

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.5918 of 2016

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the proceedings in PRC No.4 of 2016 pending on the file of Special Judicial Magistrate of First Class (Mobile Court), Nellore, SPSR Nellore District for the offences punishable under Sections 498-A and 304-B read with Section 3 IPC and Sections 3 and 4 of Dowry Prohibition Act.

2. On the complaint made by the 1st respondent-K.Krishnaiah, the Sub-Divisional Police Officer, Nellore Rural, SPSR Nellore District registered a crime and issued FIR against the petitioners 1 to 3 and after due investigation, filed charge-sheet before the Judicial First Class Magistrate for the offences punishable under Sections 498-A, 304-B and Sections 3 and 4 of Dowry Prohibition Act.

3. It is the case of the 1st respondent that the marriage of his daughter Sai Sindhu was performed with A1 Dasari Uday Kumar, S/o Dasari Radha Krishna Murthy (A2) and Dasari Rama Devi (A3), the petitioners herein on 27.05.2011 at Nellore. At the time of marriage, the 1st respondent and his wife presented Rs.5,50,000/- as dowry as demanded by the accused. The said amount was kept in deposit in Dhanalakshmi Bank, Hyderabad in the name of 2nd petitioner herein (A3). Besides payment of above Rs.5,50,000/-, presented 80 sovereigns of gold articles and 10 kgs of silver articles as demanded by the petitioners 1 and 2 and the 1st accused. After marriage, Sai Sindhu joined with A1 to lead marital life and stayed at the house of the accused at Hyderabad till the end of June, 2011. On 01.07.2011, A1 and Sai Sindhu went to USA to work as software

engineer in the USA. Thereafter, A1 started harassing Sai Sindhu at the instigation of A2 and A3. A1 used to harass Sai Sindhu for her failure to meet the illegal demand for payment of additional dowry. He also restricted Sai Sindhu to talk with her parents by phone and used to beat Sai Sindhu and harassed her subjecting her to serious cruelty for her failure to meet the illegal demand of additional dowry. Sai Sindhu never informed the harassment of A1 to her parents whenever she got an opportunity to talk with her parents by phone.

4. While the matter stood thus, in the month of January, 2013 Sai Sindhu alone came to Hyderabad and one week thereafter A1 also came to Hyderabad. Sai Sindhu and A1 to A3 came to the house of 1st respondent and stayed for four days. During the stay at Hyderabad also, A1 to A3 subjected Sai Sindhu to cruelty demanding her to get additional dowry and purchase a car by her parents on the pretext that they came to their house by walk. In the month of March 2013, Sai Sindhu and A1 went to USA. Later also A1 subjected Sai Sindhu to cruelty for her failure to meet the illegal demand to purchase cultivable land through her parents. The same was informed by Sai Sindhu to her parents by phone.

5. In the month of August 2014, Sai Sindhu along with her husband came back to India and stayed at Nellore for ten days. During the stay at Nellore, Sai Sindhu informed her parents about the harassment she meted in the hands of A1 at the instance of petitioners 1 and 2. Thereupon the parents of Sai Sindhu suggested, Sai Sindhu to come and stay at their house leaving her husband but Sai Sindhu did not accept, on the ground that her younger sister is at their house and they have to perform her marriage and it may cause inconvenience to her future if she leaves her husband. Then the 1st

respondent and his wife went to Hyderabad along with their relatives and informed about the harassment of A1, A2 and A3. A2 and A3 promised that the same would not repeated again. Later, in the month of September 2014, Sai Sindhu and A1 went to USA, but A1 did not change his attitude and continued the same harassment against Sai Sindhu and again subjected her to cruelty. He also beat Sai Sindhu and caused fracture to her right ring finger. Since then A1 did not allow Sai Sindhu to talk to her parents by phone. Finally on 31.01.2015 Sai Sindhu had a talk with her parents in a hurried manner. Sai Sindhu also informed about the same to her cousin. Sai Sindhu chatted with her cousin on 09.10.2014 through Gmail and informed that she was restricted to talk with anybody by her husband and she wants to talk with her relatives at India and her husband is harassing her at the instigation of A2 and A3.

6. In the month of January 2015, cousin of Sai Sindhu had talk with Sai Sindhu for a minute on the occasion of her birthday and observed that she did not talk to him freely. Then her cousin had a talk with A1 by phone and questioned him as to why he is harassing Sai Sindhu but A1 did not respond. Later cousin of Sai Sindhu again tried to contact A1 by phone but A1 did not respond to the phone call.

