

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.7021 OF 2012

ORDER:

This criminal petition is filed by the petitioners/Accused 2 & 3 under Section 482 of Cr.P.C to quash the proceedings in C.C.No.259 of 2012 pending on the file of XV Metropolitan Magistrate, Medchal, Ranga Reddy District, for the offence punishable under Section 498-A IPC.

The brief facts of the case are that the marriage of the defacto complainant was performed with A-1 in the presence of elders in the year 1987 as per Hindu rites and customs. A-1 was working in Army as Subedar (Radar technician) and worked at several places like Jammu, Agra, Ambala, Gujarat, Orissa and they lived happily for about 20 years. The couple were blessed with two male children who are at present studying B.Pharmacy III year and IX class. It is the case that, since 2007 A-1 started suspecting the fidelity of the defacto complainant and started ill-treating her for the past three years. It is also stated in the complaint that when the defacto complainant informed about the harassment to her elders, they have suggested her to adjust with A-1. Unable to bear the physical and mental harassment of A-1, the defacto complainant left to her sister's house on 30.11.2009. Subsequently, on 02.12.2009, husband of the defacto complainant and others tried to take her, but somehow she escaped from them and it is stated in the complaint that A-1 is supported by his brothers i.e. the petitioners herein and moreover, A-1 is torturing the defacto complainant by suspecting her fidelity.

On the strength of the above complaint, the police registered a crime and investigated into the matter. Charge sheet was filed after due investigation. The specific allegation made in the charge sheet is as follows:

“The investigation revealed that the marriage of Lw-1 was performed with the accused A1 in the year of 1987 in the presence of elders as per Hindu rites and customs. The accused A1 was working in Army as Subeder-technical job (Radar technician) and worked at many places – Jammu, Agra, Ambala, Gujarat, Orissa and they lived happily for about 20 yrs. The couple is blessed with two male children who are Pradeep, Sai Pramod studying B.Pharm. III yr and 9th class. LW-1 is staying at RK Puram from the last 3 years in a rented house and accused A1 was working at Srinagar. Since 2007 the accused A1 suspecting her fidelity and harassed her in the bed room and she revealed it to her relatives. Accused A1 to A3 also abused her in filthy language. Unable to tolerate the harassment the LW-1 went away to her sister's house LW-2 at maisammaguda on No.v30th where also the accused A1 to A3 went to her sister's house and forced her to come to his house and further continued harassment towards the complaint both mentally and physically and thereby the accused A1 to A3 committed an offence punishable u/s 498(A) IPC.”

From a bare look at the contents of the charge sheet extracted above, it is evident that A-1 used to harass the defacto complainant suspecting her fidelity and harassed her in the bed room, whereas, A-2 & A-3 abused the defacto complainant in filthy language, but no reason was mentioned for such abuse. The other allegations made against these petitioners are that the petitioners along with A-1 forced the defacto complainant to come to their house from her sister's house. These allegations on its face value would not constitute an offence punishable under Section 498-A IPC.

Section 498-A IPC deals with the punishment for subjecting a woman to cruelty. Whenever a Husband or relative of husband of a woman subjecting her to cruelty, whoever, being the husband or

the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

The term, "cruelty" is defined in the explanation given to Section 498-A IPC as (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Thus, the word 'cruelty' consists of two limbs. It relates to any act which drives a woman to commit suicide or cause grave injury and the second limb relates to harassment of the woman for her failure to meet the illegal demand of payment of dowry or valuable security. But, in the present case, the specific allegation against A-1 is that he suspected defacto complainant's fidelity and subjected her to cruelty and petitioners 1 & 2 herein abused her and forced her to come to her house. These two acts would not fall either in either of the limbs of cruelty, which I discussed above. Therefore, if the allegations made in the charge sheet, if taken on its face value, would not constitute an offence punishable under Section 498-A IPC.

In **State of Haryana v. Bhajan Lal**¹ the Apex Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex

¹ 1992 Supp. (1) SCC 335

Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.

(3) Where the 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.

(4) 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.

(5) 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.

(6) 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 proceedings 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.

(7) 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.

In view of guidelines 1, 6 & 7, criminal proceedings cannot be allowed to be continued, as the proceedings are initiated to wreak vengeance by abuse of process of the law. The allegations made in the complaint would show that the complaint was lodged to wreck vengeance and as an abuse of process of law. In such a case, the proceedings in criminal court should not be allowed to be proceeded and are liable to be quashed.

In view of the law declared by the Apex Court in the judgments referred supra, I find that it is a fit case to quash the proceedings in C.C.No.259 of 2012 pending on the file of XV Metropolitan Magistrate, Medchal, Ranga Reddy District.

In the result, the criminal petition is allowed by quashing the proceedings in C.C.No.259 of 2012 pending on the file of XV Metropolitan Magistrate, Medchal, Ranga Reddy District.

Consequently, miscellaneous applications pending if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:17.03.2017

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