

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.2161 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioners/A.2 to A.4 seek to quash the proceedings in C.C.No.989 of 2012 on the file of Additional Judicial First Class Magistrate, Vizianagaram.

2) The 1st respondent/*defacto* complainant is the wife of A.1. Petitioners/A.2 and A.3 are parents and A.4 is the unmarried sister of A.1. They are residents of Chatrapur town in Madhya Pradesh State. The case against all the accused is for the offences under Sec.498-A IPC and Sec.3 & 4 of D.P. Act. The 1st respondent/*defacto* complainant lodged FIR before Women P.S, Vizianagaram with the allegations that her marriage with A.1 took place on 06.08.2009 and at the time of marriage on the demand of the accused her parents gave Rs.1,50,000/- as dowry and other household articles worth Rs.50,000/-. For about three months, she led happy conjugal life and thereafter her husband started harassing and beating her by suspecting her conduct. He demanded her to bring an additional dowry of Rs.1,00,000/- from her parents. In the year 2010, she became pregnant and A.1 was suspecting and abusing her that she got pregnancy through some other person. He confined her in house without providing food. It is further alleged that A.1 forcibly took from her their 15 months

old daughter and necked her out of the house. It is alleged that with much difficulty, the complainant reached Vizianagaram in a train with the assistance of Railway Police. She ultimately complained that all the accused, who caused her mental and physical agony and necked out her, may be punished. The police after investigation laid charge sheet against A.1 to A.4 for the offences under Sec.498-A IPC and Sec.3 & 4 of D.P. Act.

Hence the instant Criminal Petition.

3) Though notice to R.1/*defacto* complainant was served but there is no representation on her behalf, hence heard Smt. T.V.Sridevi, learned counsel for petitioners/A.2 to A.4 and learned Public Prosecutor for the State (Andhra Pradesh).

4) Denying the charge sheet allegations, learned counsel for petitioners submitted that though marriage was held on 06.08.2009, she remained with her parents till January, 2010 as she was attending Hindi Pandit training at Parvathipuram in Vizianagaram District and stayed there till the completion of exams i.e, on 27.01.2010 and thereafter A.1 went and brought her to the matrimonial home and the complainant had the habit of leaving the matrimonial home frequently at the instance of her mother and after much persuasion, she used to return to him. Learned counsel argued that in fact on 14.12.2010, A.1 filed a petition before the Superintendent of Police, Chatrapur, Madhya Pradesh who conducted counseling between A.1 and

defacto complainant and there the *defacto* complainant insisted A.1 to take a separate residence and having agreed, A.1 took separate residence at Khajuraho in the end of January, 2012 and since then both of them were living separately. Learned counsel thus argued that A.2 to A.4 had nothing to do with the affairs of complainant and A.1. While A.1 and *defacto* complainant living in a separate residence at Khajuraho, all of a sudden on 22.02.2012, the *defacto* complainant left the matrimonial home without informing anybody leaving her little daughter. Thereupon A.1 having searched and not found her, issued a report to the Police of Khajuraho P.S and the police registered a woman missing case in Crime No.2 of 2012. Learned counsel further submitted that to overcome the above case, the *defacto* complainant filed a false case as if she was necked out of the house. Subsequently, A.1 filed O.P.No.24A/2012 before the District Court, Chatrapur for restitution of conjugal rights and the said case is pending. Learned counsel for petitioners vehemently argued that petitioners/A.2 and A.4 never resided with A.1, more particularly on the date of the alleged driving her away from the home on 22.02.2012. The petitioners 1 and 2 settled in Madhya Pradesh for more than 30 years and 2nd petitioner worked as Medical representative in Charak Pharmaceuticals, Chatrapur and petitioners 1 and 2 are residing in their own residence at Chatrapur. Learned counsel further submitted that 3rd petitioner who is the daughter of

