

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Crl.P.No.14038 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C., petitioners/A4 to A6 seek to quash the proceedings in C.C.No.513 of 2013 on the file of V Additional Judicial Magistrate of First Class, Nellore.

2) A1 is the husband of defacto complainant. A2 and A3 are the parents, A4 is the sister and A5 and A6 are relatives of A1.

a) Brief facts of the case are that the marriage between defacto complainant and A1 was performed on 27.05.2011 in Parameswari Kalyana Mandapam, Mini by-pass Road, Nellore. At the time of marriage the father of defacto complainant (LW2) paid Rs.5 lakhs cash, Rs.4 lakhs worth household articles, 100 sovereigns of gold ornaments and one flat in Nellore towards dowry and performed the marriage by spending Rs.15 lakhs. After marriage they lived happily for some time in Tirupati and London.

b) The further case is that as A1 is incapable of participating in sexual intercourse and suffering with physical infirmity and to cover up the same, he started harassing the *defacto* complainant both physically and mentally. The other accused also harassed her with a demand of additional dowry. On the instigation of A2 to A4, A1 was frequently

beating the defacto complainant in the influence of alcohol. A5 and A6 were telling lies to A1 against the complainant and her parents. A1 to A4 pressurized the complainant to sell the apartment gifted at the time of marriage and hand over the amount to them. Later, A1 harassed the complainant both mentally and physically at London in a very cruel manner and necked out her from the house during January, 2013. Later, the father of defacto complainant sent LW4 as mediator to the house of accused at Tirupati, but they did not agree to admit the complainant into the house unless their demand of additional dowry was fulfilled. Then, defacto complainant lodged a report with the police of Balajinagar PS, Nellore and basing on the said report the police registered a case in Cr.No.69 of 2013 under Section 498A IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961 and filed the charge sheet which was taken cognizance by V Additional Judicial Magistrate First Class, Nellore and registered as C.C.No.513 of 2013.

The Criminal Petition relating to petitioners 1 & 2/A2 & A3 was dismissed vide Court order dated 27.11.2013.

3) Heard arguments of Sri V.Eswaraiah Chowdary, learned counsel for petitioners/accused 4 to 6, Sri T.Nagarjuna Reddy, learned counsel for R2/defacto complainant and learned Public Prosecutor (AP).

4) Denying the accusation learned counsel for petitioners vehemently argued that even if the FIR, charge sheet and

statements of witnesses are believed on their face value, still they reveal specific allegations against A1 and his parents i.e. A2 and A3 alone but not against the petitioners/A4 to A6. Except omnibus allegations like A4 to A6 along with other accused instigated A1 to demand additional dowry from his wife and on that he beat her and harassed her for additional dowry, no specific allegations with required details are levelled against petitioners/A4 to A6 so as to sustain the case against them. Learned counsel further submitted that A4 is a married sister residing at Bangalore whereas A5 and A6 are distant relations i.e. A5 is the sister of A3 and A6 is his her son and they are residing at Tada in Nellore district whereas A1 to A3 are residing at Tirupati and the petitioners/A4 to A6 never resided together with A1 and complainant so as to harass the complainant even remotely and therefore, continuation of criminal proceedings against them would amount to abuse of process of Court. In this context, he relied upon the following decisions.

- 1) ***Shaik Arifa v. The State of Andhra Pradesh***^[1]
- 2) ***Y.Sham Kumar and others v. State of Andhra Pradesh***^[2]

He thus prayed to allow the petition.

5) Per contra, learned counsel for 2nd respondent/defacto complainant vehemently argued that the prosecution materials would clearly show the participation of all the accused in the heinous crime of harassing and torturing the

complainant. He referred the FIR, statements of witnesses and tried to impress upon the Court that specific averments are made against all the accused including the petitioners/A4 to A6. Learned counsel argued that filing of charge sheet is an indication that police after investigation found the cogent material against the petitioners for their complicity of the offence and as such it is not apt to quash the proceedings.

6) Learned public prosecutor also argued in similar lines.

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

“Whether there are merits in this petition to allow”

8) **POINT:** Speaking on the tendency of roping in as many relations of the husband in Section 498A cases, Honourable Apex Court in ***Preeti Gupta and another v. State of Jharkhand and another***^[3] observed thus:

“Para 35: The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.”

Basing on the caution of the Supreme Court, in the two cited decisions orders were passed quashing the proceedings against the accused who were unnecessarily implicated in 498A cases.

a) In that view, it has now to be seen whether any specific overtacts with required details are mentioned in the complaint and other material produced by the prosecution or only general and sweeping allegations are made to rope them.

b) Petitioners are concerned, in FIR the complainant made a reference about them at some places in para-5 to 7. In para-5 she mentioned that in order to cover his (A1) physical infirmity, her husband at the able instigation of parents (A2 and A3) and younger sister (A4) used to harass her by way of frequently beating her under the influence of alcohol and pressurized her to sell the apartment bearing No.204 which was given to her at the time of marriage by her parents. When she did not follow their dictations, her husband (A1), parents-in-law (A2 & A3), her sister-in-law (A4), with the active support of sister of her mother-in-law and her son (A5 and A6) started harassing her by telling lies against her and her parents by creating false incidents and instigated her to commit suicide by abusing her and her parents in vulgar language. In para-6 she mentioned as if her husband and his family members cheated her by suppressing his physical impotency and performed marriage and also harassed her to bring the additional dowry and dispose of Flat bearing No.204. In para-

7 she ultimately prayed to take action against the accused.

c) In 161 Cr.P.C. statements, the complainant and other accused stated in similar lines. Basing on these averments, it is argued on behalf of complainant that specific overtacts are attributed against the petitioners about harassment and they do not deserve quashment of the proceedings.

d) On a careful analysis, in my considered view, the allegations against A4 to A6 are not only sweeping and omnibus but also inherently improbable. Petitioners/A4 is concerned, in the FIR it is mentioned as if under the able instigation of parents (A2 and A3) and younger sister (A4), A1 used to frequently beat her under the influence alcohol. Sofaras A5 and A6 are concerned, it is stated with their active support A2 to A4 used to tell lies against her and her parents by creating false stories. Except these generalized statements no specific overtacts with required details are mentioned. It is not stated as to when, where and what type of instigations were made by A4 to A6 to A1. It should not be forgotten that A4 is the married sister who is living at Bangalore whereas A5 and A6 are residing at Tada in Nellore district whereas A1 to A3 are at Tirupati. For some time A1 and complainant lived at Tirupati and then left to London. In that view of the matter, it is difficult to believe A4 to A6 along with A2 and A3 could instigate A1 and tell lies against complainant. As stated supra, the FIR and statements are silent about the time and place where A4 to A6 instigated A1

so as to believe the allegations against them. Hence, in my considered view, continuation of proceedings against petitioners/A4 to A6 would amount to abuse of process of Court.

9) Accordingly, this Criminal Petition is allowed and proceedings in C.C.No.513 of 2013 against petitioners/A4 to A6 are quashed. 4

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

U.DURGA PRASAD RAO, J

Dt: 08.06.2016
Murthy

[\[1\]](#) 2015 (1) ALD (CrI.) 585 (AP)

[\[2\]](#) 2013 (1)ALD (CrI.) 652 (AP)

[\[3\]](#) (2010) 7 SCC 667