

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P.No.1643 of 2014

ORDER :

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the Petitioners-A.1 and A.2 to quash the proceedings in C.C.No.358 of 2013 on the file of the I Additional Judicial Magistrate of First Class, Kadapa, taken cognizance for the offences punishable under Sections 498-A and 506 of I.P.C. read with Sections 3 and 4 of the Dowry Prohibition Act (for short, 'the D.P.Act') from the police final report which is outcome of report of the defacto-complainant/2nd respondent in Cr.No.1 of 2013 registered on 02.01.2013 against 6 persons including the petitioners/A.1 and A.2 father-in-law and mother-in-law of defacto-complainant, A.6 V.Venkata Krishna Reddy- husband of the defacto-complainant besides A.3 paternal uncle, A.4 maternal uncle and A.5 brother-in-law of A.6(husband of defacto-complainant) respectively. The report of the defacto complainant reads that She studied M.C.A. and she is elder of the two issues of her parents and the marriage of her with A.6 of Badwel town was performed on 30.12.2010 on Rail Shubham kalyana mantapam, Kadapa and at the time of marriage, 25 lakhs of cash as dowry, 5 lakhs of cash towards Adapaduchulanchanalulu and 35 tulas of gold though demanded by the accused persons, 15 lakhs of dowry and 3 lakhs of Adapduchulanchanalulu besides 35 tulas of gold was given by her parents and she was treated first day well by her husband and in-laws, however thereafter A.1 to A5 all together started harassing her saying had they settled Anantapur alliance, they could get 50 lakhs dowry and 50 tulas of gold but her parents not given the dowry they accepted. Her husband-A.6 also used to harass her physically and mentally with the support of her parents. It is also averred that all the accused persons demanded her to give her password of bank account and E-

mail ID and ill-treated her and her husband used to beat her and unable to bear the harassment, she gave away 35 tulas of gold given by her parents to her in-laws (A.1 and A.2) but still they used to harass her demanding 10 lakhs more as dowry. It was while so, her husband left America for a job and even thereafter he was therefrom telephoning or sending messages demanding additional dowry and ill-treating mentally besides the ill-treatment of other accused, for which she, unable to bear harassment, left her in-laws' house and went to parents house and even thereafter they all came to her parents house and demanded her for additional dowry by threatening to do away with her if she returned back without bringing additional dowry and she filed matrimonial petition on the file of the Family Court, Kadapa, for restitution of conjugal rights against her husband who was at America and it is about more than one and half year after filing of the petition, her husband did not turn up to appear before the Court and after that all the accused persons came to her parent's house again and demanded her to withdraw the restitution of conjugal rights case, else they do away with her and on 21.12.2012 as she was to attend the Court for adjournment, she started at Bangalore on 20.12.2010 night to reach Kadapa and on 21.12.2012 at about 6.A.M when she got down from the bus at Kadapa, A.1(1st petitioner in the present petition), A.3 and A.4 in this case way laid her and threatened to withdraw the case, else she would be done away with and in the meantime her brother Sunil Kumar Reddy, came there and on seeing him they left and that there is a life apprehension to her in their hands, hence to take action.

2. It is from the said report, the police, having registered crime against the 6 accused persons, filed chargesheet only against the A.1 to A.5 who already obtained anticipatory bail and by showing abscondence of A.6 since at America deferred the case against the A.6 to complete the investigation against him and filed final report.

3. The learned Magistrate taken cognizance of the case therefrom

against the accused might be as per the final report and allotted the C.C.No.358 of 2013. In the course of investigation, the L.Ws.1 to 6 examined by the investigating officer and the defacto-complainant and her father, brother, three more witnesses i.e. elders to the marriage of presenting of dowry and harassing the complainant of Kadapa town and Chennur village respectively were also enquired.

