

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15782 of 2016

ORDER :

This criminal petition is filed by the petitioners/A.2 and A.3 under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to quash the proceedings in C.C.No.288 of 2016 on the file of XIV Metropolitan Magistrate, L.B.Nagar, Ranga Reddy District, for the offences punishable under Sections 498-A, 323, 354(D) and 506 IPC and Sections 4 and 6 of the Dowry Prohibition Act.

2. The ground for filing of this criminal petition is that there is no truth in the allegation made in the charge sheet and they never lived under one roof as the de facto complainant is residing at Hyderabad in connection with employment, whereas the petitioners, who are in-laws of the de facto complainant, are residing in Odissa State, therefore the question of subjecting her to cruelty at Hyderabad does not arise and the alleged cruelty is neither true nor correct and on the strength of such casual allegation, the prosecution cannot be continued since it would amount to abuse of process of law.

3. The jurisdiction of this Court under Section 482 Cr.P.C. is limited and such jurisdiction can be exercised sparingly with care circumspection. However, this Court can exercise jurisdiction only when the allegations in the charge sheet on its face value would not constitute the offences punishable under Sections 498-A, 323, 354(D) and 506 IPC and Sections 4 and 6 of the Dowry Prohibition Act.

4. Section 482 Cr.P.C. conferred jurisdiction of the Court only to give effect to any order to prevent abuse of process of any Court to secure ends of justice and such inherent power is to be exercised *ex debito justitiae*, to do real and substantial justice, for administration of which alone Courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether comes the case ends in conviction or acquittal as reported in **Mrs. Dhanalakshmi v. R.Prasanna Kumar and ors¹, Ganesh Narayan Hegde v. S.Bangarappa and ors² and M/s.Zandu Pharmaceutical Works Ltd. And ors. v. Md.Sharaful Haque and ors.³**

5. It is neither feasible, possible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 Cr.P.C. should be exercised. In **State of Haryana v. Bajana Lal⁴** the Apex Court explained the limits of jurisdiction under Section 482 Cr.P.C. and laid down the guidelines either to exercise the power or not to exercise the power under Section 482 Cr.P.C., they are as follows:

(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;

¹ AIR 1990 SC 494

² (1995) 4 SCC 41

³ AIR 2005 SC 9

⁴ 1992 Supp (1) SCC 335

(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;

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.

6. Guidelines No.1 is relevant for deciding the present case and according to it, 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. Here, the allegations made in the charge sheet are extracted here for appreciation.

Her husband went to an extent of creating a document as if she has written mentioning some love affairs before marriage. He used couple of names from her friends in that so that the document look as if she has written. When she requested her parents to arrange money, her parents with great difficulty arrange a sum of Rs.4 lakhs and paid the same to her husband on different occasions. But even after receipt of the said demands, her husband is not satisfied with the same and demanded to transfer the residential flat standing on her name to his name, otherwise he will not permit her to lead marital life. However, she has been to Hyderabad to join her duties as she was working even prior to marriage with the consent and permission of her husband. However, during the course of wedlock at Indore, she conceived her pregnancy. Her husband used to visit their home at Hyderabad once or twice in a month and stayed with her. While leaving, he used to take away all her earnings. She begot a male child in the month of December, 2015 and her husband stayed with her here till 1st week of January. During the stay, he used to say in front of her, very abusive language about her with tortured her mentally and provoked her to think about committing suicide instead of seeing that he is using abuse language about her in front of her son's ears. On 14th February, 2016 cradle ceremony was performed and her husband and his parents attended the same. After cradle ceremony, her husband started demanding her to come along with flat transfer papers and additional dowry otherwise he would kill her, her infant child, her old aged parents if his demands for additional dowry is not fulfilled.

7. The allegation that her husband went to an extent creating a document as if she has written, would prima facie constitute an offence punishable under Section 498-A IPC against the petitioners. The main contention of the petitioners is that A.1 and de facto

complainant never lived as wife and husband under one roof. But, this contention is without any substance since the de facto complainant and A.1 lived together and blessed with male child, performed cradle ceremony and thereafter demanded additional dowry and subjected her to cruelty, for her failure, made attempts by the petitioners and also caused hurt voluntarily and committed an offence staking under Section 354(D) of IPC. When the allegations made in the charge sheet would prima facie constitute an offence as per guideline No.1 in Bajana Lal's case, this Court cannot quash the proceedings by exercising the jurisdiction under Section 482 Cr.P.C. Accordingly, I find no merits to quash the proceedings and consequently the criminal petition is liable to be dismissed.

8. At this stage, learned counsel for the petitioners requested to pass an order dispensing with the appearance of petitioners before the trial Court.

9. Accordingly, the criminal petition is dismissed. The petitioners are permitted to file a petition under Section 205 Cr.P.C. before the trial Court and on filing such application, after issuing notice to the de facto complainant, the trial Court is directed to decide the same on the same day according to law.

10. Miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

8th November 2016

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