HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CRIMINAL PETITION No. 7101 of 2012

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ORDER:

The petitioners, who are A-2 to A-8 in Crime No.426 of 2012 of Visakhapatnam III Town Police Station, Visakhapatnam, registered for the offence punishable under Section 498-A and 420 IPC and Sections 3 and 4 of the Dowry Prohibition Act, filed the present application under Section 482 Cr.P.C., seeking to quash the investigation in the above crime registered against them.

The case of the prosecution is as under :

The informant who is the third respondent herein alleges that when her parents put her bio data in Bharat Matrimony seeking marriage alliance, the second petitioner/A-3 who is the sister of A-1 contacted her father expressing their interest. A-3 is alleged to have stated that her brother/A-1 completed M.B.B.S and did M.S. in U.S.A., besides passing USMLE exams and is waiting for residency admission. On that the father of the informant contacted them and had discussion. Finally, at the house of one Praveen, who is a friend of the father of the informant, talks were held. In the second week of March 2007 A-2 to A-4, A-7 and A-8 came to the house of the informant at Visakhapatnam and demanded dowry. At that time P.V.Subramanyam Raju, S.V.Ramana and P.Gopi Kishore were present. It is further alleged that A-1 through A-2 and other accused insisted the parents of the informant to pay Rs.40 lakhs dowry before the marriage date, failing which threatened to put-off the wedding. It is alleged that with great difficulty and in order to avoid humiliation the father of the informant paid that amount through bank transfers and by cash. The marriage was held at Vadapalli, Rajahmundry on August 26th, 2007. After the marriage the couple

came back to the parental house of the informant at Visakhapatnam. At that time, her sister-in-law A-5 along with her husband A-6 also came to Visakhapatnam where her father gave them Rs.9 lakhs towards balance dowry as per their demand. They got registered their marriage at the Registrar's office, Visakhapatnam on 31.08.2007. It is further alleged that on 09.09.2007 the informant alone left to USA as she was not having time off in her job, while her husband stayed back in India though his travel was booked along with her. After reaching U.S.A., the informant contacted her husband and in-laws but they did not respond properly. However, they told her that A-1 would join her only after purchase of a house in Hyderabad by her father. In the month of November, 2007 A-1 joined the informant in U.S.A. It is alleged that A-1 always used to be in a drunken condition, break things in kitchen, used to become aggressive and create a scene for no reason and pressurize her to demand money and a house from her father. While things stood thus, in the year 2009 the informant came to know that a criminal case was filed against A-1 by one Ms. G.Sreedevi on an allegation that A-1 cheated her with a promise to marry her. The said fact of pending criminal case was intentionally suppressed by A-1 and in laws. Since then, at the instance of A-1, the mother-in-law and <u>sisters-in-law</u> of the informant demanded the father of the informant to pay Rs.10 lakhs to Ms. G.Sreedevi as compounding amount for withdrawal of the case filed by her. In view of that, the <u>sister-in-law of the informant</u> sent number of mails.
It is alleged that even after meeting the unlawful demands, A-1 and in-laws did not look after her well. Further, A-1 used to spend time idle by living on the earnings of the informant and whenever she used to ask him about the future and settlement, he used to threaten her with dire consequences. It is alleged that the father of the informant paid Rs.44.5 lakhs by way of cash and purchase of assets to ensure that the life of the informant is not

disturbed on account of money in addition to Rs.40 lakhs paid as dowry. Basing on these allegations, the above crime came to be registered.

The main ground urged by the learned counsel for the petitioners is that on 20.07.2007 the respondent No.3 herein and Accused No.1 underwent a civil marriage in San Antonio Texas U.S.A., and on account of differences between them, took divorce on 29.05.2012 before a competent court of law i.e., the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex counter. It is urged that having settled all her disputes before a competent court in United States Court the present report came to be lodged in the month of July 2012 only with a view to harass the accused. It is said that the respondent herein stopped taking recourse to any proceedings in view of the settlement reached before the Courts in United States and as such continuation of present proceedings would be an abuse of process of law. It is said that the marriage in India, which took place on 26.08.2007, is not a valid one in view of the earlier marriage which took place in United States of America.

On the other hand, the learned counsel for the respondent opposed the application contending that the allegations made in the report *prima facie* constitute the offences alleged and the issue as to whether there was a compromise before a competent court in U.S.A., are matters which require to be investigated by the police. In view of the allegations made and as the issue involves factual aspects, he submits that question of quashing the investigation would not arise.

The learned Additional Public Prosecutor also opposed the petition contending that investigation is still pending.

As seen from the record, the averments in the First Information Report, which was lodged on 24.07.2012 refer to performance of a marriage on 26.08.2007 as per Hindu rites and customs at Vaddapalli Lord Venkateswara Temple. An amount of Rs.40,00,000/- was said to have been paid by the father of the informant to the inlaws through Bank transfers and by way of cash to avoid humiliation of cancellation of marriage. It is said that all the relatives and friends of the informant and her parents attended the marriage and after the marriage they came back to Visakhapatnam. It is alleged that a sum of Rs.9,00,000/- was paid as balance of dowry. The marriage was registered in the office of Registrar, Visakhapatnam on 31.08.2007. On 09.09.2007 the informant alone left to U.S.A. as she did not have time off in the job and her husband stayed back in India though his travel was booked along with her. About two months later A-1 joined the informant in U.S.A., and thereafter he used to harass her in all forms without doing any job. The averments in the First Information Report also show that in the year 2009 the informant came to know about the criminal case filed against A-1 by one Ms. G.Sreedevi alleging that A-1 has cheated her with a promise to marry her. At the instance of A-1, her mother-in-law and sister-in-law demanded the father of the informant to pay an amount of Rs.10,00,000/- to Ms. G.Sreedevi as compounding amount for withdrawal of the case. To that effect, her sister-in-law is alleged to have sent many “emails”. It is alleged that an amount of Rs.44.5 lakhs were paid by her father by way of cash and purchase of assets to ensure that her matrimonial life would not be disturbed, apart from payment of Rs.40 lakhs towards dowry.