7. Tirupathi Pitchamma and Tirupathi Venkata Seshaiyah, LWs.10 and 11 visited the house of their daughter at USA and contacted Sai Sindhu by phone and even on that occasion also she informed that A1 subjected her to cruelty.

8. On 06.02.2015, the 1st respondent and his wife received a phone call from A1 about the hanging of Sai Sindhu herself to commit suicide and admitted in the hospital. On 09.02.2015, the 1st

respondent came to know about the death of Sai Sindhu. Thereupon, he lodged a complaint and the same was registered as crime No.42 of 2015 and issued FIR.

9. During investigation, the police examined as many as 18 witnesses including the doctors Dr.Sasikanth, Assistant Professor, Department of Forensic Medicine, ACSR Government Medical College, Nellore and Dr.B.Venkateswarlu, who opined that the cause of death of Sai Sindhu was on account of Asphyxia due to hanging. Entire evidence collecting during investigation and the opinion of the doctors, who conducted autopsy over the dead body disclosed that the reason for committing suicide was only due to harassment of Sai Sindhu by A1 at the instance of A2 and A3, the petitioners herein and filed the charge-sheet before the Magistrate Court referred supra.

10. After following necessary procedure, the Magistrate registered the same as PRC 4 of 2016, since the Magistrate concluded that the case is triable by the Court of sessions exclusively, it is pending for committal by following the procedure under Section 209 Cr.P.C.

11. While PRC is pending before the Magistrate, the present petition is filed to quash the proceedings raising several contentions mainly contending that the cause of death was due to anoxic brain injury and found a legature hanger mark over the neck. A suicide note was also allegedly collected by the investigating officer. But even according to the suicide note, no one is responsible for the death of Sai Sindhu (deceased). As the suicidal death took place at USA and in the absence of allegations against the petitioners/A2 and A3 subjecting Sai Sindhu to cruelty, the proceedings against them shall not be continued as it is groundless. In the absence of any allegation regarding instigation or abetment of Sai Sindhu dragging her to

commit suicide, the allegations made in the complaint would not attract *prima facie* case for the offence under Sec.304-B IPC.

12. It is further contended that there is a gap of five months between death and visit of India by Sai Sindhu and the alleged harassment that took place at India cannot be construed as a “soon before” the commission of suicide and thereby in the absence of any proximity between death and harassing her, the Court cannot rope the petitioners with the grave charge for the offence punishable under Sections 498-A and 304-B r/w 34 IPC and Sections 3 and 4 of Dowry Prohibition Act and that there are absolutely no grounds to proceed against the petitioners and prayed to quash the proceedings.

13. During hearing, Sri Pradyumna Kumar Reddy, learned counsel for the petitioners contended that in the absence of any specific allegations against the petitioners/A2 and A3 regarding subjecting Sai Sindhu to cruelty and that apart the alleged cruelty that took place in India is not proximate in time since the presumption under Section 113-B of the Indian Evidence Act (for short ‘the Act’) cannot be applied and therefore, if the presumption under Section 113-B of the Act is excluded, there is absolutely no material against this petitioners to proceed against them for the above offences. He placed reliance on several judgments reported in **MANOHAR LAL V. STATE OF HARYANA¹**, **VIPIN JAISWAL (A-I) V. STATE OF ANDHRA PRADESH REP. BY PUBLIC PROSECUTOR²** and **BHOLA RAM V. STATE OF PUNJAB³**.

14. By placing reliance on the principles laid down in the above judgments, it is contended that to invoke the presumption under Section 113-B of the Act, there must be a proximity between the

¹ (2014) 9 SUPREME COURT CASES 645

² (2013)3 SUPREME COURT CASES 684

³ (2013) 16 SUPREME COURT CASES 421

alleged harassment and death. In the absence of any proximity between death and alleged harassment, Section 113-B of the Act cannot be invoked and on the strength of those principles, he prayed to quash the proceedings as there was no proximity between death of Sai Sindhu and the alleged harassment that took place in India demanding her for purchase of car and payment of additional dowry etc., due to intervening five months period.

