

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.7832 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioners/A1 to A4 seek to quash the proceedings in C.C.No.1 of 2013 on the file of I Additional Judicial First Class Magistrate, Tenali wherein the petitioners were charge sheeted for the offences under Section 498, 506 and 508 r/w 34 IPC by police of Tenali II Town PS.

2) The 2nd respondent/*defacto* complainant is the wife; A2 is the elder brother; A3 and A4 are parents of A1 and they are residents of Kakarlamudi, Guntur District.

a) The second respondent lodged a report with the police of Tenali II Town PS on the allegations that she belongs to Tenali and her marriage took place on 02.04.2008 and at the time of marriage her parents gave Rs.1 lakh as dowry and presented house hold articles worth Rs.24,000/- and also gave 10 sovereigns of gold and after marriage she joined the society of A1 and for some time they led happy marital life and thereafter, she gave birth to two daughters on 11.01.2009 and 18.08.2011. Her case is that since after the birth of second daughter all the accused started harassing her both physically and mentally on the allegation that she gave birth to two daughters and they abused her in many ways and demanded her to bring Rs.1 lakh as additional dowry. Unable to bear their torture she informed the same to her parents and on the

instructions of her father, her paternal uncle—Durga Rao brought Rs.10,000/- and gave to her parents-in-law on 10.11.2011. Not satisfied with that amount the accused again started abusing her that she gave birth to two daughters and who would perform their marriages. The other accused incited her husband and he too started harassing her. Ultimately on 01.03.2012, all the accused beat her and drove her to her parents' house. Further, on the night of 13.07.2012 all the accused went to the house of her parents and abused her in a filthy language and when her parents intervened and questioned their audacity, the accused pushed her parents and threatened and demanded that she should give divorce to A1 or otherwise they would harass them, kill her and her children and her parents. The police after investigation laid charge sheet against A1 to A4 for the offences under Sections 498A, 506 and 508 r/w 34 IPC and charge sheet was taken cognizance and registered as C.C.No.1 of 2013 by I Additional Judicial First Class Magistrate, Tenali. Hence, the instant quash petition by A1 to A4.

3) Heard arguments of Sri Syed Abdul Saleem for petitioners/A1 to A4, Sri Posani Subba Rao for 2nd respondent/defacto complainant and learned Public Prosecutor (AP).

4a) Denying the charge sheet allegations as false, learned counsel for petitioners submitted that the present case is a counter blast to the cases filed by the petitioners/accused

against the family members of 2nd respondent.

In expatiation, learned counsel argued that A1 is an ex-military man as he worked in Indian Military for about 6 years and while on duty he lost his both legs in a train accident and getting pension since 12.10.2006. Second respondent having fully known that A1 is a physically disabled married him on 02.04.2008. A1 did not demand any dowry or other presentations but on the other hand as per the wish of complainant and her parents, he met the marriage expenses. Further, as per the wish of complainant and her parents, he remained in the house of parents-in-law for about 1½ years and maintained his wife and her parents and brothers with the paltry pension amount. In the year 2006, he was terminated from service and Defense Ministry has given him compensation of Rs.7 lakhs and he borrowed Rs.3 lakhs from his elder brother (A2) and purchased a house and shifted there with his wife and children. Thereafter, the complainant on the evil advice of her brothers started demanding him to settle the house in her favour. Though A1 tried to convince her that after his death she would get that property, the complainant and her brothers did not heed him. On one night they forcibly took him to the house of complainant's brother—Markandeyulu and administered liquor and on the point of weapon threatened him and obtained his signatures on some revenue stamps to create documents of transfer of property in their favour. The brother of complainant who is working as a TV reporter, threatened A1 with dire consequences. On the ill-

advice of her brothers, the complainant left his society along with her children. In those circumstances, due to the threat to life A1 submitted a petition to the Human Rights Commission for protection which is pending.

b) Learned counsel further argued that apart from harassing A1, the brothers of complainant and their henchmen attacked A1's father—Subba Rao (A3) with knife and axe on 09.06.2012 while he was returning from fields and caused him injuries. On his report the police of Vemuru PS registered FIR No.52/2012 against assailants under Section 324 r/w 34 IPC instead of Section 307 IPC. Aggrieved by the biased action of police, A3 submitted a report to Human Rights Commission to give direction to police to alter the section of law and punish the accused in accordance with law and the same was also pending. Learned counsel vehemently argued that as a counter blast to the above cases filed by the accused against the complainant and her family members, they filed a false case under Section 498A IPC through the complainant to implicate the accused.

