HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Petition No.2632 of 2011

ORDER:

This criminal petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioners/accused 2 to 7 requesting to quash the proceedings against them in C.C.No.17 of 2011 on the file of the Court of the learned Judicial Magistrate, of First Class, Kamalapuram, Kadapa District.

2. I have heard the submissions of *Sri T.Niranjan Reddy*, learned counsel appearing for the petitioners/accused 2 to 7 and of the learned public prosecutor, State of Andhra Pradesh, representing the 2nd respondent-State of AP. I have perused the material record.

3. The introductory facts, in brief, are as follows:

The informant-LW1 is the wife of A1. A1 is the son of A2 and A3. A4 and A5 are brothers of A1. A6 and A7 are the grand parents of A1. Chitta Lalitha and Chitta Chinna Nagappa (LWs 2 & 3) are the parents of the informant-LW1. LW4-S.Chikkanna is her grand father. LW5-K.Lakshmi Devi is her junior maternal aunt and LW6-S.Sampath Kumar and LW7-S.Odanna are her maternal uncles. R.Venkata Konda Reddy and M.Venkata Swami Reddy are independent witnesses not related to any of the parties aforesaid. On 29.04.2007, the marriage of LW1 was performed with A1. Disputes arose between A1 and LW1 after they lead marital life for a few/(9) months. LW1 lodged a report, dated 05.12.2009, with the Station House Officer, Yerraguntla PS. In the said report, it is *inter alia* stated as follows: 'At the time of her marriage with A1, her parents gave cash of Rs.8,00,000/- and 40 tolas of gold as dowry and Rs.3,50,000/- as marriage expenses. She lived with A1 at Hyderabad. A1 used to work as Software Engineer in Satyam Computers. They lived happily for nine months. After some days, A2 to A7 came from Kalyandurgam to the house of LW1 and A1 at Hyderabad and made some false statements to A1 against LW1 and advised him to demand LW1 to get Rs.30,00,000/- as additional dowry and tell her that he would marry a second time if she failed to get the additional dowry as demanded. From then onwards, her husband (A1) harassed her both physically and mentally by various means and ways. A2 & A3 who are parents of A1, A4 & A5, who are the brothers of A1; and A6, the grandfather of A1 threatened her twice that they would kill her by blasting gas cylinder. Out of life threat, she informed the same to her parents. On that, her parents pleaded with the said accused on the aspect of demand for additional dowry. However, the accused did not listen to their pleas. On 23.11.2008, A1 left the house stating that he is going to office; but did not return. LW1 waited for return of A1 for three days and enquired with Satyam Computers, where he used to work at that time. She was informed that he (A1) resigned his job and went away. She made enquiries at different places about her husband and came to know that he was at Bengaluru. Thus, A1 and his family members-A2 to A7 harassed her both physically and mentally and spoiled her life. Hence, action may be taken against them.' Basing on the said report, a case in Crime No.170 of 2009 was registered by the Station House Officer, Yerraguntla PS, against the accused 1 to 7 for the offences punishable under Section 498A IPC and Sections 3 and 4 of Dowry Prohibition Act. After investigation, a charge sheet was filed reiterating the contents in the report of LW1 and opining that the A1 to A7 by their acts committed the aforesaid offences and are liable to be punished. On filing of the charge sheet, the learned Judicial Magistrate of First Class, Kamalapuram, has taken the above CC on file.

4. The case of the petitioners/A2 to A7 herein, in brief, is this:

A1 left matrimonial home, on 23.11.2008, and did not return home. His whereabouts are not known till date. These petitioners/accused are innocent and they never committed any acts constituting the alleged offences. They are falsely implicated by LW1 by filing a false report as a counter blast to the proceedings initiated by the 1st petitioner/A2 who is the father of A1. In fact, when A2 came to know that his son left his home for office and did not return to his home at Hyderabad, he lodged a report, on 27.10.2009, before the State Human Rights Commission requesting to cause an enquiry into the missing of his son/A1. In the said report, A2 has stated as follows: 'His son/A1 was working in Satyam Computers and that due to matrimonial disputes, he has not come back from his office, on 23.11.2008. In December 2008, he went to Humayun Nagar Police Station to lodge a complaint;

