

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.534 of 2017

ORDER:

This criminal petition is filed by the petitioners, who are accused 1 to 4 seeking for quash of further proceedings in CC.No.1949 of 2016 on the file of the Judicial Magistrate of First Class, Sathupally.

2. Heard learned counsel for the petitioners and learned Public Prosecutor and with their consent, the criminal petition is disposed of at the admission stage. Perused the record.

3. The grounds of quash are as follows:

The allegations of the complainant are that, at the time of marriage of the defacto-complainant with A1 her parents offered cash of Rs.15 lakhs, 20 tulas of gold and a plot at Sathupally. After marriage, the petitioners were insisting the complainant to sell the plot and bring the amount. The first petitioner converted into Islam religion and is following Muslim traditions. The allegations made by the defacto-complainant do not attract the definition of cruelty under Section 498-A of the Indian Penal Code neither Section 420 IPC nor Sections 3 and 4 of the Dowry Prohibition Act, There is absolutely no demand or acceptance of dowry alleged in the complaint. The allegations in the charge sheet are totally vague and ambiguous. No details are forthcoming and it is a clear case of abuse of process of law. The statements enclosed with the charge sheet do not even *prima facie* disclose any offence against the petitioners.

4. Counsel for the petitioners, in answer to the suggestion made by this Court, to approach the Court below and file a discharge petition, taking all the pleas, which are taken before the Court, contends that, in certain circumstances this Court has inherent power under Section 482 of the Criminal Procedure Code. Counsel relies on several decisions, which can be taken up successively.

NEELU CHOPRA v. BHARTI¹ wherein the facts of the case, as observed by the Supreme Court, are that the complaint is sadly vague and it did not show as to which accused has committed what offence and what is the exact role played by the appellants in the commission of offence. The above decision is completely rendered on facts of that case and no principles with regard to the ambit of Section 482 Cr.P.C. are laid down.

PREETI GUPTA v. STATE OF JHARKHAND² is also relied upon by the counsel and the counsel persuades this Court to go through paras 33 and 35 of the said decision and appreciate the contentions made on behalf of the petitioners. It would be profitable to extract the said paras, in order to avoid any comment that the contentions of the petitioners are not met with and appreciated properly. The relevant paras are as under:

“33. 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 these 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

¹ AIR 2008 SC (SUPP) 2950

² AIR 2010 SC 3363

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. 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. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society."

The above paras are only expressions of the Supreme Court, of general concern for false implications, which became rampant. However, in the other paras of the judgment, the Supreme Court also considered the case law on the ambit of Section 482 Cr.P.C. It is observed that the Supreme Court in a number of cases laid down the scope and ambit of Court's power under Section 482 Cr.P.C and every High Court has inherent power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the Court. It also held that the inherent power under Section 482 Cr.P.C can be exercised

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of court, and
- (iii) to otherwise secure the ends of justice.

The Supreme Court also referred to its decision in *STATE OF KARNATAKA v. L. MUNISWAMY* [(1977) 2 SCC 699] wherein it was observed as under:

“... the wholesome power under Section 482 Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution ...”

In *MADHU LIMAYE v. STATE OF MAHARASHTRA* [(1977) 4 SCC 551] a three-Judge Bench of the Supreme Court held as under:

“... In case the impugned order clearly brings out a situation which is an abuse of the process of the court, or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court, Such cases would necessarily be few and far between. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. The present case would undoubtedly fall for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, that the invoking of the revisional power of the High Court is impermissible.”

In *MADHAVRAO JIWAJIRAO SCINDIA v. SAMBHAJIRAO CHANDROJIRAO ANGRE* [(1988) 1 SCC 692 : AIR 1988 SC 709] the Supreme Court observed in para 7 as under:

“7. 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. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

In *STATE OF HARYANA v. BHAJAN LAL* [AIR 1992 SC 604] listing the situations under which the inherent power can be exercised, the Supreme Court, gave seven situations under which inherent powers can be invoked. But situation No.6 seems to contain a typographical mistake, as can be understood by me. In the context, the words “... *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*” has to be understood as “*where there is no specific provision*” because it would not be the intention of the Supreme Court, in the context of the other conditions, to say that when there is a specific provision in the code providing for efficacious redress for the grievance of the aggrieved party also inherent power under Section 482 Cr.P.C. can be exercised. Hence, in the above view of my understanding, the availability of a specific provision for efficacious redress of grievance would also become relevant in exercising power under Section 482 Cr.P.C and when there is no such provision, inherent powers need to be exercised.

