THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL PETITION Nos.12236 and 12277 of 2015

COMMON ORDER:

Criminal Petition No.12236 of 2015 is filed by accused No.1 whereas Criminal Petition No.12277 of 2015 is filed by Accused Nos.2 to 9 seeking quashing of all further proceedings in C.C.No.427 of 2015 on the file of the I Additional Judicial Magistrate of First Class, Khammam. Since both the petitions are filed for quashing of proceedings in C.C.No.427 of 2015, they are disposed of by this common order. A charge sheet came to be filed against the petitioners for the offences punishable under Sections 498-A and 494 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

The averments in the charge sheet are as under:

Accused No.1 is the husband of respondent No.2. Accused Nos.2 to 4 are brothers and accused No.5 is the sister of accused No.1. Accused Nos.6 and 7 are the sons of accused No.5, accused No.8 is the wife of accused No.2 and accused No.9 is the second wife of accused No.1. Accused No.1 is aged about 60 years, accused Nos.2 to 8 are aged about 61, 58, 55, 62, 45 and 48 years respectively, where as accused No.9 is aged about 30 years. The averments in the charge sheet would show that the marriage of the informant with accused No.1 was performed on 20.05.1982 at Balaji Bhavan, Tirupathi. At the time of marriage, the father of the informant gave an amount of Rs.26,000/- by way of D.D.No. TT/A9/409254, dated 03.05.1982 for Rs.10,009/-, DD No.OL/A/74426 dated 03.05.1982 for Rs.15,000/- and D.D.NO.OL/AL/744443 dated 12.05.1982 for Rs.10,000/- and twenty tolas of gold apart from other household articles. After marriage, the informant joined her husband for marital life at Chittoor and out of wedlock they were blessed with two daughters and one son. After the birth of second daughter, accused No.1 is alleged to have developed illegal contacts with his sister-in-law by name Sirajunnisa ie. Accused No.8 and started harassing the informant with dire consequences by beating and abusing her in filthy language on the ground that she is not good looking. Though the informant was harassed, she bored the same with a hope that there would be a change in the attitude of accused No.1 on one day or the other.

The averments in the charge sheet further show that accused No.1 did not change his attitude and continued to maintain illicit relationship with accused No.8. It is further alleged that, accused Nos.2 to 8 supported accused No.1 in harassing the informant by beating and also threatened her with dire consequences. It is stated that accused Nos.5 to 7 performed the second marriage of accused No.1 with accused No.9, who is the grand daughter of accused No.5 at Kadapa, contrary to the muslim law. It is further alleged that during the life time of his father, accused No.1 acquired land and constructed a RCC building bearing No.4-3-17 at Ramnagar Colony, Chittoor Town worth Rs.80.00 lakhs and also acquired Ac.10.00 of land at Srikalahasti. Basing on these allegations the above case came to be filed. After completing the investigation the police filed charge sheet, which was taken on file as C.C.No.427 of 2015 on the file of the I Additional Judicial Magistrate of First Class, Khammam.

Learned counsel for the petitioners mainly submits that even accepting the allegations in the charge sheet to be true no offence is made out against the petitioners. He further submits that in the year 1991 itself respondent No.2 herein filed a case against accused Nos.1 to 4 and others for an offence punishable under Section 498-A IPC which came to be numbered as C.C.No.25 of 1991 on the file of the V Additional Judicial Magistrate of First Class, Chittor. After a full pledged trial the accused in the said case were acquitted vide judgment dated 27.12.1995. He further submits that accused No.1 gave divorce on 12.04.1994 and sent divorcenama along with mehar amount and maintenance for iddat period. He furthers submits that respondent No.2 filed M.C.No.13 of 1991 on the file of the Judicial Magistrate of First Class, Special Mobile Court, Khammam which was initially allowed and subsequently on an application filed by accused No.1 stating that there was a divorce on 12.04.1994 itself maintenance was cancelled. Challenging the same a revision was preferred by respondent No.2 before the Principal District and Sessions Judge, Khammam, which was allowed. He further submits that respondent No.2 also lodged a report which came to be registered as Crime No.27 of 2009 with identical allegations, which was stayed by this Court on 22.10.2009 vide Crl.P.M.P.No.8250 of 2009 in Crl.P.No.8579 of 2009. Subsequently, the said Crl.P.No.8579 of 2009 was disposed of directing the police to file final report without disturbing the stay order. Four years later another report came to be lodged by respondent No.2. He submits that since the allegations made in three reports are identical, continuation of proceedings against the petitioners would be an abuse of process of law.

