

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL PETITION NO.5194 OF 2013**

**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.292 of 2012 on the file of Judicial First Class Magistrate, Karimnagar, registered for the offence punishable under Section 498-A of Indian Penal Code (for short "I.P.C.") and under Section 4 of Dowry Prohibition Act (for short "D.P.Act.").

Accused No.1 is the son of accused Nos.2 and 3, petitioners herein. Marriage of accused No.1 with the defacto complainant was performed on 19.04.2009 and at the time of marriage, parents of the defacto complainant paid Rs.8,00,000/- as dowry besides presentation of 14 Tulas of gold, they lived happily for sometime. Thereafter, they blessed with a female child named as Sharini. After giving birth to a female child, husband of defacto complainant and her in-laws i.e. petitioners herein started harassing her for her failure to meet the illegal demand of additional dowry of Rs.5,00,000/- and to convey the property of her parents by executing necessary documents in the name of accused No.1 and finally she was necked out from the house by accused Nos.1 to 3. Later, the matter was referred to elders, despite holding Panchayat, no purpose was served. Therefore, defacto complainant lodged a complaint with the police. On the strength of the complaint, police registered a crime against six accused. However, during investigation police collected material against accused Nos.1 to 3 alone and thereby the names of other accused i.e. accused Nos.4 to 6 were deleted from the charge sheet.

In the last paragraph of the charge sheet, it is alleged that since one year A1 to A3 all together harassed the L.W.1. (defacto complainant) physically and mentally for her failure to meet the illegal demand of additional dowry of Rs.5,00,000/- and also to convey the entire property of her parents to the accused No.1 by executing necessary documents and necked out the defacto complainant from the house, later a panchayat was held in the presence of caste elders for two times in this regard, but the petitioners did not change their attitude.

The present petition is filed raising several contentions that the petitioners are living separately, whereas accused No.1 and defacto complainant were lived in different places where accused No.1 worked in different capacities, that apart accused No.1 filed O.P (SR).No.9852 of 2011 under Section 9 of Hindu Marriage Act, and after filing said O.P. by accused No.1, the defacto complainant lodged the present complaint as a counterblast and there is no truth in the allegations made in the charge sheet and prayed to quash the proceedings.

Section 482 of Cr.P.C. reads thus:

“482. Saving of inherent powers of High Court:-

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

Here, the allegation made against the defacto complainant is that the complaint was lodged as a counter-blast to the petition filed under Section 9 of Hindu Marriage Act by the accused No.1. A copy of the petition filed along with the present petition disclosed

that the accused No.1 filed petition under Section 9 of Hindu Marriage Act calling upon the defacto complainant to join with him to lead marital life and the date of presentation of said O.P. is not clear and it is not known whether the defacto complainant received any notice or summons in the said O.P. by the date of lodging the present complaint. Therefore, it is difficult to hold that the complaint was lodged as a counter-blast to the petition filed under Section 9 of Hindu Marriage Act. Hence, on this ground the proceedings in C.C.No.292 of 2012 on the file of Judicial First Class Magistrate, Karimnagar, cannot be quashed against the petitioners.

The other contention of the learned counsel for the petitioners is that the petitioners being in-laws of defacto complainant i.e. parents of accused No.1 were not resided along with accused No.1 and they are residing in different place, thereby the question of subjecting the defacto complainant to harassment by the petitioners herein does not arise.

Though the specific ground is raised in the petition, no details were furnished to establish that the petitioners were living at a different place as accused No.1 worked in Hyderabad, Delhi and other places in connection with his employment; it is not known whether the petitioners are staying along with accused No.1 and defacto complainant during that period. Petitioners herein produced voter identity cards, which show that the petitioners enrolled as voters in the year 1994 in Chandrapur, Maharashtra State, but the offence took place in the year 2011. Therefore, Photostat copies of voter identity cards of the petitioners produced before this Court are not sufficient to hold that they were staying

at different place and not staying along with accused No.1. Therefore, on this ground the proceedings cannot be quashed.

It is clear from the investigation done by the police that the petitioners herein – accused Nos.2 and 3 subjected the defacto complainant to cruelty for her failure to meet the illegal demand of additional dowry of Rs.5,00,000/- and to convey the entire property of her parents on the name of accused No.1 by executing necessary documents and necked out her from the house, such conduct *prima facie* would constitute an offence under Section 498-A of I.P.C.

In “**Madhavrao Jiwaji Rao Scindia etc. vs. Sambhajirao Chandrojirao Angre<sup>1</sup>**”, 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 **Mrs. Dhanalakshmi v. R. Prasanna Kumar and Ors.<sup>2</sup>**)

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<sup>1</sup> 1988 AIR 709

<sup>2</sup> AIR 1990 SC 494

Moreover, in “**R.P. Kapur v. State of Punjab**”<sup>3</sup>, 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 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.

The Apex Court in “**State of Haryana v. Bhajan Lal**”<sup>4</sup> 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 view of the guidelines laid down by the Apex Court in the judgments referred supra, if the facts, on their face value, are taken into consideration, constitute 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.

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<sup>3</sup> AIR 1960 SC 866

<sup>4</sup> 1992 Supp. (1) SCC 335

In “**State of Orissa v. Saroj Kumar Sahoo**<sup>5</sup>”, 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* 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 material produced is 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

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<sup>5</sup> (2005) 13 SCC 540

come to a conclusion whether the proceedings 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.

Here, 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 an offence, if taken on their face value, against the petitioners, who subjected the defacto compliant to harassment when she failed to meet the illegal demand for payment of Rs.5,00,000/- as additional dowry, which amounts to cruelty under explanation to Section 498-A of I.P.C. and under Section 4 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. However, it is left open to the petitioners to raise all pleas before the trial Court and the Judicial First Class Magistrate, Karimnagar is directed to decide C.C.No.292 of 2012 in accordance with law, uninfluenced by the incidental findings recorded by this Court.

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

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**JUSTICE M. SATYANARAYANA MURTHY**

27.03.2017  
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