

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CRIMINAL PETITION No.9299 of 2015

ORDER:

The criminal petition is filed by the petitioner/A4 under Section 482 Cr.P.C. to quash the proceedings in C.C.No.221 of 2015 on the file of the Judicial First Class Magistrate, Salur, registered for the offences punishable under Sections 498-A & 109 r/w.34 IPC and under sections 3 & 4 of Dowry Prohibition Act.

2. Heard the learned counsel appearing for the petitioner/A4, learned counsel appearing for the 2nd respondent/*de facto* complainant and the learned Additional Public Prosecutor, representing the State.

3. The allegations in the charge sheet in brief are that the marriage of the 2nd respondent was solemnized on 03.02.2013 with A1 in a Masjid at Salur and at the time of marriage, the parents of the 2nd respondent gave cash of Rs.1 lakh and paraphernalia worth of Rs.1 lakh to the accused. The 2nd respondent joined the matrimonial home at Visakhapatnam, where A2 & A3, mother-in-law and sister-in-laws are dwelling along with A1 in the same roof. After 6 months of the marriage, A1 to A3 started harassing the 2nd respondent and degrading her before relatives stating that she did not bring sufficient dowry and demanding her to bring Rs.5 lakh as additional dowry. Thereafter, the 2nd respondent conceived and went to her parents' home for delivery and she gave birth to a female child. The parents of the 2nd respondent took her to the matrimonial home, where A1 to A3 subjected her to cruelty both physically and mentally and on one day, A1 beat her and tried to neck her out from the house at the instigation of A2 to A4. Hence the complaint.

4. The petitioner/A4 filed the present criminal petition contending that no allegation was made against him and he was falsely implicated in the above case. He further contends that he acted as mediator for the marriage of A1 and the 2nd respondent and he is residing at Malaysia and the 2nd respondent intentionally implicated him in the above case.

5. The 2nd respondent filed counter stating that A4 is also responsible for the ill-treatment meted out to her in the hands of A1 to A3. From the date of registering the crime and filing of the charge sheet, the petitioner/A4 did not appear before the Court below and has not obtained any bail. The Court below issued non-bailable warrants against the petitioner/A4 and they are still pending, and therefore, the present petition is liable to be dismissed.

6. The admitted fact is that the petitioner is A.4 and he is the husband of the sister of the non-petitioner/A.1 who in turn is the husband of the 2nd respondent/*de facto* complainant. The wife of the petitioner/A.4 is also arrayed as an accused No.3 who is a non-petitioner. The allegations of the complainant made in the complaint and also the investigation revealed that while the non-petitioner/A.1 has subjected the 2nd respondent/complainant to cruel treatment, the other accused viz., the mother, sister and brother-in-law of the husband/A.1 have instigated the husband to subject the complainant to harassment.

7. Learned Counsel appearing for the petitioner/A.4 vehemently submits that the allegations insofar as the petitioner/A.4 are concerned, who is admittedly a resident of Malaysia, are as vague as it could be and therefore in view of the catena of the authorities of the Apex Court, he should not be subjected to the travails of undergoing a trial, which will be

nothing short of abusing the process. Learned Counsel has relied upon the following authorities which no doubt lay down that if the allegations contained in the complaint and the charge sheet are vague and bald, family members of the husband should not be made to undergo rigors of a trial. The Supreme Court in a decision - GEETA MEHROTRA & ANR v. STATE OF U.P. & ANR. (Criminal Appeal No.1674 of 2012) held at para 17 as under:-

“Their Lordships of the Supreme Court in this matter had been pleased to hold that the bald allegations made against the sister-in-law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband’s relatives as possible. It was held that neither the FIR nor the charge sheet furnished the legal basis for the Magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge sheet, none of the alleged offences under Section 498-A, 406 and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant’s husband who was undisputedly not living with the family of the complainant’s husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister-in-law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed.”

In a decision reported in PREETI GUPTA AND ANR. V. STATE OF JHARKHAND AND ANR. (2010 (8) UJ SC 3936) the Supreme Court held at para 33 as under:-

“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 complaint are required to be scrutinized with great care and circumspection."

8. On behalf of the *de facto* complainant/R.2 a detailed counter is filed and the learned Counsel appearing for the 2nd respondent submits that even though in the complaint and the statement under Section 161 Cr.P.C., of the victim/R.2 she stated that A.1 used to subject her to cruel treatment on the instigation of A.2 to A.4 but the statements of other witnesses clearly show that it is the petitioner/A.4 who though resident of Malaysia was instigating the husband of the 2nd respondent and other people to subject her to harassment and cruel treatment in addition to making them to demand additional dowry. L.Ws.3 and 4 whose statements are placed before the Court speak about that aspect.

9. What is the effect of the evidence on record, more particularly, the statements of the relations of the wife as against the statement of the wife herself is a matter of appreciation of evidence which is possible only after a full-fledged trial. How much influence the petitioner/A.4 being a non-resident brother-in-law of the non-petitioner/A.1/husband of the victim is a matter of appreciation and consideration by taking into consideration the totality of the entire evidence that will be placed before the Court during the course of trial. In view of the above, a perusal of the material on record, *prima facie*, show that there are allegations, the truthfulness or otherwise of which can be adjudicated after the trial. It cannot therefore be said that the charge sheet insofar as the

petitioner/A.4 is concerned is liable to be quashed. There are no merits in the petition and the same is liable to be dismissed.

10. It is, however, submitted that the petitioner/A.4 is a permanent resident of Malaysia and it will be difficult for him to appear in the Court at Salur, Vizianagaram District, during the course of trial. His own wife, mother-in-law and brother-in-law are already arrayed as A.1 to A.3 in the charge sheet. In that view of the matter, learned Counsel requests that in the event of trial being proceeded against the petitioner/A.4, his presence may be dispensed with on each and every date of hearing and he undertakes to appear before the Court as when his presence is required.

11. In the result, the Criminal Petition is disposed of. The learned Magistrate is directed to dispose of C.C.No.221 of 2015, as expeditiously as possible, without insisting the presence of the petitioner/A.4 on each and every date of hearing, unless his physical presence is required for any specific purpose. Needless to say that the observations made herein need not in any way influence the trial Court in adjudicating the controversy.

Miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

M.S.K.JAI SWAL, J

27th September, 2016
Dsr/smr