

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.8675 of 2010

ORDER:

_____ This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioner/A.6 in C.C.No.459 of 2007 on the file of the Court of the XIII Additional Chief Metropolitan Magistrate, Hyderabad.

2. The contention of the learned counsel for the petitioner is two fold: (1) There is no allegation against the petitioner, therefore, it is a fit case to quash the proceedings against the petitioner, (2) The second respondent implicated the petitioner in order to bring pressure against the other accused.

3. The learned Public Prosecutor submitted that this is not the stage to go into the merits of the main case.

4. As directed by this Court, the petitioner sent notice to the second respondent by registered post with acknowledgment due and the said postal cover returned with an endorsement 'refused'.

5. In **C.C.Alavi Haji Vs. Palapetty Muhammed^[1]**, the Hon'ble Apex Court held as follows:

“13. According to Section 114 of the Act, read with Illustration (f) thereunder, when it appears to the court that the common course of business renders it probable that a thing would happen, the court may draw presumption that the thing would have happened, unless there are circumstances in a particular case to show that the common course of business was not followed. Thus, Section 114 enables the court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Consequently, the court can presume that the common course of business has been followed in particular cases. When applied to communications sent by post, Section 114 enables the court to

presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the GC Act is a far stronger presumption. Further, while Section 114 of the Evidence Act refers to a general presumption, Section 27 refers to a specific presumption. For the sake of ready reference, Section 27 of the GC Act is extracted below:

“27. Meaning of service by post.—Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression ‘serve’ or either of the expression ‘give’ or ‘send’ or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement “refused” or “not available in the house” or “house locked” or “shop closed” or “addressee not in station”, due service has to be presumed. (Vide *Jagdish Singh v. Natthu Singh* {(1992) 1 SCC 647} *State of M.P. v. Hiralal* {(1996) 7 SCC 523} and *V. Raja Kumari v. P. Subbarama Naidu* {(2004) 8 SCC 774}. It is, therefore, manifest that in view of the presumption available under Section 27 of the Act, it is not necessary to aver in the complaint under Section 138 of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved.”

6. In **Subodh S.Salaskar Vs. Jayprakash M. Shah**^[2], the Hon'ble Apex Court held as follows:

“24. Presumption of service, under the statute, would arise not only when it is sent by registered post in terms of Section 27 of the General Clauses Act but such a presumption may be raised also under Section 114 of the Evidence Act. Even when a notice is received back with an endorsement that the party has refused to accept, still then a presumption can be raised as regards the valid service of notice. Such a notice, as has been held by a three-Judge Bench of this Court in *C.C. Alavi Haji v. Palapetty Muhammed* {(2007) 6 SCC 555} should be construed liberally.”

7. As per the principle enunciated in the cases cited supra, the Court can draw a presumption that the notice was served on the party to the proceedings if the same was sent by registered post with acknowledgement due to the address where he or she ordinarily resides unless and until the contrary is proved. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the notice was served on the second respondent.

8. The facts, which are relevant for filing of the criminal petition, are briefly as follows:

On 27.12.2006, the second respondent lodged a complaint to the Station House Officer, Women Police Station, CCS, DD, Hyderabad, who in turn registered a case in Crime No.390 of 2006 for the offences punishable under Sections 498-A read with 34 I.P.C. and Sections 4 and 6 of the Dowry Prohibition Act, 1961. After completion of the investigation, the Investigating Officer laid charge sheet against the petitioner and other accused for the above referred sections. The learned XIII Additional Chief Metropolitan Magistrate, after satisfying himself with the material placed before him, has taken cognizance of the offences under Section 498-A read with 34 I.P.C. and Sections 4

and 6 of the Dowry Prohibition Act against the petitioner and other accused and issued summons. It is an admitted fact that the marriage of the second respondent was performed with accused No.1 on 21.05.2004 at Hyderabad as per Muslim Rites and Caste Custom.

