did not oblige to his demand. He forcibly took her signatures on some blank stamp and plain papers. Her parents in law caught hold of her hair and beat her and her sisters in law encourage them to kill her as they can perform another marriage of her husband with some other lady. But on her hues and cries they left her sent her to her parents house in wearing apparels, since then she is residing with her parents. Several times her mother in law tried to kill her by pressing her neck. In the month of December 2004 her parents and elders went to the house of accused persons to pacify the matter, but they refused to talk to them until their dowry demand is fulfilled, they will not allow her to enter into their house and further threatened her to kill. He she is apprehending danger to her life in the hands of her husband and in laws. She further submits that all her jahez articles and gold ornaments are in the custody of her husband and in laws and they are not allowing her to use the same. She requested action against her husband and in law.”

10. In view of these allegations in the charge sheet, the contention that the defacto complainant received her articles and acknowledged the same on 15.3.2004 i.e. prior to pronouncement of divorce and date of complaint on 15.1.2005 cannot be considered as the basis nor it can be a foundation for quashing the FIR at this stage. Though it is one of the grounds of attack that on 17.5.2005 2nd respondent received the dower amount of Rs.54,000/- also, the receipt filed in support of the same does not bear the signature of 2nd respondent nor the original receipt is filed before this Court, for the reasons best known to the petitioners. Another significant aspect is the alleged offences took place prior to

pronouncement of divorce and there is no evidence to show that the information of divorce was communicated prior to the complaint dated 15.1.2005.

11. In this context, it would be apt to refer to the judgment of the Hon'ble Supreme Court in **State of Haryana and others v. Ch.Bajanlal and others**^[5]. In the said judgment, the Hon'ble Apex Court, after considering various aspects in elaboration, laid down the following guidelines for the purpose of consideration of application of this nature under Article 226 of the Constitution of India or under Section 482 Cr.P.C.

“1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section [156\(1\)](#) of the Code except under an order of a Magistrate within the purview of Section [155\(2\)](#) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section [155\(2\)](#) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. 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.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an

ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

12. In *Rukmini Narvekar v. Vijaya Satardekar* (1 supra), the Hon'ble Supreme Court considered the scope of Article 226 of the Constitution of India and Section 482 Cr.P.C. and while referring to the judgment in *State of Haryana and others v. Ch.Bajanlal* (5 supra), at paragraphs 13, 15 & 37 held as under:

“13. The law as to when criminal proceedings can be quashed by the High Court in exercise of powers under Section [482](#) Cr.P.C or Article [226](#) of the Constitution has been laid down by this Court in *State of Haryana and Ors. v. Bhajan Lal and Ors.* 1992CriLJ527 . This decision has been followed subsequently by a series of decisions e.g. *Pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors.* 1998CriLJ1 , *Minu Kumari and Anr. v. State of Bihar and Ors.* 2006CriLJ2468 , etc.

15. The seventh ground which entitles the High Court to quash the criminal proceedings is stated in *Bhanjan Lal's* case (supra) as follows:

Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

37. The larger Bench did not leave any scope for a different interpretation of the provisions of Section [227](#) as is now being made. Incidentally, the very same arguments which have been advanced by Mr. Lalit before us on behalf of the accused, were also advanced by learned Counsel before the larger Bench and the same were negated as far as Section [227](#) Cr.P.C. is concerned. However, in paragraphs 21 and 29 of the judgment the larger Bench did indicate that the width of the powers of the High Court under Section [482](#) Cr.P.C. and Article [226](#) of the Constitution is unlimited whereunder in the interest of justice the High Court could make such order as may be required to secure the ends of justice and to prevent abuse of the process of any court.”

13. In *Syed Ali Azam v. Station House Officer, Banjara Hills Police Station, Hyderabad* (3 supra), this Court at paragraphs 6, 8, 11 & 12, held as follows:

“6. In *R.P.Kapur v. State of Punjab*, AIR 1960 SC 866, the Supreme Court pointed out the three circumstances or eventualities when this Court, in exercise of powers under Section 482 of the

Code of Criminal Procedure, 1973, can quash a criminal complaint or a criminal case. These are-

1. Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.
 2. Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not.
 3. Where the allegations made against the accused person do not constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or when there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not.
8. In all these decisions it was laid down that while quashing the criminal proceedings at the stage of investigation the extraordinary power under Article 226 of the Constitution should be exercised sparingly and with circumspection in rarest of rare cases.
11. So also, the following observations in *State of H.P. v. Pirthi Chand* (AIR 1996 SC 977) demand excerption.

When the remedy under Section 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power under Article 226 since efficacious remedy under Section 482 of the Code is available. When the Court exercises its inherent power under Section 482, the prima facie consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the Court. When Investigating Officer spends considerable time to collect the evidence and places the charge sheet before the Court, further action should not be short-circuited by resorting to exercise inherent power to quash the charge sheet. The social stability and order requires to be regulated by proceeding against the offender as a whole.

This cardinal principle should always be kept in mind before embarking upon exercising inherent power. The accused involved in an economic offence destabilizes the economy and causes grave incursion on the economic planning of the State. When the Legislature entrusts the power to the police officer to prevent organized commission of the offence or offences involving moral turpitude or crimes of grave nature and are entrusted with power to investigate into the crime in intractable terrains and secretive manner in concert, greater circumspection and care and caution should be borne in mind by the High Court when it exercises its inherent power. Otherwise, the social order and security would be put in jeopardy and to grave risk.

