

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.3456 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.73 of 2016 on the file of XIII Additional Chief Metropolitan Magistrate at Hyderabad, registered for the offences punishable under Sections 498-A and 406 of Indian Penal Code (for short "I.P.C.") and under Sections 4 and 6 of Dowry Prohibition Act (for short "D.P.Act.").

The petitioners herein are accused Nos.4 and 5 and they challenged the proceedings in C.C.No.73 of 2016 on the file of XIII Additional Chief Metropolitan Magistrate at Hyderabad, on various grounds.

One Chundi Pratima, defacto complainant lodged a complainant with Women Police Station, CCS, DD, Hyderabad alleging that on 05.01.2013 in the family counseling she came to know that her husband produced Divorce order obtained from the Family Court, Hyderabad vide F.C.O.P.No.1135 of 2010 dated 06.11.2010 that he is not accepting her as his wife. Her husband Chundi Raghav Rajesh, her father-in-law Chundi Laxmi Narsimha Rao, her mother-in-law Chundi Subba Laxmi, her sister-in-law Dr.Harini, husband of her sister-in-law Barui Venkata Kodandapani, tried to kill her by pressing her neck as she failed to meet the illegal demand of additional dowry of Rs.9,00,000/-. All the persons referred above subjected her to both physical and mental cruelty. In the month of October 2009 on the occasion of house warming ceremony, they necked out defacto complainant

with her minor child while saying that she is suffering from mental disorder and especially her sister-in-law Dr.Harini and her husband B.Venkata Kodandapani (petitioners herein) are playing key role to harass her both physically and mentally and the defacto complainant requested to take necessary action.

On receipt of the same, police registered a case in Crime No.9 of 2013 for the offences punishable under Sections 498-A and 406 of I.P.C. and under Sections 4 and 6 of D.P. Act and issued FIR against the petitioner herein and others.

The Inspector of police took up investigation and during investigation he examined 4 witnesses including defacto complainant Chundi Pratima and M.S.Subba Laxmi, mother of the defacto complainant, K.V.Subba Rao, father of the defacto complainant and recorded their statements under Section 161 of Cr.P.C. and filed charge sheet before the Court.

The specific allegations made against the petitioners herein in the charge sheet are as follows:

“..... In this regard a false medical certificate also obtained with the help of A-4 Dr. Harini to prove the same. On 05.01.2013 in the family counseling, L.W.1 came to know that A-1 produced Divorce order of the Hon'ble Family Court, Hyderabad vide F.C.O.P.No.1135 of 2010 Dt.06.11.2010, he is not accepting her as his wife. A-1 to A-5, all together on 21.06.2009, tried to kill L.W.1 by pressing her tone for want of additional dowry of Rs.9 Lakhs. All the above mentioned accused harassed her physically and mentally. In the month of October 2009, on the occasion of “Gruha Pravesham” they necked LW-1 along with her minor child out of the house. All together used to say that she was having mental disease. Especially her A-4 Dr.Harini and her husband A-5 Baruri Venkata Kodandapani are playing key role to harass LW-1 mentally and physically and necked her out of the house.”

Thus, the alleged offences committed are punishable under Sections 498-A and 406 of I.P.C. and under Sections 4 and 6 of D.P.Act.

Sri B.Chandrasen Reddy, learned counsel for the petitioners, contended that the petitioner No.2 is only husband of petitioner No.1 and brother-in-law of husband of defacto complainant and he is not relative of husband of defacto complainant within the definition of relative used in Section 498-A I.P.C., hence he cannot be implicated in a case for the offence under Section 498-A of I.P.C. He is further contended that except making omnibus allegations, no specific allegation was made against the petitioners and in the absence of any specific allegations implicating the present petitioners in the crime as accused is nothing but abuse of process of Court, in such a case the proceedings against the petitioners herein are liable to be quashed.

During the hearing the learned counsel for the petitioners drawn the attention of this Court to the statements recorded by the investigating officer during investigation.

The main contention raised before this Court is that even the allegations made in the complaint, on their face value, would not constitute the offences punishable under Sections 498-A and 406 of I.P.C. and under Sections 4 and 6 of D.P.Act and prayed to quash the impugned proceedings. Whereas the learned counsel for the respondent No.2 would contend that the material available on record would go to establish, prima facie case against the petitioners and when the specific allegations are made in the charge sheet, the Court cannot quash the proceedings at the

threshold of the trial based on the contentions. It is also contended that the petitioner No.2 is no other than husband of the petitioner No.1, who is the sister of the husband of the defacto complainant. Therefore, he would fall within the definition of relative of husband and prayed to dismiss the petition.

The first and foremost contention of the learned counsel for the petitioner is that the petitioner No.2 is not the relative of husband of the defacto complainant, and he cannot be roped with the offence punishable under Sections 498-A and 406 of I.P.C. and Sections 4 and 6 of D.P.Act. It is an undisputed fact that the petitioner No.2 is the husband of petitioner No.1, who is the sister-in-law (husband's sister) of the defacto complainant and the petitioner No.2 would fall within the definition of relative of husband to attract the offences punishable under Section 498-A and 406 of I.P.C.