4. The contention of the learned counsel for the petitioners 1 and 2 in seeking to quash proceedings in the said C.C.No.358 of 2013 is that the allegations of any harassment or dowry demands by the accused persons 1 and 2 in particular or 1 to 5 in general is baseless or false. It is introduced with a view to harass the accused persons and in fact A.6 and the defacto-complainant not stayed together since 7th January, 2011 when he left USA for his job and thereby the allegations of any demand for dowry or harassment are not true or does not arise, in fact the defacto-complainant never showed any inclination to join the matrimonial home and company of A.6 including by sending of the relevant documents for processing visa so as to go to USA and live with him and the allegation against the A.1,3 and A.4 that they allegedly waylaid her at bus stand on the date of hearing on 21.12.2012 and she came from Bangalore to Kadapa in the morning is a false accusation engineered and in fact on 21.12.2012 she did not attend the Family Court, Kadapa and the alleged threats on her reaching Kadapa to withdraw the restitution of conjugal rights FCOP No. 52 of 2011 filed by her, are nothing but false, that she filed I.A. No.79 of 2012 seeking permission to withdraw the O.P.No.52 of 2011 and the said petition was dismissed vide order dated 8.06.2012 itself and therefore the question of their threatening her to withdraw does not arise besides fabricated and concocted the allegation for laying of criminal case and in fact the husband of the defacto complainant-A.6 filed C.R.P.No.4578 of 2012 before the High Court of A.P. challenging the order dated 27.08.2013 in I.A.No.57 of 2012 in FCOP No.52 of 2011 on the file of the Family Court, Kadapa and obtained stay of

further proceedings in FCOP, the A.1 along with other accused threatening the defacto complainant to withdraw the FCOP does not arise, that in fact, when the defacto complainant filed I.A.No.79 of 2012 supra to withdraw the institution of conjugal rights O.P. when opposed by the A.6 which is dismissed showing no inclination to duty altercating the relationship with A.6 coupled with her filing of application, that in the FCOP, the A.6 filed I.A.No.57 of 2012 seeking depositing of passport and other documents for processing visa to the defacto-complainant, instead of depositing the same has filed the counter and contested the said I.A. which itself shows that she is not interested in continuing the matrimonial relationship with A.6.

5. In fact, after registration of crime, the accused persons filed C.R.P.No.4020 of 2013 in the High Court and the same was disposed of by order dated 30.04.2013 with an observations that the petitioners shall submit the facts submitted before this Court also before the investigating officer upon which the investigating officer to consider and probe into and if necessary by examining the accused persons, and file chargesheet. However, the investigating officer, without complying with the same, filed chargesheet on 18.05.2013 and the cognizance taken to put the parties to trial by the trial Court is causing untold sufferings and hardship which leads to miscarriage of justice and the chageesheet filed is without proper investigation and no independent witnesses examined and the so called statement of the blood relatives of the defacto-complainant introduced cannot be based as evidence during trial for no independent witnesses shown in the investigation to lay the charge sheet. It is also averred that the defacto-complainant, having been residing at Bangalore working as software engineer, never stayed with her in-laws after her husband left USA and her E-mail communication dated 7/8.02.2011 with a quotation 'good bye for ever' to A.6 to end the relationship with him and later made allegations as if A.5 and A.6 were hacking her E-mail and password,