c) Denying the charge sheet allegations as false, learned counsel submitted that no incident as alleged in the charge sheet took place on 13.07.2012 and the accused never went to the house of parents of complainant and threatened them. Learned counsel argued that in fact when the father of A1 lodged FIR against the attack made on him, the brothers of complainant attacked A1 on 27.06.2012 at about 8 PM, beat

him and thrown on ground and thereby his artificial legs were broken. Therefore, the petitioner/A1 after initial treatment in Secunderabad Military Hospital, got admitted in the Artificial Limb Center, Pune on 01.07.2012 and he was discharged only on 18.07.2012. Therefore, it is highly preposterous on the part of complainant to allege that A1 and other accused went to Tenali on the night of 13.07.2012 on which date A1 was at Pune and threatened the complainant and her family members. Learned counsel filed material papers relating to the cases filed against complainant and her family members and sought to quash the proceedings and submitted that continuation of case against them would amount to abuse of process of Court.

5) Per contra, learned counsel for R2/complainant and learned Public Prosecutor argued that specific allegations are levelled against all the accused, truth of which can be determined only after full-fledged trial and thus prayed to dismiss the petition.

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

“Whether there are merits in this petition to allow?”

7) **POINT:** From the material on record and the arguments put up by both the parties, it is evident that bad-blood prevails between two families of A1 and complainant, which resulted in cases and counter cases. The main ground on which the

petitioners seek to quash the proceedings is that the present criminal case is a counter blast to the petitions submitted by A1 and A3 before Human Rights Commission and also police report given by A3 in Cr.No.52/2012 of Vemuru PS. On this submission and that A1 was hospitalized in Pune on the alleged date of incident on 13.07.2012 the petitioners prayed to quash the proceedings.

8) In ***State of Haryana v. Ch. Bhajan Lal***^[1] the Honourable Apex Court has given guide lines for quashing the proceedings. They are:

“1. 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.

2. 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.

3. 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.

4. Where, the allegations in the F.I.R. 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.

5. 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.

6. 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.

7. Where a criminal proceeding is manifestly attended with mala fide 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 light of above guidelines it has now to be seen whether the proceedings in C.C.No.1/2013 can be quashed at the threshold.

9a) As can be seen from the charge sheet, the allegations levelled against the accused are not omnibus allegations but are specific allegations and some of which contain the dates also. According to prosecution, the *defacto* complainant gave birth to two daughters on 11.01.2009 and 18.08.2011 respectively and her travails started thereafter. According to her, all the accused abused her for giving birth to two daughters and started demanding her to bring additional dowry of Rs.1 lakh from her parents. Unable to bear their torture she intimated this fact to her parents. On one instance her father sent her paternal uncle—Durga Rao who brought Rs.10,000/- and paid to her parents-in-law on 10.11.2011. This fact has been spoken by LW4 in his 161 Cr.P.C.

statement.

b) Nextly, according to the statements of prosecution witnesses, the accused having not satisfied with the amount given by parents of the complainant, beat her and thrown her away from the matrimonial home on 01.03.2012. Added to it, on 13.07.2012 all the accused went to the house of parents of complainant and demanded her to give divorce to A1 and threatened her with dire consequences if she failed to follow their words. Regarding this incident, the prosecution produced the statement of LW6 who is an independent witness. So, as can be seen from the material produced by the prosecution, specific instances of harassment with dates are provided. As such they cannot be brushed aside at this stage holding that they are all false and levelled as a counter blast to the petitions filed by the accused before the Human Rights Commission and the police. As per the guidelines extracted supra, criminal proceedings can be quashed only when the allegations in the FIR even if accepted to be true on their face value do not *prima facie* constitute any offence. However, that is not the case here. At this stage, it cannot be presumed that the allegations levelled by the complainant in her report which culminated in the charge sheet are all false and aimed at serving as counter blast to the petitions filed by the accused. The truth or otherwise of the contents in the charge sheet can be determined only after a full-fledged trial as rightly argued by learned Public Prosecutor as well as learned counsel for R2/defacto complainant. Similarly, the truth of the contents in

the petitions filed before the Human Rights Commission will also come up for discussion during the trial. So, the truth or falsity of the allegations and counter allegations made by both parties cannot be decided in this quash petition. In my considered view, the trial Court is the proper form for vindicating the respective contentions by either side. Therefore, it is not a fit case to quash the proceedings. However, taking the facts and circumstances into consideration particularly the physical disability of A1 and age of other accused, their presence before the trial Court is dispensed with except on the occasions when the trial Court specifically requires their presence.

10) With these observations, the Criminal Petition is dismissed.

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

U.DURGA PRASAD RAO, J

Dt: 02.06.2016

Murthy

[\[1\]](#) AIR 1992 SC 604