15. Sri B.Vijayasen Reddy, learned counsel for the respondents contended that to decide an application filed under Section 482 Cr.P.C., the allegations made in the charge-sheet alone should be taken and the proposed defence set up by the petitioners in pre-registration case or in any pending case should be ignored and apart from that, the allegations made in the charge-sheet would *prima facie* show as to how Sai Sindhu was subjected to cruelty for her failure of payment of additional dowry. The allegations are sufficient to prove the offences against the petitioners under Sections 498-A and 304-B r/w 34 IPC and Sections 3 and 4 of Dowry Prohibition Act. He also contended that language used in Section 1 B “soon before death” can be construed based on the circumstances of each case and if there is sufficient reliable evidence to establish that Sai Sindhu was subjected to cruelty without invoking the aid of presumption under Section 113-B of the Act, the accused can be convicted and he placed reliance on judgment reported in **TUMMALA VENKATESWAR RAO V. STATE OF ANDHRA PRADESH⁴, HIRA LAL AND OTHERS V. STATE (GOVT. OF NCT), DELHI⁵, THAKKAN JHA AND OTHERS V. STATE OF BIHAR⁶, ANAND KUMAR V. STATE OF MADHYA PRADESH⁷, SURESH KUMAR SINGH V. STATE OF UTTAR PRADESH⁸,**

⁴ (2014)2 SUPREME COURT CASES 240

⁵ (2003)8 SUPREME COURT CASES 800

⁶ (2004)13 SUPREME COURT CASES 348

⁷ (2009)3 SUPREME COURT CASES 799

⁸ (2009) 17 SUPREME COURT CASES 243

BANSILAL V. STATE OF HARYANA⁹, STATE OF PUNJAB V. IQBAL SINGH AND OTHERS¹⁰ and AJAY KUMAR DAS V. STATE OF JHARKHAND AND ANOTHER¹¹.

16. He also contended that to exercise inherent jurisdiction under Section 482 Cr.P.C., the Court has to consider only the allegations made in the charge-sheet or complaint and if those allegations on its face value would constitute a *prima facie* offence against the petitioners, the Court cannot normally exercise its inherent jurisdiction to quash the proceedings. In view of the same, he placed reliance on a judgment of Apex Court reported in **PADAL VENKATA RAMA REDDY V. KOVVURI SATYANARAYANA REDDY¹²**.

17. The Public Prosecutor for the State of Andhra Pradesh while supporting the respondents raised a strange contention that when the case is pending at the stage of PRC, the Court cannot quash the proceedings though Sec.482 Cr.P.C. permits the Court to quash the proceedings at any stage. However, his contention is supported by a judgment of Apex Court in **UMESH KUMAR V. STATE OF ANDHRA PRADESH AND ANOTHER¹³** and on the strength of the principle laid down in this judgment, the State of Andhra Pradesh prayed to dismiss the petition.

18. Considering the rival contentions and on perusing the material available on record, the points that arise for consideration are as follows:

- 1) Whether this Court can exercise inherent powers under Section 482 Cr.P.C. when the proceedings are at PRC stage?
- 2) Whether there are sufficient allegations in the charge-sheet to constitute the offences punishable under Secs.498-A and 304-B read with Secs.3 and 4 of Dowry Prohibition Act against the

⁹ (2011) 11 SUPREME COURT CASES 359

¹⁰ (1991)3 SUPREME COURT CASES 1

¹¹ (2011) 12 SUPREME COURT CASES 319

¹² (2011) 12 SUPREME COURT CASES 437

¹³ (2013) 10 SUPREME COURT CASES 591

petitioners/A2 and A3, if not, whether they can be proceeded in a Court of law for the said offences ?

19. **POINT NO.1:-** One of the major contentions argued by the Public Prosecutor for the State of Andhra Pradesh is that at the stage of PRC, proceedings cannot be quashed. But the learned counsel for the petitioners-Sri Pradyumna Kumar Reddy submits that there is no interdict against quashing proceedings at any stage.

20. The language used under Section 482 Cr.P.C. is clear that the Court can exercise inherent power under Section 482 Cr.P.C. at any stage and in the absence of any specific restriction on exercise of such power, the contention of the Public Prosecutor for the State of AP cannot be accepted. In view of rival contentions, it is necessary to advert to Section 482 Cr.P.C., which reads as follows:

“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.”

