

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.16738 OF 2016

ORDER:

This Criminal Petition, under Section 482 of the Code of the Criminal Procedure (Cr.PC.), is filed to quash the proceedings against the petitioners in CC.No.320 of 2016 on the file of the Judicial First Class Magistrate at Peddapalli for the offences punishable under Sections 498-A, 494 and 506 read with Section 34 of the Indian Penal Code (IPC) and Sections 3 and 4 of the Dowry Prohibition Act, 1961 ("the Act" for brevity).

The second respondent filed a private complaint before the Judicial First Class Magistrate at Peddapalli for the aforesaid offences and the matter was referred to the police under Section 156(3) Cr.PC. by the Magistrate concerned and on that, the police issued FIR in Crime No.154 of 2015 for the abovementioned offences. Later, police took up investigation, recorded the statements of five witnesses and filed final report under Section 173 Cr.PC. before the Judicial First Class Magistrate at Peddapalli.

In the present petition, petitioner Nos.1 to 7 are accused Nos.1 to 7 respectively, i.e., A-1 is husband, A-2 and A-3 are parents-in-law of the *de facto* complainant, A-4 and A-6 are married sisters of A-1 and A-5 and A-7 are husbands of A-4 and A-6 respectively.

The petitioners raised only two grounds to quash the proceedings. The first ground is that there was no dowry either at the time of marriage or after the marriage and that the second respondent joined A-1 to lead marital life and both of them lived happily for two to three months and later, the second respondent started harassing A-1 to set up separate

family leaving his parents-petitioner Nos.2 and 3, but petitioner No.1-A1 refused to oblige her illegal demand. Having failed to succeed in her attempts to set up a separate family, the second respondent started going to her parents' house very often and staying there for days together. The second ground is that petitioner Nos.4 to 7 are the married sisters and their husbands and they are living separately and they have nothing to do with the above offence and prayed to quash the proceedings.

The power under Section 482 Cr.P.C. can be exercised sparingly in the exceptional circumstances to give effect only to the orders passed by this Court to prevent abuse of process of Court or to meet the ends of justice and this Court can exercise inherent power only when the allegations made in the complaint or the FIR or the charge sheet, if they are taken at their face value and accepted in entirety do not *prima facie* constitute an offence or make out a case against the accused.

The scope of Section 482 of Cr.P.C was time and again discussed in catena of perspective pronouncements of the Apex Court and in a classic judgment of the Apex Court in State of Haryana v. Bhajan Lal¹, seven guidelines were laid down and they are as under:

- (a) 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;
- (b) 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;

¹ 1992 Supp. (1) SCC 335

(c) 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;

(d) where the allegations in the FIR 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;

(e) 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;

(f) 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;

(g) where a criminal proceeding is manifestly attended with malafide 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. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence justification and this case does not call for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. itself. [307B] State of West Bengal v. S.N. Basak, [1963] 2 SCR 52; distinguished.

In *R.P. Kapur v. State of Punjab*², this Court laid down the following principles:

- (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
- (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
- (iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

Thus, in view of the law declared by the Apex Court in the above two judgments, the Court can exercise such power under Section 482 Cr.PC. only when the allegations made in the charge sheet on its face value would not *prima facie* constitute an offence. In the present facts of the case, the specific allegations made against the petitioners is that A-1 had received huge amount as dowry i.e., Rs.20,00,000/- besides receiving Rs.2,00,000/- each by A-4 and A-6 as 'Adabaduchu Katnam'. It is clear from the allegations made in the charge sheet that the petitioners subjected the second respondent to cruelty as defined in the Explanation to Section 498-A IPC for her failure to meet the illegal demand of additional dowry of Rs.4,00,000/-.

For the purposes of this section "cruelty" means—

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of woman, where such harassment is with a view to concerning her or any person related to her to meet any unlawful demand for any property or valuable security or is

² MANU/SC/0086/1960 : AIR 1960 SC 866 : (1960) 3 SCR 388

on account of failure by her or any person related to her to meet such demand.

Thus, the allegations on their face value would constitute an offence punishable under Section 498-A IPC *prima facie*.

The word “dowry” under Section 2 of the Dowry Prohibition Act reads as under.

Dowry means any property or valuable security given or agreed to be given either directly or indirectly:

- (a) by one party to a marriage to the other party to the marriage; or
- (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Even payment or taking of dowry is an offence punishable under Section 3 of the Act. Similarly, demanding Rs.4,00,000/- by the petitioners would constitute an offence punishable under Section 4 of the Act.

To exercise inherent power under Section 482 Cr.PC., the Court should not act as a trial Court and even when a charge is framed at that stage, the Court is to specify only about existence of sufficient ground for quashing proceedings against accused but cannot appreciate the evidence. The Court is not required to appreciate the evidence to call whether the material produced is sufficient or not for convicting the accused while passing an order exercising power under Section 482 Cr.PC.

Learned counsel for the petitioners, during hearing, brought to the notice of this Court the attendance certificates of petitioner No.5/accused No.5 issued by the Assistant Engineer, IB Section, Velgatoor and other documents to show that petitioner Nos.4 to 7 are residing at a different

place. These documents would be helpful to prove the plea of alibi under Section 11 of the Evidence Act and it is a question of disputed fact to be decided. Mere proof that they are staying somewhere and their absence at the time of alleged incident cannot be accepted at this stage while deciding an application filed under Section 482 Cr.PC. since the petitioners have to prove during trial that they were elsewhere and place of occurrence is not accessible to the petitioners at the time of the alleged offence. Thus, the question of plea of alibi is a question of fact to be decided during trial and such fact cannot be taken into consideration to decide the presence of petitioners at the time of occurrence of offences punishable under Sections 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act at this stage while deciding the petition under Section 482 Cr.PC. Therefore, I find no ground to quash the proceedings since the allegations made in the charge sheet at their face value would constitute an offence punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act. Consequently, the petition is liable to be dismissed.

In the result, the Criminal Petition is dismissed at the stage of admission. Miscellaneous petitions, if any, pending shall stand dismissed.

(M.SATYANARAYANA MURTHY, J)

14th December 2016
RRB