A reading of the First Information Report would show that the allegations are directed against husband, mother-in-law and sister-in-law with regard to demands made at the time of marriage and the subsequent payments made for compounding the offence with

Sridevi. The averments in the report also show that A-1 used to harass the informant demanding her to arrange money and a house through her father. Truth or otherwise of these allegations are required to be investigated by the police and it may not be proper to discard these allegations at this stage.

As stated earlier, the learned counsel for the respondent relied upon the marriage certificate issued by the State of Texas dated 20.07.2007 to show the performance of marriage in U.S.A. and the divorce said to have been taken before the Sueprior Court of New Jersey Chancery Division-Family Part Middlesex county on 29.05.2012. The joint exhibit dated 17.05.2012 filed before this Court shows that the parties have agreed to divide an amount of $60,000 which is currently under her husband's control. The husband was directed to deliver cashier's check for an amount of $25,000 to the wife at the time of final divorce herein and the parties shall waive any alimony/support claims they may have against each other. It further says that prior to 29.05.2012 A-1 shall deliver all documents related to the land, together with an irrevocable power of attorney executed in accordance with the Indian laws and in such a manner that is accepted in India.

The learned counsel for the respondent strenuously submits that the genuinity or authenticity of these documents need to be investigated by the police and it is premature to accept them as true for the purpose of holding that there was a marriage and also a divorce in the U.S. Court.

The learned Additional Public Prosecutor submits that the investigation is still pending and only five witnesses are examined and as such it is too pre-mature to say that there was a compromise and divorce. In reply the learned counsel for petitioner placed on record the judgments of the Apex Court and also a report alleged to have been given to the Station House Officer by A-6 on 05.12.2012. Insofar as the report dated 05.12.2012 is concerned, the same do not contain any endorsement of acknowledgment by any of the Officers of the concerned police station or by the Commissioner of Police. Therefore, the relevancy of the said report can only be gone into during the course of trial. Further, a reading of the First Information Report would clearly indicate that specific role with regard to the alleged acts of harassment for money or for property are directed mainly against A-1, A-2 and A-3. Part of cause of action took place in U.S.A. and part in India, when demands have been made to the father of the informant. The argument of the learned counsel for the petitioners is that if the settlement is accepted the proceedings have to be closed. But here is a case where Xerox copy of the orders, passed by the foreign court, are placed on record to show that there was a marriage between the parties in San Antonio, prior to the date of marriage in India and also divorce before a foreign court after agreeing to accept certain amount. The issue as to admissibility of Photostat copy of the decree of the foreign judgment came up for consideration before the Apex Court in **Y.Narasimha Rao and others v. Y.Venkata Lakshmi and another**[1]**.** In the said case, the Apex Court after referring to the various judgments and also the provisions of the Evidence Act held that, "the expression "certified copy" of a foreign judgment in Section 14 of the Code has to be read consistent with the requirements of Section 86 of the Evidence Act." The Court held that the document is not admissible in evidence for want of the certificate under Section 86 of the Act and not because it is a photostat copy of the original as held by the High Court. The Magistrate was directed to proceed with the matter pending before him according to law as expeditiously as possible, preferably within four months from the date of the order. Since the case on hand stands on the same footing, the Xerox copies of the documents cannot be made a basis for quashing the proceedings.

In **Devendra Kumar Sharma v. Bhavna Sharma**[2] the Apex Court while dealing with a situation where an amount of Rs.16 lakhs was paid by way of 4 D.Ds., in favour of the respondent observed that having regard to the facts and circumstances the proceedings in D.V.C. and also in another case i.e., before the Assistant Collector and Magistrate at the Collectorate, Jaipur are quashed. But, the situation on hand is different, as neither the investigation agency nor the learned counsel for the respondent herein have agreed to the fact of receipt of the money from A-1 towards full and final settlement. On the other hand, the Joint Exhibit dated 17.05.2012 referred to division of an amount of $60,000 lying in A-1's account and which also state that A-1 shall deliver a cashier's check for an amount of $25,000 to the wife at the time of the final divorce hearing and delivery of the same shall be acknowledged on the record. The learned counsel for the respondent disputes payment in terms of the same. Since the said issue requires investigation and collection of factual aspects, it may not be proper for this Court to give a finding on the said aspect. But, however a perusal of the averments in the First Information Report would show payment of Rs.9 lakhs dowry to A-5 and A-6 and harassment for money and property by A-2(mother-in-law) and sister-in-law (A-3) along with A-1.

In view of the above allegations and as the case is still under investigation, the request of A-2, A-3, A-5 and A-6 is rejected. Insofar as others i.e., A-4 and A-7 the criminal petition is allowed. However, it is always open to the petitioners/ A-2, A-3, A-5 and A-6 to avail the remedies available under law after filing of charge-sheet. It is needless to mention that since the investigation is still pending, the police shall investigate into the alleged marriage, divorce and payment which took place in U.S.A.

Accordingly, the Criminal Petition is partly allowed. Miscellaneous Petitions pending if any, in this Criminal Petition shall stand closed.

JUSTICE C.PRAVEEN KUMAR

Date: 13.04.2016
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[1] (1991)3 Supreme Court Cases 451

[2] (2011) 10 Supreme court Cases 607