21. The specific clause used in the above provision “at any stage” includes the stage of PRC. The Apex Court in one of the judgments reported in **UMESH KUMAR’s case** (13 supra) placing reliance on earlier judgment in **STATE OF BIHAR V. P.P.SHARMA**¹⁴ and other judgments, held that quashing the charge-sheet even before cognizance is taken by a criminal Court amounts to ‘killing a still born child’ and that till the criminal Court takes cognizance of the offence there is no criminal proceedings pending. The Apex Court also adverted to **SHEONANDAN PASWAN V. STATE OF BIHAR**¹⁵ and **PRAKASH SINGH BADAL V. STATE OF PUNJAB**¹⁶ and concluded that the proceedings at PRC stage cannot be quashed by

¹⁴ 1992 Supp(1) SCC 222

¹⁵ (1987)1 SCC 288

¹⁶ (2007)1 SCC 1

invoking inherent power under Section 482 Cr.P.C. since it is a premature stage. At this stage, the High Court could examine the charge-sheet, case diary and other material in the charge-sheet, which by no means can be termed as substantive evidence.

22. If this principle laid down in **UMESH KUMAR's case** (13 supra) is applied to the present facts of the case, it is difficult to uphold the contention of the learned counsel for the petitioners, though the language used in Sec.482 Cr.P.C. is otherwise. Learned counsel for the petitioners did not bring to my notice any other judgment of a larger bench of the Apex Court or recent judgment of the Apex Court on the same point. Therefore, this Court is bound by the principle laid down by the Supreme Court in **UMESH KUMAR's case** (13 supra). On this ground alone, the proceedings cannot be quashed. Accordingly, this point is held against the petitioners and in favour of the respondents.

23. **POINT NO.2:-** One of the major contentions raised by the learned counsel for the petitioners is that there is no proximity between the alleged incident of harassment in India and suicidal death of Sai Sindhu in USA and that, in the absence of such proximity, a presumption under Sec.113-B of the Act cannot be applied to conclude that these petitioners also drove her to commit suicide which falls within clause 2 of explanation to Section 498-A IPC. Section 113-B of the Act authorizes to raise a presumption that when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death. So there

must be a proximity of time to draw such presumption. The presumption under Section 113-B of the Act is an additional factor to hold the accused guilty but such presumption is a rebuttable presumption and can be rebutted by cross-examining the witness or by adducing independent evidence. On proper analysis of Section 113-B of the Act, it is clear that there must be material to show that soon before her death, the victim was subjected to cruelty or harassment. The prosecution is under obligation to rule out any possibility of natural or any accidental death where the ingredients of Section 304-B of IPC are satisfied. If the death is unnatural, i.e., either homicidal or suicidal, which would have taken place in unnatural circumstances, the provisions of Section 304-B IPC would be applicable. As held by the Apex Court in **SANJAY KUMAR V. STATE OF DELHI**¹⁷, undisputedly the death of Sai Sindhu was due to suicidal hanging as per medical evidence on record and it was within seven years after marriage.

24. Now, the question is whether such presumption can alone be the basis for recording conviction. Such cause of death of a woman can be proved by adducing independent evidence or with the aid of a legal presumption contained under Section 113B of the Act. But while deciding an application filed under Section 482 Cr.P.C., this Court can consider such presumption. Moreover, whether there is any proximity between the death and the alleged harassment is a matter of evidence.

25. But the learned counsel for the petitioners drawn the attention of this Court in **MANOHAR LAL's case** (1 supra), where the Apex Court held that,

¹⁷ AIR 11 SC 363

“normally in a criminal case, the accused can be punished for an offence on establishment of its commission of that offence on the basis of evidence, may be direct or circumstantial or both. But in case of an offence under Section 304-B IPC an exception is made by deeming provision as to nature of death as ‘dowry death’ and that the husband or his relative, as the case may be, is deemed to have caused such death, even in the absence of evidence to prove these aspects, but on proving the existence of the ingredients of the said offence by convincing evidence. Hence, there is need for greater care and caution, that too having regard to the gravity of the punishment prescribed for the said offence, in scrutinizing the evidence and in arriving at the conclusion as to whether all the above mentioned ingredients of the offence are proved by the prosecution”.

“The expression “soon before her death” used in Section 304-B IPC and Section 113B of the Evidence Act was considered in **HIRA LAL V. STATE (GOVT. OF NCT OF DELHI)**¹⁸.

As stated above, the Apex Court considered the scope of Section 113-B of the Act and Sec.304-B of IPC and concluded that the Court did not consider the effect of 113-B of the Act but decided on merits after a full-fledged trial for the offences punishable under Sections 304-B and 498-A IPC based on the facts of the case. Therefore, the principle laid down in the above judgment has no application to the present facts of the case.