petitioners 1 and 2 has completed her MBBS Degree in the year 2006 and studied Diploma in Clinical Pathology from 2007 to 2009 at Visakhapatnam and joined in Apollo Hospital, Jubilee Hills, Hyderabad in the year 2009 and thereafter she joined in Vijaya Diagnostics, Himayatnagar, Hyderabad as Consultant Pathologist in the year 2010 and continuing there till date and due to her busy occupation, the 3rd petitioner/A.4 has been always away from her parents and she never resided with A.1 and *defacto* complainant and therefore, it is preposterous to allege that she too joined in the alleged crime. Learned counsel further argued that even if FIR and other materials produced by the prosecution are accepted to be true, they only reveal the allegations against A.1 but not against the other petitioners. Except omnibus allegations that all the accused harassed and subjected her to cruelty, no specific averments with required details are mentioned in the prosecution material. Learned counsel thus submitted that continuation of the proceedings against the petitioners would amount to abuse of process of the Court and prayed to quash the proceedings.

5) Per contra, learned Public Prosecutor opposed the petition and submitted that the petitioners too joined A.1 in harassing the *defacto* complainant and all the accused have driven away the *defacto* complainant from the matrimonial home after forcibly taking away her daughter and with great difficulty, she could reach her parental home at Vizianagaram

and therefore, their petition may be dismissed.

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

“Whether there are merits in this petition to allow”

7) **POINT:** The Apex Court in the case of ***State of Haryana vs. Ch.Bhajan Lal***^[1] has given guidelines as to when the High Court can exercise its plenary powers under Sec.482 Cr.P.C to quash the proceedings to prevent the abuse of process of the Court and to secure the ends of Justice. 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. xx xx

5. xx xx

6. xx xx

7. xx xx”

8) Further, deprecating the practice of unnecessarily roping

in as many relations of the husband in 498-A cases, the Apex Court in ***Preeti Gupta vS. State of Jharkhand***^[2] made the following observations:

“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 the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the 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 complainant are required to be scrutinised with great care and circumspection.”

9) In the teeth of above decisions, it has now to be seen whether the materials produced by the prosecution even if uncontroverted, would reveal the commission of offences under Sec.498-A IPC and Sec.3 & 4 of D.P. Act, by the petitioners 2 to 4 or whether the petitioners were unnecessarily implicated to bog down A.1.

10) A close scrutiny of the complaint which is the first of the documents of allegations would give an understanding that the *defacto* complainant’s main grievance is against A.1 only. She alleged that for three months after marriage, they lived happily and thereafter he started suspecting her fidelity and

with that suspicion, he beat her and confined her in the house without providing food. His harassment culminated in driving her away from the house on 22.02.2012 by forcibly retaining their little daughter and with much difficulty, she could reach her parental home at Vizianagaram. Be that it may, in her 161 Cr.P.C statements she cast aspersions on petitioners/A.2 and A.3 also as if they too harassed her. In the statements of LWs.2 and 3 i.e, mother and Aunt (mother's sister) of *defacto* complainant also, it is mentioned as if A.1 and his parents subjected the *defacto* complainant to cruelty.

11) So at the outset, the materials produced by the prosecution if uncontroverted, project a *prima facie* case against A.1 to A.3 alone. The truth or otherwise of which can be decided only after a full-fledged trial and hence, petitioners/A.2 and A.3 do not deserve quashment of the proceedings. However, except a causal reference about petitioner/A.4, no specific allegations of cruelty are made against petitioner/A.4 who is the sister of A.1. It is the case of petitioners that since long A.4 was away from her parents on account of her studying medicine and job at Hyderabad. It is not disputed that petitioner/A.4 is a Doctor and staying at Hyderabad. Considering these facts, this Court is of the view that allegations against her are inherently improbable and continuation of the proceedings against her would amount to abuse of process of the Court.

12) In the result, this Criminal Petition is partly allowed and

the proceedings in C.C.No.989 of 2012 on the file of Additional Judicial First Class Magistrate, Vizianagaram insofar as petitioner/A.4 are concerned, quashed.

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

JUSTICE U. DURGA PRASAD RAO

Date: 20.06.2016

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

[\[2\]](#) (2010) 7 SCC 667