Respondent No.2, who appeared in-person opposed the applications contending that the allegations made in the reports lodged earlier and in the present report are different and it cannot be said that the present proceedings are initiated only with an intention to harass the accused. She further submits that grave injustice has been done to her and if the proceedings are quashed she will be put to irreparable loss and injury.

In order to appreciate the rival contentions, it would be useful to refer to the allegations made in the present report and also the judgments of the Apex Court in this regard.

In ***NEELU CHOPRA AND ANOTHER V. BHARTI***[1], the Apex Court was dealing with a case where the parents-in-law of the respondent were shown as accused for an offence punishable under Sections 406 and 498-A read with Section 114 of IPC. The Apex Court held that in order to lodge a proper complaint, mere mention of the sections and the language of those sections is not be all and end of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence. The Apex Court found that the allegations in the said complaint were vague, as it does not show as to which accused has committed what offence and what is the exact role played by them in the commission of crime. Under these circumstances, the Apex Court found that continuation of proceedings against the in-laws would be an abuse of process of law.

In ***GEETA MEHROTRA' V. STATE of UP***[2], the Apex Court held that mere casual references of the names of the family members in a matrimonial dispute without any allegation of active involvement in the matter would not justify taking cognizance against them in view of overlooking facts 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. The Apex Court also observed that if the FIR as it stands does not disclose specific allegation against the accused, especially 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 FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the Court to take cognizance of the case against the relatives of the main accused who are prima facie not found to have indulged in the torture of the complainant.

In **Preeti Gupta v. State of Jharkhand**[3], the Apex Court pointed out that in cases of this nature, allegations in the complaint should be scrutinized with great care and circumspection especially against the husband's relatives who are living in different cities, who never visit or rarely visit the matrimonial house of the complainant. The Supreme Court reminded the member of the Bar and Bench of their social responsibility and obligation to ensure that social fiber of family life is not ruined or demolished.

Keeping in view of the principles of law enunciated by the Apex Court, I shall now deal with the case on hand.

From the judgments referred to above, it is clear that continuation of proceedings against the accused would be improper where the allegations made against accused are vague and omnibus in nature.

As seen from the averments in the present charge sheet, the marriage of accused No.1 and respondent No.2 took place on

20.05.1982 and after marriage she joined her husband at Tirupati. Out of wedlock they were blessed with two daughters and one son. After the birth of second daughter, accused No.1 is alleged to have developed illegal contacts with accused No.8 and started harassing respondent No.2 both mentally and physically saying that she is not good looking. It is to be noted that accused No.1 is now aged about 60 years while accused No.8 is aged about 53 years. Accused Nos.2 to 5 are aged about 61, 58, 55 and 62 years, where as accused Nos.6 and 7, who are sons of accused No.5 are aged about 45 and 48 years respectively. Accused No.9, with whom accused No.1 is alleged to have got married is aged about 30 years. The averments in the charge sheet are silent with regard to the period during which the alleged harassment took place, the period during which the informant was necked out from the house and also the date when accused No.1 married accused No.9.

The statement of LW.1, who is the informant herein, recorded by the police during the course of investigation is only refers to harassment by accused No.1 on the instigation of other accused but the same is silent as to when and in what form the said harassment took place. LW.2 who is the son of LW.1 states that he is aged about 29 years and that when he was five years old his father left them and since then he along with her mother and two sisters are staying at Khammam. He further states that he is now working in the office of D.F.O. Though he went and asked his father to take care of them there was no response from him. Recently they came to know that his father married accused No.9 which lead to lodging of this report by his mother.

The statement of LW.3, who stood as mediator at the time of marriage of accused No.1 with the informant, toes the line of LW.1. It is stated that accused No.1 on the instigation of other accused, used to demand additional dowry and ultimately necked out the informant from the house. The statement of LW.4 also goes in line with the statements of LWs.1 and 3.

