

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15062 OF 2016

ORDER:

This criminal petition, under Section 482 of Code of Criminal Procedure, 1973, is filed to quash the proceedings against the petitioners/A.2 and A.4 in C.C. No.166 of 2016 pending before the XIII Additional Chief Metropolitan Magistrate, Hyderabad.

The offence allegedly committed by the petitioners/A.2 and A.4 along with other accused- A.1 and A.3 is demand of additional dowry and subjected the de-facto complainant-second respondent to harassment, when she was unable to meet illegal demands made by them.

The main ground urged before this Court is that except omnibus allegations in the charge sheet, no specific overt acts have been attributed against each of the accused and that apart petitioners/ A.2 and A.4 went to Dubai and their presence is not expected at the time of alleged incident and that the complaint was filed as an abuse of process of law. Therefore, sought to quash the proceedings.

Initially, the second respondent-de facto complainant gave a complaint to the police on 25.01.2016 making serious allegations against the petitioners and two other accused persons, which attracted the offence punishable under Sections 498-A of Indian Penal Code, 1860 (for short, 'IPC'). On the strength of the complaint, the Police registered a case against the petitioners and two other accused persons. During investigation, the Police examined as many as five witnesses and recorded their statements

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under Section 161(3) Cr.P.C. Based on the evidence collected during the course of investigation, the Police satisfied that there is material against the petitioners to proceed with for filing final report with the Magistrate i.e. Charge sheet. Even in the charge sheet, it is specifically mentioned as follows:

“on the second day of marriage, the A.1 to A.4 started harassment by passing sarcastic remarks allegedly the jahez articles are not standard and she belongs to a poor family if they would have married with some other girl they would have got handsome dowry amount and good jahez articles and they started giving mental tortures to her. Thereafter on the instigation of the A.2 to A.4, they made a demand for Rs.3,50,000/- as an additional dowry, when she showed her parents’ inability to arrange such a huge amount. On hearing this, the A.1 to A.4 beat her mercilessly by humiliating her. The A.2 to A.4 always instigated to the A.1 to harass the L.W.1 physically and mentally for additional dowry. Due to their unbearable harassment, with a great difficulty her parents arranged and paid Rs.50,000/- to the A.1 and A.2 in the presence of A.3 and A.4 for the betterment and welfare of her matrimonial life while taking amount they promised to her parents that they will not harass or ill treat her in future. The A.1 to A.4 did not keep up their promise and again altogether picked up a quarrel with her and started demanding the remaining additional dowry Rs.3,00,000/- from her parents, when she refused to comply their demand of remaining additional dowry amount, the A.1 and A.2 got annoyed and started giving mental and physical tortures to her and started taking the entire housework like a maid servant and her in-laws were not providing proper food and medicine to her

The investigating officer is also concluded that there is, *prima facie*, material and filed charge sheet based on the evidence collected.

Sri M.N.Narasimha Reddy, learned counsel for the petitioners, contended that based on omnibus allegations, the prosecution cannot be proceeded and placed reliance on the Judgment of the Apex Court in **GEETA MEHROTRA AND ANOTHER v. STATE OF UTTAR PRADESH AND ANOTHER¹**, wherein the Apex Court while deciding the petition under Section 482 Cr.P.C. pertaining to matrimonial disputes held as follows:

“....when the contents of the FIR is perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names who have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.”

Similarly at paragraph 25 of the Judgment referred above, the Apex Court cautioned that the courts may not misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what the Court wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of-course the FIR discloses specific

¹ (2012) 10 SCC 741

allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife.

In **PREETI GUPTA AND ANOTHER v. STATE OF JHARKHAND AND ANOTHER**² the Apex Court at paragraphs 27 and 36 in the Judgment reiterated the principle laid down in the above judgment while holding that when a complaint for harassment and demand of dowry against the husband and relatives of the husband including sister-in-law and unmarried brother-in-law of complainant, no specific allegations against appellants, nor any of witnesses alleged any role of them, refusal by high court to quash complaint as against appellants, not proper. The court also emphasized the duty of Bar members in respect of offence punishable under Section 498-A IPC and advised the Bar members to treat such complaints as a basic human problem and to make serious endeavour to help parties in arriving at an amicable resolution of that human problem so as to ensure that social fibre, peace and tranquility of society remains intact.

In **GEETA MEHROTRA**'s case there was no specific allegations against the petitioners therein, but the High Court dismissed it, however, the Apex Court set aside the same on the sold ground that mere casual reference of a name of family member in the complaint is not sufficient and quashed the proceedings. In the latter case, **PREETI GUPTA**'s case, the Apex Court held that in the absence of any specific allegation and when

² 2011(1) ALD (CrL) 297 (SC)

any of the witnesses did not testify anything about the overt acts attributed to the family members of the husband, the Court can quash the proceedings.

But, in the present case, FIR stage was over, since investigation was taken up by the Police and recorded statements of five witnesses during investigation by the investigating agency and most of them testified in favour of the de- facto complainant, and, more particularly, about the overt acts attributed to each of the accused. Therefore, the facts of the present case are totally different from the facts in the two judgments referred above.

However, the power vested on this Court under Section 482 Cr.P.C., which is inherent, shall be exercised sparingly only to give effect to any order under code of criminal procedure, to prevent abuse of the process of any court and to secure the ends of justice as held by the Apex Court in **R.P. KAPUR VS. STATE OF PUNJAB³**.

In **STATE OF HARYANA v. BHAJAN LAL⁴** the Apex Court laid down seven guidelines to exercise jurisdiction under Section 482 Cr.P.C. In **MADHAVRAO JIWAJI RAO SCINDIA & ANR. v. SAMBHAJIRAO CHANDROJIRAO ANGRE & ORS.,⁵** the Apex Court held that, the legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. The same

³ AIR 1960 SC 866

⁴ 1992 Supp.(1) SCC 335

⁵ AIR 1988 SC 709

principle is reiterated in **STATE OF BIHAR & ANR. VS. SHRI P.P. SHARMA & ANR.**⁶

The cumulative effect of the principles laid down in the Judgments referred to above is that when the allegations made in the charge sheet if taken on its face value would not constitute an offence punishable under any provision of IPC, this Court can quash the proceedings unhesitatingly. But when there are specific allegations, it would constitute an offence under Section 498-A IPC and they are supported by the evidence collected by investigating agency during investigation and the statements recorded under Section 161 Cr.P.C., this Court cannot exercise such inherent power to quash the proceedings and therefore, I find no ground to quash the proceedings in C.C. No.166 of 2016 pending before XIII Additional Chief Metropolitan Magistrate, Hyderabad, since the allegations made in the charge sheet would constitute an offence if proved, the defence set up by the petitioner is to be established during trial only.

In the result, the criminal petition is dismissed.

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

M. SATYANARAYANA MURTHY, J

Date: 26.10.2016
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⁶ AIR 1991 SC 1260