HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.2100 of 2013

ORDER:

In this petition filed under Sec.482 Cr.P.C, petitioner/A.1 seeks to quash the proceedings against him in C.C.No.249 of 2009 on the file of VII Metropolitan Magistrate, Cyberabad, Hayathnagar, Ranga Reddy District, wherein he was charge-sheeted for the offences under Sec.498-A IPC and Sec.4 and 6 of Dowry Prohibition Act.

2) The accusation is that the petitioner/A.1 is the husband and A.2 and A.3 are father-in-law and mother-in-law of the *defacto* complainant respectively and marriage between A.1 and the *defacto* complainant took place on 23.05.1997 and ever since marriage, A.1 used to beat her on various minor issues and used to quarrel with her and A.2 and A.3 instigated him. The accused drove the complainant away to her parental home in the year 1997 itself but with the intervention of elders of both the families, the matter was settled and A.1 and complainant lived happily for couple of years and they were blessed with three children out of their wedlock, two of the children are twins. The parents of complainant rendered financial assistance to A.1 to enable him to go to Kuwait in the year 1998 to do job there and he returned to Hyderabad in the year 2000. Ever since he went t o Kuwait, the complainant has been residing with her parents along with her three children and A.1 did not look

after the welfare of the complainant and her three children. On the other hand on the instigation of A.2 and A.3, A.1 used to threaten the complainant over phone. The further case of the prosecution is that on 02.02.2009 at about 3:00pm, A.1 came to the parental home of the complainant and beat her in front of her mother and threatened them with dire consequences and demanded to send the complainant and her children along with him and also demanded Rs.2,00,000/- towards additional dowry to start a new business, failing which he would eliminate the complainant and her children. Hence, the charge sheet for the offences under Sec.498-A IPC and Sec.4 & 6 of Dowry Prohibition Act.

3) Heard arguments of Sri Vedula Venkata Ramana, learned Senior Counsel for petitioner; learned Public Prosecutor for the State and
Sri U.V.Suresh Kumar, learned counsel for respondent No.2.

4) Seeking quashment of the proceedings, learned Senior Counsel vehemently argued that the charge sheet allegations besides being false are inherently improbable. Expatiating, he submitted, the falsity of allegations is writ-large from the fact that the complaint is filed not by a newly married wife on account of real cruelty meted out in the hands of her husband and his relations but a mother of a three children that too long after her marriage which took place in the year 1997. All these years, he argued, she lived

happily with the husband and bore children through him and in order to maintain the wife and children the petitioner went to Kuwait in pursuit of job and earned livelihood and maintained his wife and children who are residing with her parents and now she filed a false complaint with the instigation of her parents and others which culminated in charge sheet. He stressed that when the couple led a happy conjugal life for considerable period, it would be hard to believe that at this stage the husband who is toiling in alien country for the sake of his wife and children would harass them for additional dowry. So the charge sheet allegations themselves are false to the core and aimed at harassing and implicating the petitioner in a false case. Referring the copies of the passport of the petitioner, learned counsel submitted that the stamping on the passport would show that the petitioner left for Kuwait on 13.02.2009 and the complainant conveniently lodged the FIR two days later i.e, on 15.02.2009 as if on 02.02.2009, the petitioner/A.1 went to the parental home of the complainant and demanded Rs.2,00,000/- and threatened her and her mother with dire consequences to eliminate the complainant and her children if his demand was not met. He pointed out that the said attempt was only to implicate him in a false case and see that his passport is seized by the police. Learned counsel argued that if really the incident of demand for dowry took place on 02.02.2009, nothing prevented the complainant to lodge the FIR immediately but the FIR was lodged conveniently on 15.02.2009.

a) Arguing about the inherent improbability in the allegations of demand for dowry, learned counsel submitted that no husband can get dowry or other valuables from his parents-in-law if he eliminates his wife and children and thus the allegation that the accused threatened the mother of the complainant to eliminate the complainant and her children if his demand was not met is nothing but an inherently improbable one. He finally submitted that when the allegations are false on the face of the record and no offence is made out, the petitioner would deserve quashment of the proceedings as laid down in a number of decisions of the Apex Court. He buttressed his point on the strength of the decision reported in ***Indian Oil Corporation vs. NEPC India Ltd.***[1].

5) Per contra, learned counsel for 2nd respondent/ complainant argued that there are specific allegations against the petitioner/A.1 as on 02.02.2009 he went to the parental home of the complainant and demanded additional dowry of Rs.2,00,000/- and threatened the mother of complainant with dire consequences of eliminating the complainant and her children and the police after investigation laid charge-sheet and therefore, the petitioner is not entitled for quashing the proceedings. He argued that the stamping on the passport shows that he left for Kuwait only on 13.02.2009 which indicates that he was very much

present in India on 02.02.2009 which would *prima facie* show that there was every possibility of the petitioner going to the house of his in-laws and making demand for dowry. He thus prayed to dismiss the petition.

6) Learned Public Prosecutor argued in similar lines and prayed for dismissal of the petition.

7) In the light of above rival arguments, the point for determination is:

"Whether there are merits in this petition to allow?"

8) **POINT**: The petitioner is facing charges under Sections 498A IPC and Sections 4 and 6 of Dowry Prohibition Act, 1961. In the cited decision (1 supra), the Apex Court relying on its earlier decisions, discussed the principles for quashing the criminal proceedings. They are:

> *(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.*
>
> *For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint is warranted while examining prayer for quashing of a complaint.*
>
> *(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been*

initiated with maladies/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

In the light of above principles it has now to be seen whether on the face of the record, no case is made out against the petitioner to quash the proceedings. When the charge-sheet and other material are perused, one would realize that specific allegations of cruelty and harassment are made against the petitioner/A.1. It is the case of the complainant that ever since the marriage, A.1 used to beat her on various minor issues and used to pick up quarrel with her. The specific allegation is concerned, the complainant mentioned that on 02.02.2009 at about 3:00 pm, A.1 went to his in-laws house and demanded Rs.2,00,000/- as additional dowry from them to start a new business and threatened to eliminate the complainant and his children if his demand was not met. The stamping on the passport shows, he left for Kuwait only on 13.02.2009 and therefore, his presence in India on 02.02.2009 was not in dispute. The truth about the incident allegedly occurred on 02.02.2009 regarding the demand for additional dowry and threat said to be offered by petitioner/A.1 can be discovered only after the trial. As the matter stands, there are no valid grounds to allow the petition.

9) Accordingly, this Criminal Petition is dismissed.

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

U. DURGA PRASAD RAO, J

Date: 23.03.2016
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[1] AIR 2006 SC 2780