The Apex Court in “***U.Suvetha v. State by Inspector of Police and Another***¹” discussed the scope of meaning of the word ‘relative of the husband’ after reviewing the entire earlier law laid down by it and held that status of a relative is conferred only by blood or marriage or adoption. “Girlfriend” or “concubine” being not connected by blood or marriage is not a relative of the husband as per Section 498-A of I.P.C. Meaning of “relative” depends upon the nature of statute. Persons who can commit an offence under Section 498-A of I.P.C. are husband and his relatives only, girlfriend being not a relative cannot be charged under Section 498-A of I.P.C.

¹ (2009) 6 Supreme Court Cases 757

This Court earlier considered the status of “paramour” and “concubine” to rope them with the offence punishable under Section 498-A of I.P.C. in **“Vungarala Yedukondalu v. State of Andhra Pradesh²”** and opined as follows:

“The term "relative" has not been defined in Indian Penal Code and in the absence of any such definition, the Court has to go by the precedents. Assuming that the allegations made against the petitioner viz., that she is the concubine of A1 is true, then, it is to be held that there is a living relationship between the petitioner and A1 in the case and there are specific allegations to the fact that only at the instigation of the revision petitioner, A1 is harassing the second respondent and as such this Court is of the considered view that a charge under Section 498-A of IPC among other offence has also been rightly framed against the revision petitioner.”

The Apex Court in **“U.Suvetha v. State by Inspector of Police and Another”** (referred supra) defined the ingredients of Section 498-A of the Penal Code are as follows:

- a) The woman must be married
- b) She must be subjected to cruelty or harassment; and
- c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.

The word 'relative' has been defined in P. Ramanatha Aiyar Advanced Law Lexicon - Volume 4, 3rd Edition as under:

Relative, "RELATIVE" includes any person related by blood, marriage or adoption. [Lunacy Act].

The expression "RELATIVE" means a husband wife, ancestor, lineal descendant, brother or sister. [Estate Duty Act].

"RELATIVE" means in relation to the deceased,

- a) the wife or husband of the deceased;
- b) the father, mother, children, uncles and aunts of the deceased, and

² 1988 Cri L J 1538 (AP)

c) any issue of any person falling, within either of the preceding sub-clauses and the other party to a marriage with any such person or issue [Estate Duty Act].

A person shall be deemed to be a relative of another if, and only if, -

a) they are the members of a Hindu undivided family, or

b) they are husband and wife; or

c) the one is related to the other in the manner indicated in Schedule I-A [Companies Act, 1956].

"RELATIVE" in relation to an individual means -

a) The mother, father, husband or wife of the individual,

or

b) a son, daughter, brother, sister, nephew or niece of the individual, or

c) a grandson or grand-daughter of the individual, or

d) the spouse of any person referred to in Sub-clause (b) [Income tax Act].

"REAETIVE" means-

1) spouse of the person;

2) brother or sister of the person;

3) brother or sister of the spouse of the person;

4) any lineal ascendant or descendant of the person;

5) any lineal ascendant or descendant of the spouse of the person;

[Narcotic Drugs and Psychotropic Substances Act].

Random House Webster's Concise College Dictionary defines 'relative' at page 691 to mean:

Relative: 1. a person who is connected with another or others by blood or marriage. 2. something having, or standing in, some relation to something else. 3. something dependent upon external conditions for its specific nature, size, etc. (opposed to absolute). 4. a relative pronoun, adjective, or adverb. - adj. 5. considered in relation to something else; comparative: the relative merits of gas and electric heating. 6. existing or having its specific nature only by relation to something else; not absolute or independent: Happiness is relative. 7. having relation or connection. 8. having reference : relevant; pertinent (usually fol. by to): two facts relative to the case. 9. correspondent;

proportionate: 10. depending for significance upon something else: "Better" is a relative term. 11. of or designating a word that introduces a subordinate clause and refers to an expressed or implied element of the principal clause: the relative pronoun who in "That was the woman who called." 12. (of a musical key) having the same key signature as another key: a relative minor.

In any view of the matter, if there is relationship by marriage or by blood with the husband, they would fall within the definition of relative of the husband. Therefore, the petitioner No.2 is the relative of the husband of the defacto complainant due to marriage with the petitioner No.1 herein, who is the sister of the husband of the defacto complainant.

In view of the undisputed relationship, the petitioner No.2 has become the relative of the husband of the defacto complainant by marriage. Hence, on the ground that the petitioner No.2 is not the relative of the husband of the defacto complainant, the proceedings cannot be quashed.

Coming to the allegations made in the complainant, the defacto complainant specifically alleged that the petitioner No.1 – Dr. Harini along with her husband throttled her neck when she expressed her inability to meet the illegal demand of additional dowry of Rs.9,00,000/- in the month of October 2009, on the occasion of their “Gruha Pravesham”.

Even in the statement recorded by the police during the course of investigation, the defacto complainant stated that her sister-in-law Dr. Harini created a certificate that the defacto complainant had mental disorder and she is impotent to lead matrimonial life after she gave birth to a child and at the end of the statement she specifically requested to take necessary action

against Dr. Harini and her husband as they tortured the defacto complainant both physically and mentally.