and sending the said E-mail with quotation good bye for ever to the E-mail ID of A.6 and refuting the same A.3 and A.6 lodged the complaint in Micolayout police station and Rajendra Nagar Police respectively under Section 66 of the Information Technology Act and it is later the present crime proceedings are initiated, for which she fabricated the allegations in giving the report with ill-will without basis that was not properly considered by the investigating officer in filing chargesheet and the investigating officer also not looked into explanation dated 16.04.2013 submitted by the A.1 and that the continuation of proceedings are nothing but abuse of process and the idea is only to settle the scores and thereby sought for quashing of the C.C. Proceedings. It is also averred that the A.3 is an employee of Tirumala Tirupati Devasthanam(T.T.D) and discharging duties on 21.12.2012 when the A.1 was at Bangalore, and the IBC Verification Service Private Limited registered-company registered with Ministry of Corporate Affairs, Government of India letter dated 16.02.2013 in its investigation report show the defacto-complainant was present on 20th and 21st December,2012 at Bangalore and her alleged coming to Kadapa in the morning of 21.12.2012 to attend in FCOP is nothing but false thereby the proceedings are liable to be quashed and referred two expressions of Apex Court in this regard in **Preeti Gupta Vs. State of Jharkhand**^[1] and **Geeta Mehrotra Vs. State of Utter Pradesh**^[2] saying unless there are specific allegations in the complaint against other relatives of husband in the First Information Report, no cognizance can be taken against the family members from any baseless or fake or mala fide allegations in roping them. It is averred that the A.3 to A.5 filed Crl.P.No.8148 of 2013 to quash the C.C. Proceedings and obtained interim order and the same is also pending.

6. Whereas, it is the submission by the learned Public prosecutor in support of the prosecution case and supporting the version of the defacto-complainant-2nd respondent that there is a prima facie

accusation, from which the learned Magistrate rightly taken cognizance and there are no grounds to quash the C.C. Proceedings in particular against the petitioners 1 and 2 and thereby sought for dismissal and perused the material on record including additional material USR No.4579 of 2015, dated 17.07.2015 which are statements of the witnesses in verbatim and its English translations respectively that was examined by the investigating officer during investigation as part-II C.D.

7. From the case referred supra, so as to allegation regarding to attribute against the A.1, A.3 and A.4 are concerned and on 21.12.2012 at Kadapa near bus stand at 6.00 A.M. threats by them on the defacto-complainant to withdraw the matrimonial FCOP, else to do away concerned, it is their defence that even during the investigation they cause done, the defacto-complainant was at Bangalore not only on 20.12.2012 but also 21.12.2012, her version is highly unbelievable besides false to say she travelled from Bangalore to Kadapa, having boarded on the night of 20.12.12 and reached 21.12.12 morning and so alleging they threatened her. Besides that if at all to decide the same in trial as part of defence, there are certain circumstances which show in support of the defence and in favour of the accused to improbablise her very version of the FCOP filed by her against her husband who is in America. It is the allegation by the quash petitioners that after marriage dated 30.12.2010 the couple lived for about 16 days till 17.01.2011 and the A.6-husband of defacto-complainant left for America and the defacto complainant has been working in Bangalore or staying there thereafter for she did not have any visa. In fact, I .A.No.57 of 2011 filed by A.6 in FCOP to furnish particulars of the documents so as to get H-1b Visa to her, she filed I.A.No.79 of 2012 in which application also seeking permission to withdraw the FCOP filed by her against her husband which ended in dismissal by order of the Family Court dated 08.06.2012, referring to I.A.No.57 of 2012 filed by her husband though saying allegations are false that in order to get H-

1b Visa he wants her husband's brother the fact remains he sought particulars of her with reference to documents to get H-1b Visa to her to take with him for which purpose they filed FCOP it is as referred supra she filed I.A.No.79 of 2012. The order of the Family Court in I.A.No.79 of 2012 dated 08.06.2012 refers I.A.No.57 of 2012 also filed by the A.6 herein(husband of defacto-complainant) stating that his H 1b visa under renewal process and it will take six months from February, 2012 for his coming to India and thereby unable to attend the Court in India as he could not get back to USA thereafter. A.6 willfully suppressed the factum of the date of expiry of H 1b Visa and she filed a memo and also I.A.No.71 of 2012 for want of 1-129 application, 13 digit receipt number, copies of his passport, copy of 1-94 pay slips of her husband and date of expiry of H 1b visa but in spite of that he failed to give information to her referred in I.A.No.71 of 2012 but for filing a false reply stating 1-94 contain the company particulars and as per policy of his company that cannot disclose and it is her contest that I.A.No.57 and 58 of 2012 an affidavit averments of him are nothing but false and mischievous and she secured H 1b visa particulars along with Email copy of him that disclose the H 1b visa was in force upto 15.17.2012 and he sent E-mail attached 1-94 document to one Joy for clarification, however filed false reply in I.A.No.71 of 2012 and she averred that even though there is enough time for him to travel to India for no restriction imposed by the Government of USA upto 15.07.2012, he did not evince interest to visit India thereby the continuation of the FCOP for his non-securing and not turned up is meaningless and his acts are nothing but cruelty and harassment besides willful desertion and thereby she wants to withdraw the FCOP. It is her averment therein that when A.6 cause issued notice dated 30.05.2011 through his counsel she made allegations against him and his family members and his brother-in-law lodged a complaint before BTM Layout Police Station, Bangalore, that shows her husband is trying to play fraud on her. Though it is their allegation as if she is filing false and frivolous

