

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.15283 of 2016

ORDER

This petition is filed under Section 482 Cr.P.C., to quash the proceedings in C.C.No.14 of 2015 on the file of XXV Metropolitan Magistrate, Kukatpally, Cyberabad at Miyapur, Ranga Reddy District, registered for the offences punishable under Section 498-A IPC and under Sections 3 and 4 of Dowry Prohibition Act (for short 'the Act')

2. Petitioners 1 to 3/A1 to A3 are husband and in-laws of the first respondent/de-facto complainant. Petitioner No.4/A4, who is working as Khazi of the Government and not relative of the first petitioner, filed Crl.P.No.1386 of 2016 seeking to quash the proceedings in Cr.No.290 of 2015 of Gachibowli Police Station, Hyderabad, and obtained stay of his arrest in Crl.M.P.No.1310 of 2016 and the same is pending.

3. The main grievance of petitioners before this Court is that petitioners 1 to 3 never demanded the de-facto complainant for dowry and that the complaint was lodged deliberately after divorce and consequently, the allegations made in the charge sheet are false, and if those allegations have taken into consideration on its face value, they would not constitute the offences punishable under Section 498-A IPC and under Sections 3 and 4 of Dowry Prohibition Act.

4. In view of the specific allegations in the charge sheet, it is appropriate to extract the said allegations, which read as under:

“At the time of marriage her parents gave a dowry of Rs.5 lakhs, 12 tulas of gold and other articles apart from presenting one gold chain and a gold ring to her husband Irfan. The brothers of her mother-in-law presented her two gold rings which she kept with her mother while she was going to other village. But her mother-in-law picked up quarrel demanding her to return the rings to her as they were presented by her brothers. Remaining total gold of the complaint is with her husband in the locker. They all were reciprocal with her for one month after the marriage. Later her mother-in-law asked the complainant to ask her mother to speak to her. When the complainant informed it to her mother, she has spoken to the mother-in-law of the complainant on phone. In the phone call the mother-in-law of the complainant demanded her one sofa towards the dowry but which was not agreed by her. When the complainant questioned her husband why were they asking for sofa, enough dowry was already given, for which her husband scolded and quarrelled with her. On a later date her father-in-law went to the maternal house of the complainant and demanded her father an amount of Rs.2 lakhs towards additional dowry which was refused by him. Since then the husband of the complainant stopped speaking to her. In another occasion when her husband booked a laptop, his mother scolded the complainant when her husband told her that he had booked laptop on her request. When she was pregnant neither her husband nor other in-laws taken care of her. She stayed with her parents for nine months. Both the sisters-in-law of the complainant working in ICICI Bank and the eldest sister-in-law demanded the complainant an Innova car and they both forced her to cook breakfast and lunch on her own before going to office. She was working in TCS and after coming back to home from the office she had to prepare all food and other chores. When she asked her husband to suggest his mother to help her, he beat and scolded her. She was working in TCS prior to her marriage. Just because she was working they married her for more dowry and quarrelled with her on the pretext that she did not give total salary to them. She remained at her parental house for three months after the delivery for rest. During that period her husband came to her around 21.30 hours, took her son and dragged her by her tuft and took with him. In one occasion when his mother-in-law quarrelled with her, her husband beat her, removed the mangalasutram and toe rings and threw them at her and sent her to her maternal house that night. On 07/08/2014 there was a meeting in the presence of elders who have suggested them to start a separate family from her in-laws

for which her husband sought one month of time and went to Mumbai for training. During this period she remained at her maternal house. Her husband got himself transferred to Kurnool and put a condition to her to resign her job and to join him in Kurnool. He did not accept her requests due to which she approached Gachibowli Woman Police Station and counselling was conducted on him, but he did not change. They approached the caste elders and sent a notice to complainant through Khaji. She has received one notice but not the 2nd and third notice. On 29/05/2014, when she left the house for office, her husband beat her due to which she fell down and fractured her hand. When she went to her maternal house, they took her to Premier hospital, Nanal Nagar. On 28/06/2015 her husband informed her through Eenadu daily newspaper informing that he has divorced her on 29/05/2015 and also gave card to her towards the maintenance of their son. Therefore, she requested for legal action into the incident”.

5. As seen from the charge sheet, it is alleged that the parents of the first respondent gave Rs.5 lakhs, 12 tulas of gold and other articles towards dowry at the time of marriage and on later occasion, petitioners demanded an amount of Rs.2 lakhs and sofa set towards additional dowry and the first respondent refused to meet their demands. It is further alleged that the sisters-in-law of the first respondent, who were working in ICICI Bank, also demanded her to provide Innova car, but they are not arrayed as accused in C.C, since no material was found against them. The allegations made against petitioners/A1 to A3 would clearly establish *prima facie* case that they demanded a sum of Rs.2 lakhs and sofa set towards additional dowry besides receipt of the amount of Rs.5 lakhs and 12 tulas of gold at the time of marriage from the parents of the first respondent. If the allegations made in the charge sheet have taken into consideration on its face value, they would constitute the

offences punishable under Section 498-A IPC and under Sections 3 and 4 of the Act.

