

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.5458 of 2017

ORDER:

1. This petition is filed under Section 482 Cr.P.C. seeking to quash the proceedings against the petitioners-Accused Nos.2 and 3 in C.C.No.81 of 2016 on the file of the Court of V Additional Judicial Magistrate of First Class, Nellore.

2. Learned counsel for the petitioners submitted that the V Additional Judicial Magistrate of First Class Court, Nellore has no territorial jurisdiction to entertain the case. He further submitted that there is no dowry system in the community to which the petitioners and second respondent belongs. He also submitted that even if the allegations made in the charge sheet are *ex facie* taken to be true and correct, no *prima facie* case is made out against the petitioners; therefore, it is a fit case to quash the proceedings against the petitioners. **Per contra**, learned Public Prosecutor for the State of Andhra Pradesh submitted that the allegations made in the charge sheet *prima facie* sufficient to proceed further against the petitioners. He further submitted that the allegations made in the charge sheet clearly demonstrate the role played by the petitioners.

3. A perusal of the record reveals that the marriage of the second respondent was performed with Accused No.1 on 14.02.2013 at Tirumala as per Hindu rites and caste customs. Immediately after the marriage, the second respondent joined A1 to lead marital life. Out of wedlock, the second respondent and A1 were blessed with a child. A perusal of the record further reveals

that basing on the complaint lodged by the second respondent, the Station House Officer, Nellore IV Town Police Station, registered a case in Crime No.280 of 2015 against the petitioners and another for the offences under Sections 498-A IPC and 3 and 4 of Dowry Prohibition Act. After completion of investigation, the Investigating Officer laid charge sheet before the Court of V Additional Judicial Magistrate of First Class, Nellore for the offences under Section 498-A IPC and 3 and 4 of Dowry Prohibition Act. The learned Magistrate after satisfying himself with the material placed before him, has taken the case on file under Sections 498-A IPC and 3 and 4 of Dowry Prohibition Act and issued summons.

4. The predominant contention of the learned counsel for the petitioners is that the V Additional Judicial First Class Magistrate Court, Nellore, has no territorial jurisdiction to entertain the case. It is not in dispute that the second respondent and her parents belong to Nellore town. As per the allegations made in the charge sheet, on 01.11.2015, accused No.1 went to Nellore and beat the second respondent and her mother. It is needless to say that the complainant can lodge the report to the Station House Officer within whose jurisdiction part of cause of action arose. Jurisdictional aspect is mixed question of fact and law. Jurisdictional aspect has to be considered after full fledged trial only. As per the allegations made in the charge sheet, the petitioners directed the second respondent to undergo DNA test. As per the allegations made in the charge sheet, the petitioners subjected the second respondent to cruelty for additional dowry.

5. In order to appreciate the contention of the learned counsel for the petitioners, it is not out of place to extract hereunder the following decisions:

(1) **Madhu Limaye Vs State of Maharashtra**¹, wherein the Hon'ble apex court held thus:

“At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which have been followed ordinarily and generally, almost invariably barring a few exceptions:-

- (a) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
- (b) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice.
- (c) That it should not be exercised as against the express bar of law engrafted in any other provision of the code”

(2) **Padal Venkata Rama Reddy @ Ramu V Kovvuri Satyanarayana Reddy**², wherein the Hon'ble apex Court held thus:

“It is well settled that the inherent powers under Section 482 Cr.P.C. can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code (Vide Kavita v State, 2000 CrL.L.J. 315 (Delhi) and B.S.Joshi v State of Haryana, 2003 (1) ALD (CrL).842 (SC) = (2003) 4 SCC 675 = AIR 2003 SC 1386= 2003 AIR SCW 1824). If an effective alternative remedy is available, the High Court will not exercise its powers under this section, especially when the applicant may not have availed of that remedy.”

(3) **Amit Kapoor v Ramesh Chander**³, wherein the Hon'ble Apex Court held as follows:

27.2 The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith *prima facie* establish the offence or not. If the allegations are so

¹ AIR 1978 SC 47

² 2011 (2) ALD (CrL.) 948 (SC) = (2011) 12 SCC 437

³ (2012) 9 SCC 460

patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the court may interfere.

27.3 The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4 Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

(4) **Umesh v State of Kerala**⁴ wherein the Hon'ble apex Court at Paras 2, 4 and 6 held as follows:

2. The appellant is aggrieved by the refusal on the part of the High Court in quashing the criminal proceedings now pending before the Judicial Magistrate, First Class, Chavakkad in CC Nos.289/1996 and 280/1996. The appellant is accused No.5 in both the cases.

4. We find it difficult to appreciate the contention. Even if all contentions taken by the appellant are taken on their face value also, it is for the Magistrate concerned to consider those contentions in an appropriate application filed under Section 239 of the Cr.P.C.

6. We direct the learned Magistrate to consider the applications, if any filed, having regard to the contentions taken by the appellant and dispose of the same, in accordance with law.

5. As per the principle enunciated in the cases cited *supra*, if the material available on record is *prima facie* sufficient to proceed further, the Court cannot quash the proceedings while exercising jurisdiction under Section 482 Cr.P.C. As observed earlier, there is no flaw in the investigation conducted by the Investigating Officer. The learned Magistrate has not committed any illegality or irregularity while taking cognizance of offence in this case. At this stage, the Court cannot consider whether material on record is sufficient to convict the accused or not. The court has to consider

⁴ (2017) 3 SCC 112

whether the material placed before it *prima facie* sufficient to proceed further or not.

6. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that the material placed before this Court is *prima facie* sufficient to proceed further, as such it is not a fit case to quash the proceedings against the petitioners at this stage.

7. Hence, the Criminal Petition is dismissed. Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

Date: 11.07.2017
Rns

T.SUNIL CHOWDARY, J