12. The decision in *State of Haryana v. Bhajan Lal* (supra) was subsequently followed in *Hridaya Ranjan Prasad Verma v. State of Bihar*, (2000) 4 SCC 168, and *Mahavir Prasad Gupta v. State of NCT of Delhi*, (2000) 8 SCC 115. The following observations from *Mahavir Prasad Gupta v. State of NCT of Delhi* (supra) are apt.

The law on the subject is very clear. In the case of *State of Bihar v. Murad Ali Khan* [(1988) 4 SCC 655 = 1989 SCC (Cri) 27] it has been held that jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised sparingly and with circumspection. It has been held that an initial stage a Court should not embark upon an inquiry as to whether the allegations in the complaint are likely to be established by evidence or not. Again in the case of *State of Haryana v. Bhajan Lal* [(1992) Supp (1) SCC 335 = 1992 SCC (Cri) 426] this Court has held that the power of quashing criminal proceedings must be exercised very sparingly and with circumspection and that too in the rarest of rare cases. It has been held that the Court would not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. It has been held that the extraordinary or inherent powers did not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice”.

14. In *Shamim Ara v. State of U.P. and another* (2 supra), the Hon'ble Supreme Court at paragraphs 14, 16 and 17 held as under:

“14. We are in respectful agreement with the abovesaid observations made by the learned Judges of High Courts. We must note that the observations were made 20-30 years before and our country has in recent times marched steps ahead in all walks of life

including progressive interpretation of laws which cannot be lost sight of except by compromising with regressive trends. What this Court observed in *Bai Tahira v. Ali Hussain*, dealing with right to maintenance of a muslim divorce is noteworthy. To quote:

"The meaning of meanings is derived from values in a given society and its legal system. Article [15\(3\)](#) has compelling,compassionate relevance in the context of Section [125](#) and the benefit of doubt, if any, in statutory interpretation belongs to the ill-used wife and the derelict divorce. This social perspective granted, the resolution of all the disputes projected is easy. Surely, Parliament, in keeping with Article [15\(3\)](#) and deliberate by design, made a special provision to help women in distress cast away by divorce. Protection against moral and material abandonment manifest in Article [39](#) is part of social and economic justice, specified in Article [38](#), fulfillment of which is fundamental to the governance of the country (Article [37](#)). From this coign of vantage we must view the printed text of the particular Code." (para 7)

"Law is dynamic and its meaning cannot be pandemic but purposeful" (para 12)

16. We are also of the opinion that the talaq to be effective has to be pronounced. The term 'pronounce' means to proclaim, to utter formally, to utter rhetorically, to declare to, utter, to articulate (See Chambers 20th Century Dictionary, New Edition, p.1030). There is no proof of talaq having taken place on 11.7.1987. What the High Court has upheld as talaq is the plea taken in the written statement and its communication to the wife by delivering a copy of the written statement on 5.12.1990. We are very clear in our mind that a mere plea taken in the written statement of a divorce having been pronounced sometime in the past cannot by itself be treated as effectuating talaq on the date of delivery of the copy of the written statement to the wife. The respondent No. 2 ought to have adduced evidence and proved the pronounced of talaq on 11.7.1987 and if he failed in proving the plea raised in the written statement, the plea ought to have been treated as failed. We do not agree with the view propounded in the decided cases referred to by Mulla and Dr. Tahir Mahmood in their respective commentaries, wherein a mere plea of previous talaq taken in the written statement, though unsubstantiated, has been accepted as proof of talaq bringing to an end the marital relationship with effect from the date of filing of the written statement. A plea of previous divorce taken in the written statement cannot at all be treated as pronouncement of talaq by the husband on wife on the date of filing of the written statement in the Court followed by delivery of a copy thereof to the wife. So also the affidavit dated 31.8.1988, filed in some previous judicial proceedings not inter parte, containing a self-serving statement of respondent No. 2, could not have been read in evidence as relevant and of any

value.

17. For the foregoing reasons, the appeal is allowed. Neither the marriage between the parties stands dissolved on 5.12.1990 nor does the liability of the respondent No. 2 to pay maintenance comes to an end on that day. The respondent No. 2 shall continue to remain liable for payment of maintenance until the obligation comes to an end in accordance with law. The costs in this appeal shall be borne by the respondent No. 2.”

15. In view of various factual controversies as indicated in the preceding paragraphs and in view of the guidelines and the law laid down in the above referred judgments, this Court is not inclined to interdict the process of enquiry and adjudication in the criminal case and in fact as per the above authoritative pronouncements of the Hon'ble Apex Court and this Court, the same is impermissible. This Court also finds sufficient force in the submission of the learned counsel for 2nd respondent that the marriage of the 2nd respondent in the year 2008 is absolutely of no consequence and cannot be a ground for quashing the FIR, when admittedly the offences alleged took place prior thereto and as the offences are against the society and public at large. As rightly pointed out by the learned counsel for 2nd respondent that in the definite opinion of this Court, this is not a rarest of rare cases, warranting interference of this Court under Article 226 of the Constitution of India.

16. For the aforesaid reasons, the writ petition is dismissed. As a sequel, the miscellaneous petitions, if any, shall stand dismissed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 9.2.2015

Note:

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