6. Section 2 of the Act defines 'dowry', 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 parent 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 ¹ [or any time after the marriage] ² [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

7. Thus, demanding an amount of Rs.2 lakhs and sofa set towards additional dowry and also receipt of the amount of Rs.5 lakhs and 12 tulas of gold towards dowry at the time of marriage would fall within the ambit of 'dowry' under Section 2 of the Act. Section 3 of the Act prescribes penalty for giving or taking dowry and Section 4 of the Act prescribes penalty for demanding dowry. Here, the first part i.e., receipt of dowry and payment of dowry at the time of marriage would fall within Section 3 of the Act and subsequent demand of Rs.2 lakhs and sofa set would fall within Section 4 of the Act. Therefore, the allegations made in the charge sheet on its face value would attract the offences punishable under Sections 3 and 4 of the Act.

8. Coming to the allegations pertaining to the offence punishable under Section 498-A IPC, 'cruelty' means:

(a) any wilful conduct which is of such a nature as it 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 on account of failure by her or any person related to her to meet such demand”

Since the allegations in the charge sheet clearly show that the first respondent was subjected to ‘cruelty’, as defined under Section 498-A IPC, by petitioners 1 to 3 by demanding additional dowry of Rs.2 lakhs and sofa set subsequent to the marriage and if those allegations on its face value are accepted, they would certainly attract the offence punishable under Section 498-A IPC.

9. The jurisdiction of this Court under Section 482 Cr.P.C. is limited and such jurisdiction has to be exercised in exceptional circumstances where the allegations made in the charge sheet on its face value would not constitute an offence punishable under either of the Sections mentioned in the charge. This principle was laid down in **State of Haryana v. Bhajanlal**¹ wherein the Apex Court laid down 7 guidelines, which are extracted hereunder:

(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;

(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;

¹ 1992(1) SCC 335

(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 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.

10. In **Madhavrao Jiwaji Rao Scindia vs. Sambhajirao Chandrojirao Angre**² wherein the Apex Court held that a test to be applied by the Court as to whether uncontroverted allegation as made *prima facie* establish the offence.

11. In view of the principles laid down in the above two judgments, it is clear that if this Court finds that the allegations made in the charge sheet would not attract the offences punishable under Section 498-A IPC or under Sections 3 and 4 of the Act on its face value, this Court can certainly interfere with the proceedings while exercising jurisdiction under Section 482 Cr.P.C. and quash the same. But in the present case, serious allegations are made, however, subject to proof would constitute the offences, *prima facie* on its face value, under Section 498-A IPC and under Sections 3

² 1998 SC 709

and 4 of Dowry Prohibition Act. Therefore, I am unable to exercise the jurisdiction under Section 482 Cr.P.C. to quash the proceedings against petitioners/A1 to A3 in the aforesaid C.C.

12. It is the contention of learned counsel for petitioners that the first respondent was with her parents during her pregnancy and after delivery also she was with them for three months. But that itself is not a ground when there is specific allegation about receipt of a sum of Rs.5 lakhs and 12 tulas of gold at the time of marriage, which constitute the offence punishable under Section 3 of the Act. These are all the subject matter of trial and consequently, it is not a ground to quash the proceedings. In addition to that, it is the contention of the learned counsel for petitioners that after obtaining divorce by the first petitioner, she made the complaint against the petitioners. Since the first respondent was subjected to cruelty, which is continuing offence, delay in lodging the complaint is not a ground to quash the proceedings against the petitioners if it is questioned during trial. However, it is not a ground to quash the proceedings if it is not explained during trial.

13. Learned counsel for petitioners also contended that even though the 4th petitioner A4 is a Government Khazi and is not a relative of the first respondent, he was unnecessarily arrayed as A4 in the crime. He further contended that though A4 filed Crl.P.No.1386 of 2016 and obtained stay of all further proceedings in the crime against him vide order dated 08.02.2016, filing of charge sheet by the police against him is nothing but violation of the orders passed by this Court.

14. In view of the pendency of criminal case filed by A4, it is difficult to quash the proceedings at this stage in a peculiar facts and circumstances of the case. The present order is subject to result of said C.C. filed by A4. In view of the same, the 4th petitioner/A4 is at liberty to renew his request in case the criminal petition is decided against him. Giving liberty to the 4th petitioner, the present Criminal Petition is dismissed.

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

27th October, 2016

sj

M. SATYANARAYANA MURTHY, J