26. The learned counsel further drawn the attention of this Court to **BHOLA RAM’s case** (3 supra), where the Apex Court in paras 15, 21 and 25 considered the scope of Section 113-B of the Act and adverted to earlier judgment in **KANS RAJ V. STATE OF PUNJAB**¹⁹, and held as under:-

“a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;

b) such death should have occurred within 7 years of her marriage;

c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;

d) such cruelty or harassment should be for or in connection with the demand of dowry; and

¹⁸ (2003) 8 SCC 80

¹⁹ (2000) 5 SCC 207

e) to such cruelty or harassment the deceased should have been subjected soon before her death.”

Mere making a demand for dowry is not enough to bring about a conviction under Section 304-B IPC. The victim of a dowry death should also have been treated with cruelty or harassed for dowry either by her husband or by his relatives.

It was further held as under:

“Based on evidence concluded that there is a possibility of members of the family having varying roles, active and passive. Depending on the nature and extent of involvement, a person may be punished for an offence under Section 498-A IPC or Section 304-B or Section 306 IPC or Section 4 of the Dowry Prohibition Act, 1961. At best, the principle laid down in the above judgment is applicable only after trial. All the above judgments relied upon by the learned counsel for the petitioners are pertaining to a judgment after full pledged trial.”

27. The learned counsel for the respondent while contending that the presumption under Section 113-B of the Act based on proximity test can be dispelled by adducing evidence and at the stage of deciding an application under Sec.482 Cr.P.C., the Court can conclude that there is no evidence to establish that the deceased Sai Sindhu was not subjected to cruelty soon before her death in view of the gap of five months, has drawn the attention of this Court to TUMMALA VENKATESWAR RAO's case (4 supra), where the Apex Court held that the term 'soon before her death' has been employed by the Parliament to refer to cruelty or harassment which was meted out in the proximity of death and has to be death as cause of death the provision does not apply the time any time before nor immediately before and must be construed according to its true purport.

28. The Apex Court in **TUMMALA VENKATESWAR RAO's case** (4 supra) referred to **HIRA LAL's case** (5 supra), wherein in para 11

thereof discussed the ingredients of Section 498-A IPC, definition of 'dowry' with reference to presumption under Section 113-B of the Act and highlighted the intention of Parliament incorporated under Section 113-B of the Act.

In **THAKKAN JHA's case** (6 supra), the Supreme Court held as follows:

"No presumption under Section 113-B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty or harassment thereafter. Mere lapse of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the death of the victim. This is so because the expression used in the relevant provision is "soon before". The expression is a relative term which is required to be considered under specific circumstances of each case and no straightjacket formula can be laid down by fixing any time-limit. The expression is pregnant with the idea of proximity test. It cannot be said that the term "soon before" is synonymous with the term "immediately before". This is because of what is stated in Section 114 Illustration (a) of the Evidence Act. The determination of the period which can come within the term "soon before" is left to be determined by the courts, depending upon the facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link."

In **ANAND KUMAR's case** (7 supra), the Apex Court in para 13 held as follows:

"Undoubtedly, the aforesaid provisions do raise a presumption but the facts of the case cannot be ignored. The different terminology of Sections 113-A and 113-B itself brings out the real purpose behind the two provisions and whereas Section 113-B places a heavier onus on an accused, the onus placed under Section 113-A is far lighter. We produce the two sections hereunder to focus on this distinction:

"113-A Presumption as to abetment of suicide by a married woman-when the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of

her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

113-B Presumption as to dowry death-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.”

A comparative reading of the two provisions (particularly the underlined portions) would highlight that under Section 113-A the court “may presume”, having regard to all the other circumstances of the case, an abetment of suicide as visualized by Section 306 IPC but in Section 113-B which is relatable to Section 304-B the word “may” has been substituted by “shall” and there is no reference to the circumstances of the case.

In **SURESH KUMAR SINGH’s case** (8 supra), the Apex Court considered the scope of Sections 113-A and 113-B of the Act, 1872 and Sections 304-B and 498-A IPC and highlighted the relevance of the language used in Section 113-B of the Act “soon before her death” and held as follows:-

“Indisputably, in order to attract Section 304-B, it is imperative on the part of the prosecution to establish that cruelty or harassment has been meted out to the deceased “soon before her death”. There cannot be any doubt or dispute that it is a flexible term. Its application would depend upon the factual matrix obtaining in a particular case. No fixed period can be indicated therefore. It, however, must undergo the test known as “the proximity test”. What, however, is necessary for the prosecution is to bring on record that the dowry demand was not too late and not too stale before the death of the victim”.

