SMT JUSTICE T. RAJANI

CRIMINAL PETITION Nos.4455 and 2437 of 2013

COMMON ORDER:

While CRLP.No.4455 of 2013 is filed by A4 and A5, who are the parents-in-law of the *de facto* complainant, CRLP.No.2437 of 2013 is filed by A2 and A3, who are the sister and brother-in-law of A1, who is the husband of the *de facto* complainant.

2. The grounds, on which the petitions are filed, seeking for quash of the proceedings in CC.No.4 of 2010 on the file of XII Chief Metropolitan Magistrate, Hyderabad, are that the petitioners are innocent and that they are pre-occupied and concerned with their own obligations and are no way concerned with the matrimonial affairs of the *de facto* complainant and A1 and they did not directly or indirectly involve or interfere with their marital affairs. There is no legally sustainable material to show that the petitioners herein have committed an offence alleged under Section 498A of the Indian Penal Code, 1860 and Sections 3 and 4 of the Dowry Prohibition Act and no *prima facie* material has been placed before the Court with regard to the same. The 161 Cr.P.C. statements of the witnesses do not make out any offence and the petitioners are falsely implicated. The investigation officer, without proper investigation and in order to satisfy the *de facto* complainant and to facilitate her to demand and extract huge amounts from A1, filed the present charge sheet.

3. Heard counsel for the petitioners; counsel for the second respondent and the learned Public Prosecutor, who takes notice for first respondent.

4. The counsel for the petitioners, in the foremost, drew the attention of this Court to the opinion of the Senior Assistant Public Prosecutor of the III Additional Chief Metropolitan Magistrate, Hyderabad dated 23.12.2009 and addressed to the SHO, S.R. Nagar Police Station, Hyderabad. The opinion expressed was that he verified the references 1 to 5 mentioned therein i.e. the requisition of the I.O.; CD file in Cr.No.1256 of 2009; email sent by the alleged accused; bail orders of the V Additional Metropolitan Sessions Judge Court and copy of written report given by the *de facto* complainant and more particularly 161 Cr.P.C. statements of the witnesses i.e. G. Anita, Ayyavariah, Girija Kumari, G. Hemanth Kumar, Rage Venkata Subbaiah, V. Ramachandraiah, Sivaramaiah, R. Venkata Subbaiah and R. Subbaiah. On verification of the contents of the written report given by the *de facto* complainant and 161 Cr.P.C. statements of L.Ws.1 to 9, he observed that the *de facto* complainant did not stay at her in-laws house for considerable time and there was no allegation that the victim was subjected to cruelty at in-laws house. It was also observed that after marriage, on completion of formalities, the *de facto* complainant and A1 left India and they stayed in USA and that all the allegations pertain to the period when A1 and the *de facto* complainant were staying in USA. The allegations are that the complainant was threatened by the accused and a further demand of Rs.5 lakhs was made. The Public Prosecutor expressed, that except those two

allegations there is no allegation against A1 to A5. He records in his opinion that it was also an admitted fact that the in-laws of the *de facto* complainant resided in a remote village without cell phone facilities. He opines that except the vague allegations of abusing her and demanding her additional dowry through phone, the *de facto* complaint did not furnish any information when such incident took place. He also observed that there is no allegation from the parents of the *de facto* complainant that A2 to A5 demanded additional dowry from them. According to him, the elders i.e. V. Ramachandraiah, Sivaramaiah, Ramanboyina, Venkata Subbaiah and R. Subbaiah and others, who attended the marriage, stated that the *de facto* complainant abruptly came to India without informing her husband and the witnesses on behalf of the *de facto* complainant stated that they tried their best to sort out the misunderstandings and reunite the couple. From that, the Public Prosecutor infers that there is only misunderstanding between A2 and the *de facto* complainant. He recommended for closing of the case against A2 to A5.

5. In the background of the said opinion of the Public Prosecutor, a perusal of the two statements of the *de facto* complainant, which were recorded on 21.07.2009, which is the date on which the crime was registered and 05.10.2010, which is subsequent to the recording of the first statement, would be beneficial.

6. In the first statement, it is stated that the receipt of dowry of Rs.10 lakhs was by sister and brother-in-law of A1. It is stated therein that they were the persons who negotiated as elders from her husband's side. The allegation against the parents-in-law are that they

used to call her and threaten that her parents have two more girls, who are yet to be married and that they cannot do anything hard to them. She also alleged that her parents-in-law, sister-in-law and her husband used to make calls to USA and scold her family members in a very indecent manner. Nowhere in the statement, did she admit that her parents-in-law were residing in a remote village without any cell phone. From where the Public Prosecutor gathered the said opinion is not understandable. The allegations, which are made in the first statement, are also made in the second statement of the *de facto* complainant. The improvements as termed by the counsel for the petitioners are only in the form of further explanation of the bare facts that were stated in the first statement. Whether they are improvements and whether they would strike at the root of the prosecution case, are all questions which have to be decided during and after the full trial.