It is to be noted that apart from the above crime, two more crimes came to be registered for the very same offences against some of the accused. C.C.No.25 of 1991 on the file of the V Additional Judicial First Class Magistrate, Chittoor relate to an offence under Section 498-A IPC against accused Nos.1 to 5 therein i.e. Accused Nos.1,3,4 herein and the parents of accused No.1. The allegations therein also refer to payment of dowry, giving gold and household articles at the time of marriage. It is also alleged that out of wedlock three children were born and three years prior to 1990, accused No.1 started harassing PW.1 for cash and gold necklace. It is stated that on 12.02.1990 when PW.1 went to the house of accused No.1 along with her elder brother Shaik Nissar Ahmed, accused Nos.1 to 5 therein abused them and necked out PW.1 stating that PW.1 will not be taken back unless she gets additional dowry of Rs.25,000/- and a gold necklace. Basing on these allegations the above C.C. came to be taken on file. In support of its case, the prosecution examined PWs.1 to 4 and got marked Exs.P1 to P4. Though no oral evidence was adduced on behalf of defence, but he got marked Exs.D1 to D5. After considering the evidence available on record, the trial Court acquitted the accused. The said judgment has become final.

Subsequently in the year 2009 the informant lodged another report for the very same offences i.e. 498-A and 494 IPC and

Sections 3 and 4 of the Dowry Prohibition Act, 1961 before the Women Police Station, Khammam against seven accused making identical allegations and also referring to the second marriage of accused No.1 with Taslimabhanu without the consent of the informant for which a case in Crime No.27 of 2009 came to be registered. Crl.P.No.8579 of 2009 came to be filed by the accused questioning the registration of Crime No.27 of 2009. By an order dated 22.03.2011, this Hon'ble Court disposed of the same directing the police to complete the investigation within a period of three months from that day and file final report either way without arresting the accused as per the interim orders passed by this Court. It is stated that the investigation in the said crime is still pending.

As seen from the record three cases came to be registered at the instance of the informant for the very same offences. The first crime was in the year 1991 referring to the allegations of harassment made till then and also sending her out of the house. Subsequent reports do not anywhere indicate about the informant joining accused No.1 after she was alleged to have been necked out from the house in the year 1990. The first case which was registered in the year 1990 ended in acquittal and the same has become final. The second crime which was registered in the year 2009 refers to the allegations of harassment which took place in the year 1989 and 1990 and also refers to the second marriage of accused No.1 with one Tahsilmabhanu. It is stated that the said crime is still pending investigation against all the accused. Thereafter the present crime came to be registered against very same accused for the very same offences though the earlier crime registered in the very same police station is said to be pending.

It is true that there cannot be two trials in respect of the same incidents, but it is also to be noted that in Crime No.27 of 2009 the police have not yet filed the charge sheet. It appears that the case is still pending at the stage of investigation and in the subsequent report given the police have filed charge sheet which is subject matter of challenge in the present criminal petitions.

Having regard to the judgments of the Apex Court and taking into consideration the statements of witnesses i.e. LWs.1 to 4 it cannot be said that petitioners in Crl.P.No.12277 of 2015 are responsible for the offence alleged more so in view of the order of acquittal against accused No.1 and others for the very same offences and more particularly when the investigation in Crime No.27 of 2009 is said to be still pending.

Coming to the allegation made for the offence punishable under Section 494 IPC against accused Nos.1 and 9, it is to be noted that in Crl.R.P.No.32 of 2002 on the file of the Principal District and Sessions Judge, Khammam, filed against an order passed in Crl.M.P.No.2743 of 2001 in M.C.No.13 of 1991, the learned Sessions Judge, while reversing the order of cancellation of maintenance observed the admissions made by respondent No.2 herein, wherein she categorically admitted that there was talaq on 12.04.1994 itself. Apart from that a copy of divorcenama filed before this Court is not disputed by respondent No.2 herein. Therefore, it cannot be said that the marriage of accused No.1 alleged to have been performed with accused No.9 amounts to an offence under Section 494 IPC, since the earlier marriage was not in subsistence at the time of accused No.1 marrying accused No.9. Further, the averments in the charge sheet are silent as to when accused No.1 married accused No.9. The witnesses, who were examined during the course of investigation and who were cited as witnesses in the charge sheet do not anywhere speak about they witnessing the marriage of accused Nos.1 and 9. Hence, this Court is of the view that continuation of proceedings against all the accused would be an abuse of process of law and the same is liable to be quashed more so as Crime No.27 of 2009 is still pending and there cannot be two trials in respect of the same incident.

Accordingly, both the criminal petitions are allowed and the proceedings against accused Nos.1 to 9 in C.C.No.427 of 2015 on the file of the I Additional Judicial Magistrate of First Class, Khammam, are hereby quashed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand dismissed.

JUSTICE C. PRAVEEN KUMAR

01.04.2016
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[1] 2009(4) JCC 3021

[2] (2012) 10 SCC 741

[3] **(2010)7 SCC 667**