29. Placing reliance on **THAKKAN JHA’s case** (6 supra) so also in **KAMESH PANJIYAR V. STATE OF BIHAR**²⁰, it has ultimately concluded that as the death had not taken place within a period of seven years from the date of marriage and there is no evidence that

²⁰ (2005)2 SCC 388

any cruelty has been inflicted upon the deceased soon before her death neither the presumption in terms of Sec.113-B of the Act could have been drawn nor could it be concluded that the appellant is guilty of commission of the offence under Section 304-B IPC. In view of the finding that the death did not take place within seven years from the date of marriage, no presumption could have been raised either under Section 113-A or under Section 113-B of the Act.

30. To invoke the presumption under Section 113-B of the Act, the death must have been occurred within seven years from the date of marriage and there must be proximity between demand of dowry and death. What is the approximate time varies from facts of each case and no straight-jacket formula can be laid down in view of the principles laid down in **ANAND KUMAR's case** (7 supra) and **SURESH KUMAR SINGH's case** (8 supra).

“In BANSILAL's case (9 supra), the Apex Court highlighted the importance of Sections 113-A and 113-B of the Evidence Act and drawn the distinction between the two words used ‘may’ and ‘shall’ in both the sections and held that there is legislature in its wisdom has used the word “shall” in Sec.113-B of the Evidence Act, thus, making a mandatory application on the part of the Court to presume that death had been committed by the person who had subjected deceased to cruelty or harassment in connection with any demand of dowry. It is unlike the provision of Section 113-A of the Evidence Act, where a discretion has been conferred upon the Court, wherein it had been provided that court may presume abetment of suicide by a married woman. Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of Section 113-B relatable to Section 304-B IPC, the onus to prove shifts exclusively and heavily on the accused. The only requirements are that the death of a woman has been caused by means other than any natural circumstances; that death has been caused or occurred within seven years of her marriage; and such woman had been subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand of dowry.”

31. In the instant case, the death of Sai Sindhu had taken place within seven years from the date of her marriage and her death is unnatural death as the cause of death is due to hanging, as opined by the doctors, and death took place at the residence of her husband in USA. If the prosecution is able to prove that she was subjected to cruelty by all these petitioners soon before her death by adducing any evidence, the burden will automatically shifts on to the accused to rebut or dispel such presumption. The fact that soon before the death of Sai Sindhu, she was subjected to cruelty by the petitioners is a matter of evidence based on the principles laid down by the Apex Court. Regarding the application of doctrine of proximity of time, the Court cannot quash the proceedings while exercising inherent jurisdiction under Section 482 Cr.P.C since the burden to dispel or rebut the presumption contained under Section 113-B of the Act in the case where the petitioners charged under Sections 498-A and 304-B read with 3 IPC.

32. In **STATE OF PUNJAB's case** (10 supra), the Apex Court held that,

“the legislative intent as appears from the introduction of Sections 304-B and 498-A of IPC and Sections 113-A and 113-B of Evidence Act is to curb the menace of dowry deaths etc. with a firm hand. Court must keep in mind this legislative intent even if there is no evidence as to whether suicide had been committed within a period of seven years from the date of marriage so as to attract Section 113-A of the Evidence Act and the Court has to decide whether the accused husband could be convicted under Section 306 IPC. Where the husband or his relative by his willful conduct creates a situation which he knows will drive the woman to commit suicide and she actually does so, the case would squarely fall within the ambit of Section 306 IPC. In such a case the conduct of the person would tantamount to inciting or provoking or virtually pushing the woman into a desperate situation of no return which would compel to put an end to her miseries by committing suicide”.

The principle laid down is totally in a different situation and even if the prosecution failed to prove the proximity of time between suicide and the alleged harassment demanding for dowry for her failure to meet the illegal demand by Sai Sindhu, still the Court can convict the accused for the offence punishable under Sections 306 read with 107 IPC abatement of committing suicide but the present stage is at pre-registration case and such situation would not arise in the present facts of the case.