7. The decisions relied upon by the counsel for the petitioners are as under:

MANOJ MAHAVIR PRASAD KHAITAN v. RAM GOPAL PODDAR[1] wherein the powers of the High Court were observed as being tremendous under Section 482 Cr.P.C. The Supreme Court also cautioned that the High Court must look into the allegations with openness and then to decide whether to pass an order in the interest of justice. The facts dealt with by the Supreme Court are that the complaint was a retaliation of the criminal prosecution, which was

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1 (2010) 10 SCC 673

being faced by the respondents therein. But, in this case, there is no material to say that the complaint was filed as retaliation. Hence, the said judgment does not help the petitioners.

PREETI GUPTA v. STATE OF JHARKHAND[2] wherein the Supreme Court observed that there is a social responsibility and obligation for the Courts to maintain social fibre of family life and genuine cases of dowry harassment is a matter of serious concern but exaggeration of small incidents should not be reflected in the criminal complaint. It was also observed that allegations have to be scrutinized with great care and circumspection especially against the husband's relatives, who were living in different States and never visited or rarely visited the matrimonial home of the complainant.

In this case, from the beginning the allegations against the sister and brother-in-law of A1 have been grave and they are the persons who negotiated the talks of marriage and they are the persons, who received the dowry amount. Hence, even if the said persons, who are residing separately from the couple, in a different country and though they do not have regular business with the family affairs of the *de facto* complainant and her husband, the nature of the allegations would show that they are keenly interested in the affairs of the family of A1. So also the allegations against the parents-in-law. The allegation, which is consistent, against them is that they used to call the *de facto* complainant and threaten that her father has two more daughters and hence, they cannot do anything hard to them.

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2 (2010) 7 SCC 667

That allegation, if it is found to be true, would result in lot of mental agony to the *de facto* complainant and it cannot be simply brushed aside. Hence, in the light of the nature of the allegations, the aforesaid decision also cannot be said as helping the petitioners.

GEETA MEHROTRA v. STATE OF UTTAR PRADESH[3] wherein it was observed by the Supreme Court that a casual reference to the family members of the husband, who are unmarried sister and elder brother-in-law, would entitled then for a quash. But, as already observed, the allegations against the petitioners herein cannot be termed as casual reference. Hence, the above decision cannot be relied upon for quash of the proceedings against the petitioners. The contention of the counsel for the petitioners that at paras 18, 20 and 22 of the judgment, the Supreme Court observed that bald allegations made against the accused would suggest the anxiety of the informant to rope in as many of the husband's relatives as possible also does not help the petitioners in this case, as the allegations are not bald and they are very specific against each of the petitioners.

SUSHIL KUMAR SHARMA v. UNION OF INDIA[4] wherein the constitutionality of Section 498A IPC came up for decision. The object of the provision was explained in para 19 of the said judgment. It was incidentally observed that there were instances where the complaints are not *bona fide* and have been filed with oblique motive. However, as already observed, the case on hand is not one such instance;

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3 (2012) 10 SCC 741
4 (2005) 6 SCC 281

hence, the said decision cannot be pressed into service by the petitioners.

SHAIK KUSROUDDIN v. STATE OF AP[5] wherein this High Court quashed the proceedings against petitioners 4 to 9 therein and refused to quash the proceedings against petitioners 1 to 3 therein. The allegations in that case are totally different from the allegations, which are made in this case. The allegations in the said case are that petitioners 4 to 9 instigated the first petitioner in making the demand for dowry. It was observed that in the recent past it has become a practice to make all the family of the husband accused in cases relating to dowry harassment. But, unfortunately, the material, in this case, does not lead to formation of such opinion.

ATLURI RAVINDRA v. STATE OF AP[6] wherein this Court observed that no specific overt acts are mentioned as to alleged mental harassment and when the harassment was caused. But, in this case, specific overt acts are mentioned against the accused and it is specifically stated by the *de facto* complainant that she was put to lot of mental agony due to said harassment.

8. The parameters for quashing the proceedings are laid down by the Supreme Court in STATE OF HARYANA v. CH. BHAJANLAL[7] it was held that in the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way

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[5] 2004 (2) ALD (CRL.) 195 (AP)

[6] 2006 (2) ALD (CRL.) 285 (AP)

[7] AIR 1992 SC 604

of illustration, wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide, myriad kinds of cases wherein such power should be exercised;

> 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;
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> 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;
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> 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;
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> 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;
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> 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 proceeding 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.

Going by the above parameters, it can be concluded without any demur that this case does not fall within the above parameters and it is not a case fit for quash of the proceedings.

The Criminal Petitions are dismissed. The interim stay granted earlier in CRLP.No.4455 of 2013 dated 04.06.2013 and CRLP.No.2437 of 2013 dated 02.04.2013 shall stand vacated. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

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T. RAJANI, J

December , 2017
DSK