cases and it came on record from the order that there is O.S.No.110 of 2011 pending on the file of IV Additional District Judge, Kadapa filed by the defacto-complainant and her father and by discussing all the details, the learned Family Court Judge, dismissed the application of her for withdrawal of FCOP. In fact, on perusal of the order shows there is no allegation of the acts of cruelty in the matrimonial proceedings by the defacto-complainant against any of the accused persons. It is after lapse of time only on 02.01.2013 crime is registered. It speaks much water flown under the bridge even nothing there in the matrimonial proceedings. Coming to the F.I.R., one of the main allegations is the alleged incident dated 21.12.2012. The factual background supra shows she filed an application for withdrawal of FCOP that was ended in dismissal by order dated 08.06.2012 to say she herself is not interested to continue the FCOP. Is it believable of she was threatened to do away with her by asking her to withdraw said FCOP, that too, on the alleged date i.e.21.12.2012 in the morning near bus stand when she came from Bangalore having boarded on 20.12.12 night when reached to attend the adjournment in the above case. The absurdity is not only therefrom who also comes therefrom, the A.6 who is the husband of the defacto-complainant being respondent to the FCOP filed I.A.No.57 of 2012 and having been unsuccessful, preferred Crl.P.No.4578 of 2012 in the High Court and obtained stay of further proceedings in FCOP vide order dt.21.11.2012. In this background also when the proceedings are stayed with effect from 21.11.2012, is it believable to say on 21.12.2012 she attended Kadapa Family Court for adjournment in that stayed matter thereby the police did not verify these aspects by fair investigation but for simply reproducing in the chargesheet what the complainant mentioned in her complaint that was not even properly considered by the learned Magistrate to take cognizance for any offence in this regard. Leave it as it is, when she herself stated that after marriage she joined her husband and lived for few days amicably and later there are additional demands for dowry

and harassment, without even specific dates or instances in roping the in-laws and even father-in-law's brother and mother-in-law's brother and even her husband's brother-in-law as A.2 to A.6 shows, she lodged the complaint after long lapse of time to the incident, during her short spell of stay in the matrimonial life before her husband left to America the incident is unbelievable. As it had been, she could have with no lapse of time approached the police without waiting till report given on 02.01.2013, that too, after the efforts to withdraw the FCOP became futile and, that too, there are no such allegations to substantiate the First Information Report contentions in the FCOP.

8. Having regard to the above, the chargesheet proceedings are liable to be quashed for the material discussed supra shows the report given by the defacto-complainant is outcome of some vengeance and to settle the scores in relation to any other matrimonial disputes by using the criminal proceedings as liver to coerce and are liable to be quashed as per the guidelines of the Apex Court in Bhajanlal besides Geeta Malhotra.

9. Accordingly, the Criminal Petition is allowed quashing all the proceedings in C.C.No.358 of 2013 on the file of the I Additional Judicial Magistrate of First Class, Kadapa. Miscellaneous petitions, if any pending, in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:01.09.2015

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[\[1\]](#) 2010(7) SCC 667

[\[2\]](#) 2012 10 SCC 741