9. As per the allegations made in the charge sheet, the parents of the second respondent gave an amount of Rs.4,00,000/- to accused No.1 towards dowry. It is further alleged that accused Nos.1 to 5 along with the petitioner subjected the second respondent to cruelty for additional dowry.

10. The possibility of roping the other family members in matrimonial cases, more particularly, cases registered under Section 498-A I.P.C. cannot be ruled out completely. It is an admitted fact that the petitioner is the junior maternal uncle of accused No.1. I have carefully scanned Section 161 Cr.P.C. statement of LW.1 in order to ascertain whether there is any allegation against the petitioner or not. There is no mention in Section 161 Cr.P.C. statement of the second respondent that the petitioner subjected her to cruelty for additional dowry. I have carefully perused Section 161 Cr.P.C. statements of LWs.2 to 4 also. They have not stated anything about the petitioner. It is not out of place to extract the relevant portion of the charge sheet, which is as follows:

“In the month of Dec’ 2006 A.1 to A.6 came to Lw-1’s parents’ home and repeated their demand and abused in filthy language and also manhandled Lw.1.”

This Court is unable to understand how the Investigating Officer came to such a conclusion even though there is no allegation much less specific allegation against the petitioner. It appears that the Investigating Officer simply implicated the petitioner as accused even though no allegation is made against him. Even if the statements of LWs.1 to 4 are *ex facie* taken to be true and correct, no case is made out against the petitioner. In such circumstances, compelling the

petitioner to undergo mental agony by facing the rigour of criminal trial.

11. The learned counsel for the petitioner has drawn my attention to the judgment in **Shakson Belthissor Vs. State of Kerala and another**^[3], wherein the Hon'ble Apex Court at para Nos.14, 15 and 19 held as follows:

“14. The scope and power of quashing a first information report and charge sheet under Section 482 of the CrPC is well settled. The said power is exercised by the court to prevent abuse of the process of law and court but such a power could be exercised only when the complaint filed by the complainant or the charge sheet filed by the police did not disclose any offence or when the said complaint is found to be frivolous, vexatious or oppressive. A number of decisions have been rendered by this Court on the aforesaid issue wherein the law relating to quashing of a complaint has been succinctly laid down.

15. “5.....In **Nagawwa v. Veeranna Shivalingappa Konjalgi**, [(1976) 3 SCC 736], it was held that the Magistrate while issuing process against the accused should satisfy himself as to whether the allegations (made) in the complaint, if proved, would ultimately end in the conviction of the accused. It was held that the order of Magistrate for issuing process against the accused could be quashed under the following circumstances: (SCC p. 741, para 5)

‘(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'."

19. "6. In **State of Haryana v. Bhajan Lal**, (1992 Supp. (1) SCC 335, a question came up for consideration as to whether quashing of the FIR filed against the respondent Bhajan Lal for the offences under Sections 161 and 165 IPC and Section 5(2) of the Prevention of Corruption Act was proper and legal. Reversing the order passed by the High Court, this Court explained the circumstances under which such power could be exercised. Apart from reiterating the earlier norms laid down by this Court, it was further explained that such power could be exercised 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".

12. As per the principle enunciated in the case cited supra, even if the allegations made in the complaint *prima facie* do not constitute any offence much less the offence alleged to have been committed by the accused, the Court can quash the proceedings.

13. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that it is a fit case to quash the proceedings against the petitioner/A.6.

14. In the result, the Criminal Petition is allowed quashing the proceedings against the petitioner/A.6 in C.C.No.459 of 2007 on the file of the Court of the XIII Additional Chief Metropolitan Magistrate, Hyderabad.

15. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

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T.SUNIL CHOWDARY, J

Date: 30.03.2016

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- [\[1\]](#) (2007) 6 SCC 555
- [\[2\]](#) (2008) 13 SCC 689
- [\[3\]](#) (2009) 14 SCC 466