

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.8031 OF 2016

ORDER:

This criminal petition, under Section 482 Cr.P.C., is filed to quash the proceedings against the petitioner in C.C. No.271 of 2016 pending before the II Metropolitan Magistrate, Cyberabad, L.B. Nagar, Ranga Reddy District, for the offences punishable under Sections 498-A and 406 IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961, mainly on the ground that the petitioner, who is the elder brother of the husband of the *de-facto* complainant, was falsely implicated without making any allegations either in the complaint or charge sheet, not even any allegation is made in the statement recorded by the police, during investigation, under Section 161(3) Cr.P.C. But the court took cognizance against the petitioner herein based on omnibus allegations against the petitioner as he happened to be the elder brother of A.1.

Notice to the second respondent was ordered, but it was returned unserved as 'addressee left' and also ordered substitute service of notice by paper publication, but none appeared on behalf of the second respondent.

To exercise inherent jurisdiction under Section 482 Cr.P.C., the court has to look into the allegations made in the charge sheet to find out, whether those allegations would constitute an offence punishable under Sections 498-A and 406 IPC and Sections 3 and 4 of Dowry Prohibition Act, on its face value. The specific allegations made in the complaint, are as follows:

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“soon after marriage, my husband started distancing himself from me and behaving indifferently and subjecting me to physical torture and mental agony. Looking into my mobile phone numbers, my husband attributes that I have illegal contracts with all those persons. Joining chorus, the other members of his family i.e. my parents-in-law, V.Narasimha Rao & V.Venkateswara Rao too are ill treating me and pestering me for additional dowry. All of them made an attempt on my life by loosening the hot-geyser and portrayed it as an accident in September, 2011, but luckily I escaped with minor burns on my body.....”

Whereas, in her statement under Section 161(3) Cr.P.C., during investigation, she specifically stated as follows:

“On 15.09.2011 my mother-in-law and Krishnaveni loosened the hot geyser water pipe to cause me burns and portrayed it as accident and did not give me any medical treatment and threatened me not to tell my parents.”

The statement recorded by the police, during investigation, is totally contrary to the allegations made in the complaint dated 22.12.2011 lodged with the police.

Moreover, in the charge sheet, routine and omnibus allegations are made against the petitioner alleging that soon after the marriage of the de facto complainant, her husband (A.1) and in-laws, A.2 to A.5, had started harassing her both physically and mentally with a demand to bring additional dowry from her parents. When she expressed her inability all of them had hatched a plan to do away the life of the de facto complainant and in pursuance of their criminal plan, they made

an attempt on her life by loosening the hot geyser and created it as an accident in the month of September, 2011.....

Initially the *de facto* complainant made an allegation against all the accused, but when she was examined by the police, during investigation, she did not attribute anything against the petitioner herein to attract the offences punishable under Section 498-A and 406 IPC or under Sections 3 and 4 of Dowry Prohibition Act.

In the entire statement recorded under Section 161(3) Cr.P.C. or in the complaint, no specific date and time was disclosed as to when the *de facto* complainant was subjected to cruelty either under clause (a) or (b) of explanation to Section 498-A IPC, except making general allegations. The allegations made in the charge sheet are nothing but an improvement from the statement of the *de facto* complainant recorded under Section 161(3) Cr.P.C.

However, even those allegations are routine, this court by order dated 27.07.2015 in CrI.P.No.2735 of 2013 quashed the proceedings against A.6 and A.7, against whom an identical allegations were made holding that the allegations in the complaint does not disclose anything to attract either the first limb or the second limb of Section 498-A IPC and it is obviously the allegation made against the petitioner out of frustration.

In any view of the matter, the Apex Court in **SHAKSON BELTHISSOR v. STATE OF KERALA AND ANOTHER**¹ held that when no allegation in the FIR or charge sheet is made to

¹ 2009(2) ALD (CrI.)497

constitute 'cruelty' as defined in explanations to Section 498-A IPC, the court can exercise its inherent jurisdiction to quash the proceedings and Section 498-A IPC would be applicable only to such a case where the husband or the relative of the husband of a woman subjects the said woman to cruelty.

In **NAGAWWA v. VEERANNA SHIVALINGAPPA**

KONJALGI² the Apex Court laid down the following guidelines.

“(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.”

If those principles are applied to the present facts of the case, the allegations made in the complaint and in the charge sheet are totally omnibus and routine, to rope all the family members of her husband for the offence punishable under Sections 498-A and 406 IPC and Sections 3 and 4 of Dowry Prohibition Act.

The Apex Court, time and again, cautioned the courts to exercise inherent power under Section 482 Cr.P.C., more particularly, in family disputes and if the allegations made in the

² 1976 Cri.L.J. 533

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complaint and charge sheet would not constitute on its face value, the Court can quash the proceedings against the petitioners before the court.

In the present facts of the case, none of the allegations made in the charge sheet would constitute an offence punishable under Sections 498-A and 406 IPC and Sections 3 and 4 of Dowry Prohibition Act against the petitioner.

Therefore, following the principle laid down by the Apex Court in **SHAKSON BELTHISSOR**'s case and **NAGAWWA**'s case and the order passed by this Court in CrI.P. No.2735 of 2013, the proceedings against the petitioner in C.C. No.271 of 2016 are liable to be quashed, while exercising inherent jurisdiction under Section 482 Cr.P.C.

In the result, the criminal petition is allowed.

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

M. SATYANARAYANA MURTHY, J

Date: 03.11.2016
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