In *MOHAN GOSWAMI v. STATE OF UTTARANCHAL* [(2007) 12 SCC 1] a three-Judge Bench of the Supreme Court held as under:

“Inherent powers under Section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.”

The counsel also relied upon the decision of the Supreme Court in *VIPIN JAISWAL v. STATE OF AP*³ which was made after full trial of the case, hence, does not bear any relevance.

*BOBBILI RAMAKRISHNA RAJU YADAV v. STATE OF AP*⁴ wherein the Supreme Court on finding that no allegations attract the offence under Sections 3 and 4 of the Dowry Prohibition Act, quashed the proceedings. It also took into consideration the fact that there already the criminal prosecution was being faced by the appellants therein, for the offence under Sections 498-A and 304B IPC. Hence, the said decision also cannot be taken help of.

*Y. SHAM KUMAR v. STATE OF AP*⁵ wherein this Court by considering the facts of the case therein concluded that the offence, if any, committed was only by the first accused but not by any other accused and quashed the proceedings against A2 to A12 therein. It also relied upon a decision of the Supreme Court in *GORIGE PENTAI AH v STATE OF A.P.* [2008 AIR SCW 6901] wherein it was held as follows:

"Inherent powers under Section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the Court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute."

It is further held as under:

³ AIR 2013 SC 1567

⁴ AIR 2016 SC 442

⁵ 2013 (1) ALD (CRL.) 652 (AP)

"The High Court should normally refrain from giving a prima facie decision in a case where all the 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 such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage."

It also considered the decision in *MADHAVRAO JIWAJIRAO SCINDIA AND OTHERS v SAMBHAJIRAO CHANDROJIRAO ANGRE* [(1988) 1 SCC 692] wherein the Supreme Court observed as follows:

"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 un-controverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

It also considered another decision in *STATE OF HARYANA v. BHANJAN LAL* [1992 SUPP. (1) SCC 335] the Supreme Court expressed the view that:

"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, then the proceedings are liable to be quashed."

The Supreme Court further held that:

"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, the proceeding is liable to be quashed".

The counsel also relied upon a decision of this Court in *J. SETHA RATNA KUMARI v. STATE OF AP*⁶ wherein this Court quashed the proceedings by considering that the averments in the complaint did not show anything of cheating or deception or suppression of facts.

5. In the light of the above decisions, going through the contents of the statement of the complainant and the charge sheet would be profitable, to see whether any of the exceptional circumstances under which the courts are directed to exercise inherent powers, in the rulings mentioned above, do exist in this case. The copy of the complaint is not furnished. Hence, the statement of the complainant would be helpful.

"She alleges that she belongs to Viswabrahmin community and that at the time of fixing the alliance, the father of A1 i.e. A2 expressed that it would suffice for them to give Rs.30 lakhs as dowry, though there are several offers to A1 with more dowry, as they liked the complainant. They have presented dowry of Rs.15 lakhs and gave a plot at Sathupally. At the time of marriage, when the purohit was applying sindoor to A1 as per Hindu customs, A1 objected for it and expressed that there is another person, who came to perform their marriage and A1 with the help of that person read something on a paper as per the Muslim customs and asked her to read and sign on