but, they have not accepted it and that later, on 02.01.2009, he sent the said complaint to Humayun Nagar Police Station by registered post from his native village. The same was received by the police under an acknowledgment. Still, there was no information from the police. A2 and his family members enquired at all the known places; but, they could not find out his whereabouts. On account of missing of his elder son, A2 and his family members became helpless. His health and that of his wife deteriorated. Socially, they are under pressure. Hence, an enquiry may be made and find out the whereabouts of his son/A1 and produce him before the Court.' Only on the A2 approaching the State Human Rights Commission and the direction given to the police, a case in Crime No.450 of 2009 was registered on 12.12.2009. LW1 filed a false complaint as a counter blast to the said proceedings initiated by the 2nd accused who is the father of the A1 and as he particularly expressed a doubt against the family of LW1 for missing of his son. The criminal proceedings are initiated maliciously against A2 to A7; and, even though no *prima facie* case is made out the investigating agency filed a charge sheet without making any investigation and without gathering any material and by simply repeating the averments in the report of LW1. The allegations in the report of LW1 are vague and omnibus and no specific overt acts are attributed to any of the accused 2 to 7. There is no semblance of material to attract the ingredients of the alleged offence. The family members of LW1 came and man-handled A2 and A3, who are parents of A1 and obtained their signatures forcibly on some papers. Hence, A2 gave a report to the Superintendent of Police, Anantapur, on 08.02.2010. The criminal proceedings are initiated by LW1 one year after her husband/A1 left the matrimonial home. A1 left the matrimonial home due to misunderstandings between him and his wife/LW1. Till date, he has not returned home and his whereabouts are not traced out by the police. Hence, the criminal proceedings initiated against A2 to A7 cannot be continued and they are liable to be quashed. No investigation was conducted by the Investigating Officer. The petitioner/A5 left India, on 14.12.2006, for prosecuting further studies in Denmark. He has not returned to India after 14.12.2006. A copy of his passport with VISA entries is filed into Court. Though the petitioner/A5 was not in India, allegations were also made against him as if he along with other accused instigated A1 to harass LW1 both physically and mentally and threatened to kill her by blasting a gas cylinder. All the family members were roped in only as the petitioner/A2, by filing a report before the Human Rights Commission, particularly expressed a doubt against the family of LW1 for missing of his son.

5. Though the 2nd respondent/LW1 is served with notice, she did not enter appearance resisting the application.

6. Learned Public Prosecutor submitted that on the report of LW1, the crime was registered and that after investigation, a charge sheet was filed and that in view of the contents of the report and the charge sheet, there are no grounds to quash the

proceedings and that the truth or otherwise of the case of the prosecution has to be decided after framing of charges and after full-fledged trial and hence, the petition is liable to be dismissed.

7. I have given earnest consideration to the facts and submissions.

8. Before proceeding further, it is profitable to refer to the undisputed legal position obtaining. A charge can be framed against an accused in a case where the prosecution has placed on record sufficient evidence to show a *prima facie* case against him under a particular penal provision of law. In case the prosecution fails in its primary duty to show a *prima facie* case to proceed against the accused i.e., when the Court comes to the conclusion that there is no sufficient ground to proceed against the accused, he shall be discharged forthwith under Section 227 CrPC. It is a well settled principle of Criminal Jurisprudence that a Court would not require the prosecution to prove its case beyond any shadow of doubt at the time of framing of the charge as it is required to do so only at the time of conclusion of its case in order to bring home the guilt of the accused. At the stage of framing of charge or at the time of considering the request made by the accused for quashing the proceedings, the prosecution is under an obligation to place only that much material against the accused which may be sufficient enough in the circumstances of a given case to draw a presumption that the accused has committed an offence. Further, in Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja

and others [1990 Cri L.J. 1869], the Supreme Court held as follows: "From the above discussion it seems well settled that at the Section 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case." In Union of India v. Prafulla Kumar Samal and another [1979CriLJ154], the Supreme Court held as follows: "The Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. In exercising his jurisdiction under