The allegations made in the charge sheet, if taken into consideration, on their face value would constitute an offence punishable under Section 498-A and 406 of I.P.C. and under Sections 4 and 6 of D.P. Act.

The Apex Court in **“State of Haryana v. Bhajan Lal³”** laid down seven guidelines. According to guideline No.1 where the allegations made in the first information report or the complaint, even if they are taken on their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused, the Court can quash the proceedings by exercising jurisdiction under Section 482 of Cr.P.C.

In **“Madhavrao Jiwaji Rao Scindia etc. vs. Sambhajirao Chandrojirao Angre⁴”**, the Apex Court held that the legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made *prima facie* establish the offence.

The 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 the case ends in conviction or acquittal. (Vide

³ 1992 Supp. (1) SCC 335

⁴ 1988 AIR 709

Mrs. Dhanalakshmi v. R. Prasanna Kumar and Ors.⁵⁾

The specific allegation made against the petitioners herein is that they made an attempt to press the neck of the defacto complainant for her failure to meet the illegal demand of additional dowry of Rs.9,00,000/-. Making such demand would fall within the ambit of Sections 4 and 6 of D.P.Act and attempt to press or throttle her by the petitioners herein would fall within the explanation to cruelty under Section 498-A of I.P.C. Thus, I find the specific allegation made against petitioners herein would constitute an offence on its face value to proceed against them in the trial.

The other contention raised by the learned counsel for the petitioners is that the present complaint was lodged by the defacto complainant is an abuse of process of the Court, but he failed to demonstrate as to how it was an abuse of process of the Court except contending that the husband of the defacto complainant obtained divorce in F.C.O.P.No.1135 of 2010, which is an exparte divorce. On the other hand, learned counsel for the respondent No.2 contended that a petition was filed to set aside the exparte order and the same is pending before the Court. Therefore, obtaining exparte divorce, which was not brought to the notice of the defacto complainant, is not a ground to quash the proceedings.

Moreover, in **R.P. Kapur v. State of Punjab**⁶, the Apex Court held as follows:

- (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the

⁵ AIR 1990 SC 494

⁶ AIR 1960 SC 866

quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;

(iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

In view of the guidelines laid down by the Apex Court in the judgments referred supra, if the facts on its face value are taken into consideration, it constitutes an offence, *prima facie* if proved. The Court cannot interfere, except when the Court comes to a conclusion that it is an out come of abuse of process of law. But at this stage, it is difficult for me to conclude that the present complaint was filed as an abuse of process of law.

No doubt, the Apex Court in various judgments highlighted the powers of the Court to quash the proceedings, more particularly in cases registered under Section 498-A of I.P.C. while deprecating the practice of roping the relatives of the husband of defacto complainant without attributing any overt acts. For the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusations are made, the overt acts attributed to persons other than husband are required to be proved beyond reasonable doubt. By mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. A tendency has, however, developed for roping in all

relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused. Vide: “**Kans Raj v. State of Punjab and others**”⁷

Similarly, in “**Preeti Gupta v. State of Jharkhand**”⁸ the Supreme Court deprecated the practice of roping as many persons as possible, who are relatives of the husband and pointed out the duty of the Bar and Bench, held that the ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of the complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. 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.

In “**State of Orissa v. Saroj Kumar Sahoo**”⁹, the Supreme Court had an occasion to deal with the scope of Section 482 and held that the inherent powers under Section 482 Cr.P.C should not be exercised by the High Court to stifle a legitimate prosecution. The Apex Court also held that the High Court being the highest Court of a State should normally refrain from giving a prima facie

⁷ AIR 2000 SC 2324

⁸ (2010) 7 SCC 667

⁹ (2005) 13 SCC 540

decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. The Supreme Court further observed that there is no hard and fast rule laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage, while exercising jurisdiction under Section 482 of Cr.P.C, it is not permissible for the court to act as if it was a trial Court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

The Court can not evaluate the material and documents on record and it cannot appreciate evidence, to conclude whether the material produced is sufficient or not for convicting the accused. Therefore, the limited purpose of appreciating of facts is only to come to a conclusion whether the proceeding against the accused for the alleged offence committed by the accused be proceeded. Thus, the limited jurisdiction under Section 482 of Cr.P.C can be exercised only in exceptional circumstances.

Thus, the Court must exercise its inherent power only when the allegations made in the complaint would not constitute an offence, but here the allegations made in the complaint would

prima facie constitute offence, if taken on their face value, against the petitioners, who made attempt to press the neck of the defacto complainant when she failed to meet the illegal demand for payment of Rs.9,00,000/- as additional dowry, which amounts to cruelty under explanation to Section 498-A of I.P.C. and under Sections 4 and 6 of D.P.Act.

However, it is difficult, at this stage, to find whether the petitioners committed such offence or not. Therefore, I find no ground to quash the proceedings at this stage. Consequently, the petition is liable to be dismissed.

Accordingly, the petition is dismissed. No costs.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

08.12.2016
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