⁶ 2016 (1) ALD (CRL.) 481

it. When she questioned and did not sign on it, immediately after her marriage, she was taken to Bangalore on the same day. On the day of reception, A1 went to Masjid and offered prayers and participated in the reception. When she questioned him, he told her that she would come to know everything after going to US. He did not secure passport to her and made her believe that he applied for it in Tatkal. Whenever she was performing poojas, the accused used to say that it is not their custom. A1 to A3, whenever they spoke to her father, used to ask him to sell the plot and bring money and that A1 is leaving to US shortly. Saying that the passport of the complainant would get delayed, A1 left for US on 14.03.2015. From the time A1 left, A2 to A4 used to harass her mentally and physically and used to pester her to ask her father to sell the plot and bring money and that otherwise she would have to stay in India only. When she informed the same to A1, he used to say that they are acting on what he is saying. A4 used to behave in obscene manner and used to take her photographs. When she informed the same to A2 and A3, they expressed that he behaves like that only, A4 used to tell her that A1 took up Islam and by showing the Facebook ID of A1, he used to state that her husband's name is Osman Murtuza and when she informed the same to A1, he expressed that thereafter everything would be recorded in the same manner. She informed the same to her parents, her parents came to Bangalore and questioned A2 and A3 on which they expressed that sufficient dowry was not given to them. They also demanded that the plot should be sold and money should be given to them and that otherwise they can take away the complainant with them. Saying so, they took away the ornaments on her body and necked her out even without giving her original certificates. She telephoned to A1 to A3 several times, but they did not respond. A2 sent a message on 19.05.2015 asking her to bring additional dowry."

6. The principles laid down by the Supreme Court in the decisions cited above are foremost in the form of caution and next in the form of suggestion or advice. The caution has come by holding that Section 482 Cr.P.C. has to be used sparingly though the powers are wide. The substance of all the decisions is that when taking on its face value, if the complaint does not disclose any offence committed by accused; if there is abuse of process of law and if ends of justice are need to be secured otherwise, the power under Section 482 Cr.P.C. can be exercised.

7. A reading of the statement of the complainant would not only bring out allegations against each of the accused, but also imply cruelty on the part of all the accused. Whether a particular act of the accused amounts to cruelty or not depends on the appreciation done in the light of other facts and circumstances. What may be an act of cruelty in one circumstance may not be so in another circumstance. The Courts have been expanding the meaning of the word 'cruelty' under Section 498-A IPC by appreciating the instances of alleged cruelty brought before them, with the help of the whole circumstances of the case. Hence, the contention of the counsel for the petitioners that a demand for purchase of computer for starting business was held to be not an act of cruelty in VIPIN JAISWAL's case (3 supra) cannot be appreciated to hold that the acts attributed to the accused, in this case, do not amount to cruelty. The further contention of the counsel is that the dates mentioned in the statement of the complainant would show that the couple lived together for very short time, in which time, the acts alleged against the accused are not believable. But it depends

on the levels of modesty on the part of the individuals. It may not be possible for every individual to contain oneself and maintain modesty for a certain period and to restrain himself from exhibiting the crookedness lodged in his mind.

8. Hence, as is observed by the Courts in the above cited decisions, the facts and circumstances of each case have to be examined to appreciate the truth of the allegations made by the complainant. The concern of the Supreme Court in PREETI GUPTA's case (2 supra) should not prompt the Courts to reach out to the victims of false implications, by crossing all barriers of law, which are incorporated for other valid purposes. Apart from all that is said on the inherent powers, I understand that inherent powers are conferred on courts to meet a situation where no specific provision is made under the law for redressal of a grievance. It is only when there is no provision and when the court sees a situation of injustice, to address the same, Courts need to summon the powers which are inherent.

9. The decision of the Supreme Court in RAJESH SHARMA v. STATE OF U.P.⁷, which is relied upon by the counsel after the matter was kept for orders, does not throw any light on the parameters to be adopted for quashing the proceedings. It only endorses the concern for false implications and suggested some measures before arrest of the accused.

Hence, with the above, this Court comes to the conclusion that the allegations made by the complainant, in this case, are sufficient

⁷ 2017 (2) ALT (CRL.) 393 (SC)

enough for the trial to be taken up and thereby, the proceedings are not advisable to be quashed. However, the petitioners are at liberty to file a discharge petition, if they so choose, before the court below and raise all the pleas that are raised herein and the court below shall dispose of the said petition uninfluenced by the observations made hereinabove by this court.

Consequently, the criminal petition is disposed of. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

October 13, 2017
DSK

T. RAJANI, J