Section 227 the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

9. Reverting to the facts of the instant case, it is to be noted that the relationship between the parties to the proceeding is not in dispute. Admittedly, after the marriage between A1 and LW1, they lived separately at Hyderabad, as at that time, A1 was working in Satyam Computers. They lived happily for few months (nine months). However, some disputes arose between them. On 23.11.2008, he left for his office and did not return home. According to the contents of her report, LW1 waited for three days even though her husband/A1 did not return home from his office; After three days, she made an enquiry in the office of her husband and came to know that he resigned his job and went away. His whereabouts are not known till date. She or her parents did not lodge a report about the missing of her husband as according to her she came to know that her husband-A1 was at Bengaluru. Though A1 left the matrimonial home on 23.11.2008, the present report was lodged by her, on 05.12.2009, with the police of Yerraguntla PS, and the crime was registered on the same day by the said police. In the said report, it is stated that she lead happy marital

life with her husband for nine months and that A2 & A3, A4 & A5 and A6, who are the parents, brothers and grand father of A1 came to her house and made false statements against her to her husband/A1 and instigated him to demand Rs.30,00,000/- as additional dowry and threaten her by saying that he would marry a second time if she failed to comply with the said demand and that from then onwards, her husband/A1 started harassing her both physically and mentally. Thus, an omnibus allegation was made against all the family members by roping in all of them by stating that they all instigated and tutored her husband/A1 to demand additional dowry and threaten her. No details of such allegations were mentioned and only omnibus allegations were mentioned. It is pertinent to note that the Investigating Officer also did not collect any additional material; but, simply filed the charge sheet reiterating the averments in the report; and, in the charge sheet, it is stated that A1 and A4 are now residing at Bengaluru. Even though a complaint is lodged that A1 is missing, no efforts were made to trace A1. If really, the averments in the charge sheet that A1 is residing in Bengaluru is correct, the investigating officer ought to have apprehended A1 and secured the presence of A1 from Bengaluru. Any such steps in that direction were not taken. Therefore, the version of LW1 and the police that A1 was at Bengaluru, appears to be *prima facie* not correct. It is to be noted that though A5 left India on 14.12.2006, for pursuing further studies in Denmark and did not return to India thereafter, an omnibus allegation was also made against him also by stating that he along with other accused made false statements against LW1 and instigated A1 against LW1. The charge sheet was also filed even against him by reiterating the case stated by LW1 in her report. All the circumstances would only lay bare that no investigation was done in the case and that a charge sheet was filed merely repeating the averments in the report of LW1.

9. In this regard it is apt to refer to the decision of the Supreme Court in Central Bureau of Investigation v. K. Narayana Rao[1] where in the following principles were postulated.

> On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:
>
> (i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.
>
> (ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.
>
> (iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.
>
> (iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.
>
> (v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material

[1] (2012) 9 SCC 512

> placed on record and must be satisfied that the commission of offence by the accused was possible.
>
> (vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.
>
> (vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

In the decision in G.V. Rao v. L.H.V. Prasad & Others[2] wherein it was held as under:

> '...there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their cases in different courts.'

---

[2] (2000) 3 SCC 693

Having regard to the peculiar facts and the aspects like the missing of A1 and the long delay of more than one year in lodging the report by LW1 since 23.11.2008, that is, the date of missing of A1, the Court has to proceed with caution while taking cognizance or examining the *prima facie* case against the accused and the Court should not encourage prosecution of the husband, his parents, brothers and close relatives without sufficient *prima facie* material before the Court. Further, the specific case of A2 is that, on coming to know that when his son was missing and when his report was not received by the police concerned, he approached the State Human Rights Commission and that later the instant false report was lodged by LW1 as a counter blast, as he (A2) expressed doubt about the involvement of the LW1 and her family members for the missing of his son. In the light of the peculiar facts & the broad probabilities of the case, the total effect of the evidence, the basic infirmities appearing in the case, the legal position obtaining and the submission of the accused, which remained un-refuted, this Court finds that there is acceptable merit in the submissions of the petitioners-A2 to A7.

10. In that view of the matter, this Court finds that the contentions of the petitioners/A2 to A7 merit consideration. On the above analysis, this Court finds that sufficient case is made out for quashing the proceedings and that the prosecution of the petitioners/A2 to A7 in C.C.No.17 of 2011 would amount to abuse of process of law.

11. In the result, the criminal petition is allowed and the proceedings against the petitioners/A2 to A7 in C.C.No.17 of 2011 on the file of the Court of the learned Judicial Magistrate of First Class, Kamalapuram, Kadapa District, are hereby quashed. The bail bonds of the petitioners/A2 to A7, if any, shall stand cancelled.

Miscellaneous petitions pending, if any, in this criminal petition shall stand closed.

M. SEETHARAMA MURTI, J

03.11.2017
RAR