33. In **AJAY KUMAR DAS's case** (11 supra), the Apex Court while considering various judgments deciding an application under Section 482 IPC for the offence punishable under Section 304-B read with Section 34 IPC held that in **STATE OF HARYANA V. BHAJAN LAL**²¹, the Apex Court gave exhaustive list of various kinds of cases wherein such power could be exercised. In para 103 of the said judgment, the Apex Court, however, hastened to add that as a note of caution it must be stated that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases for the Court would not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the first information report or in the complaint and that the extraordinary or the inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

34. The facts of the **AJAY KUMAR DAS'S** (11 supra) judgment are that the allegation was demand for cows, motorcycle and other goods but the Court did not accept the said contention at the stage of considering the petition under Section 482 Cr.P.C. as all those

²¹ 1992 SUPP(1) SCC 335

allegations dealt with by a Court at different stages for which liberty would be available to the appellant and opined that this is not the stage when the Court would make an enquiry into the factual position to find out as to whether or not the appellant is guilty of the charges or not. The appellant, in their considered opinion, will have sufficient opportunity to place his entire case before the Court at the time of framing the charge since charge-sheet has already been filed against the appellant also holding that a case under Section 304-B and Section 34 is made out and they do not wish to enter into the factual details for any discussion on them at this stage as the same may prejudicially affect the case of the appellant.

35. When there is a disputed question of fact while deciding an application under Section 482 Cr.P.C., the Court cannot exercise its inherent jurisdiction conferred on it by Section 482 Cr.P.C. But in the present case, the disputed question of fact is that whether the petitioners/A2 and A3 subjected Sai Sindhu to cruelty for her failure to meet the illegal demand of providing car and payment of dowry. Purchase of any other agricultural land, soon before her death is a question of fact and the proximity test have been applied depending upon the circumstances of the case but based on such principle, the proceedings cannot be quashed in view of the presumption under Sec.113-B of the Act which is rebuttable and can be dispelled or rebutted by adducing on evidence during trial.

36. In those circumstances, this Court cannot embark upon a detail analysis of entire material while deciding an application under Sec.482 Cr.P.C. In view of the judgment in ***DHANALAKSHMI V. R.PRASANNA KUMAR***²² and ***GANESH NARAYAN HEGDE V.***

²² 1991 SCC (Cri) 142

S.BANGARAPPA²³, the Apex Court in **BAJAN LAL's case** laid down as many as seven guidelines and the some are relevant for deciding the present case and it is extracted hereunder:

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, the Court can inherent jurisdiction and quash the proceedings.

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, the Court can exercise inherent power and quash the proceedings.

37. In **PADAL VENKATA RAMA REDDY's case** (12 supra), the Apex Court relied on **STATE OF HARYANA's case** (21 supra) and other cases and held that quashing of proceedings case by exercising power under Section 482 Cr.P.C. can be exercised sparingly in exceptional circumstances.

38. On an overall consideration of the facts of the present case, the charge-sheet filed by the police discloses that the allegations on its face value, taken on their entirety, would constitute an offence punishable under Sections 498-A and 304-B read with Section 34 IPC. Whether there is any proximity of time between the act of cruelty and commission of suicide depends upon various factors as held by the Supreme Court in various judgments referred supra. At this stage, this Court cannot venture to and meticulously analyse each and every material produced before the Court to find out whether the allegations made in the charge-sheet would constitute a *prima facie* offence against the petitioners but for limited purpose to find out existence of grounds to proceed against the petitioners for

²³ (1995)4 SCC 41

the above offences, the Court can advert to the material including the allegations in the charge-sheet and decide the case.

39. In the present case, as discussed above, the dispute is with regard to subjecting the deceased to cruelty. Both the learned counsel appearing for both parties strongly relied upon the principles laid down by the Apex Court in various judgments in regard to the offences punishable under Sections 498-A and 304-B IPC based on the presumptions under Section 113-B of the Act.

40. In view of the law declared by the Supreme Court in various judgments referred supra, the burden heavily lies on the accused to rebut the presumption under Sec.113-B of the Act and such presumption can be rebutted only by adducing evidence. Therefore, at this stage, this Court cannot exercise its inherent powers under Sec.482 Cr.P.C. to quash the proceedings and in the present facts conclude that there is proximity of time between the alleged harassment and death of Sai Sindhu. Consequently, I find no grounds to quash the proceedings at this stage and this petition is liable to be dismissed as I find existence of grounds to proceed against the petitioners for the above offences. However, the petitioners are at liberty to raise all these pleas during trial.

41. Accordingly, the Criminal Petition is dismissed.

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

JUSTICE M. SATYANARAYANA MURTHY

Date : 08.02.2017.
ssp