

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL PETITION No.799 OF 2017

ORDER:

The present petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the Code') requesting to quash the proceedings in C.C. No.38 of 2016 on the file of Additional Judicial Magistrate of First Class, Kavali, SPSR Nellore district.

2. The petitioners are arraigned as accused Nos.4 and 5 in the aforesaid calendar case. They alleged to have committed the offences punishable under Sections 498-A of IPC and under Sections 3 & 4 of the Dowry Prohibition Act.

3. Heard Sri Unnam Muralidhar Rao, learned counsel for the petitioners, and the learned Additional Public Prosecutor for the State of Andhra Pradesh.

4. The learned counsel for the petitioners would submit that the 2nd petitioner is a Government employee and initially the *de facto* complainant also reported against brother-in-law and wife of brother-in-law as accused Nos.6 & 7, who are living in Singapore, like the petitioners herein, and the investigating officer, while filing charge-sheet having found from the evidence he collected, they did not come to India since the date of marriage of accused No.1 with the *de facto* complainant from Singapore, deleted their names. It is, therefore, his submission that the petitioners are also similarly placed and in view of

the law declared by the Hon'ble Supreme Court in **Kans Raj v. State of Punjab**¹ and in **Preeti Gupta v. State of Jharkhand**² sought to quash the proceedings against the petitioners as no overt acts have been attributed to the petitioners either in the complaint or in the statements recorded by the police under Section 161 of Cr.P.C. and over implication of the husband's relatives with exaggerated versions of allegations, are held to be deprecated in the aforesaid decisions and sought to allow the criminal petition.

5. Yet another submission made by the learned counsel for the petitioners has been that cause does not arise at SPSR Nellore District, more particularly, within the jurisdictional limits of Additional Judicial Magistrate of First Class, Kavali, and the entire allegations would show that the *de facto* complainant has attributed the alleged acts of cruelty or harassment said to have been meted out to her at her matrimonial house located in Maddipadu, Prakasam District. Hence, on this ground also, sought to quash the proceedings.

6. Learned counsel for the petitioners has placed reliance on the rulings of the Hon'ble Supreme Court in **Y. Abraham Ajith v. Inspector of Police, Chennai**³, **Bhura Ram v. State of Rajasthan**⁴ and **Ramesh v. State of Tamil Nadu**⁵.

¹ AIR 2000 (SC) 2324

² AIR 2010 (SC) 3363

³ (2004) 8 SCC 100

⁴ (2008) 11 SCC 103

⁵ 2005 (2) SCJ 622

7. Learned Additional Public Prosecutor for the State of Andhra Pradesh resisted the request contending that there is material to show the participation of the petitioners herein in instigating accused Nos.1 to 3. So far as the jurisdictional issue is concerned, it is according to the learned counsel, the same can be postponed as the same is a mixed question of law and fact and cannot be decided at the threshold, at this stage, where the trial court is yet to commence in the calendar case.

8. The said issue can only be decided when the evidence of the witnesses is recorded and, therefore, just merely basing on the statements recorded under Section 161 of Cr.P.C., the said issue cannot be resolved by giving a final say at this stage. Therefore, the submission is postponed leaving it open to the trial Court.

9. Concerning the first submission made by the learned counsel for the petitioners that no overt acts have been attributed to the petitioners, and the petitioners have been living separately but not in the matrimonial home of the *de facto* complainant. Learned counsel for the petitioners mainly relying on the statements of one L.W.6 - Parella Sreedevi and L.W.7 – Parella Padma to the effect that the petitioners herein are now residing in Maddipadu village separately and, therefore, there would not be any occasion either to abet the commission of offence or to instigate accused Nos.1 to 3 in the alleged acts constituting harassment attributed by the *de facto* complainant. Concerning the statement of L.Ws.1 to 5, there are

omnibus allegations against the petitioners and their participation is not stated with distinct overt acts according to the learned counsel.

10. The petitioners made available First Information Report and the statements of L.Ws. 1 to 7 with true translations recorded under Section 161 of Cr.P.C. and copy of service book of 2nd petitioner/accused No.5. Copy of service book is filed to show that the 2nd petitioner/accused No.5, is working as Secondary Grade Assistant in Kochherlakota, Donakonda, Prakasam District.

11. Certain basic facts are required in order to appreciate the submissions made by the learned counsel for the petitioners.

12. A perusal of the complaint dated 7.2.2014, lodged by the 2nd respondent with the Station House Officer, Kaligiri P.S. would show four main aspects. The first, relates to the payment of Rs.5,20,000, 25 sovereigns of Gold towards dowry and presentations being given by the parents of the *de facto* complainant and that three months they lived together, later she learnt that her husband resides in Delhi maintaining extra marital relationship with another lady and addicted to drinks.

13. Second aspect is that her husband on occasions used to visit Maddipadu i.e., her matrimonial home, and used to comment at her, he lost interest on her, and the dowry she brought was exhausted and he does not require her any more and even Gold given by her parents

was also spent away and started demanding her to bring additional amounts by abusing and beating her.

14. Next aspect is according to her, her parents-in-law and the petitioners herein and A6 & A7 i.e., her sister-in-law and her husband tortured her mentally and physically.

15. Third is the main aspect which relates when she was three months pregnant in October, 2009 she requested to get medicines on which her mother-in-law and father-in-law brought tablets which are used for abortion and when she consumed them she suffered abortion next day itself and when this fact was informed to her parents, her parents along with elders convened mediation and when questioned her husband, parents-in-law and others, they all abused them and attempted to pour kerosene on her person, but she was saved by her parents and they brought her back to their house and thus, she expressed danger to her life in the hands of the persons, whom she named in the complaint.

16. The statement under Section 161 of Cr.P.C. of the *de facto* complainant is almost replica of what has been mentioned by her in the complaint. Audimulam Audilaxmi, mother of *de facto* complainant, examined as L.W.3, also stated omnibus allegations against the petitioners as well as the *de facto* complainant's sister-in-law and her husband. Statement of father of the *de facto* complainant, Audimulam Srihari, examined as LW.2 is also to the very same effect.

17. One L.W.4 - Mooli Ramana Reddy, is a resident of the village of the *de facto* complainant's parents. Statement of L.W.4 – Mooli Raana Reddy – is with slightly abridged version of LWs.1 to 3. Statement of L.W.5 – Nemmikanti Venkateswarlu also stands on the same footing of L.W.4 - Mooli Amana Reddy. L.W.7 is one Parerlla Padma. She resides at Maddipadu village where matrimonial home of the *de facto* complainant is situated.

18. Thus, there appears only the allegation that the petitioners along with A6 & A7, whose names have been deleted on the ground that they never visited India after the marriage from Singapore, where they have been residing, no other allegations have been mentioned. Thus, the details of overt acts constituting cruelty or harassment on the part of the petitioners do not find place.

19. It is no doubt true that they reside in the very same village, but the statements are not clear whether they also lived under the same roof, under which accused Nos. 2 & 3 have been residing. On the same allegations, the names of A6 & A7 were deleted, of course, on additional point that they were living at Singapore. To some extent the *de facto* complainant has put forth exaggerated version touching the complicity of the petitioners cannot be at all be ruled out. The other specific allegations levelled are directed against the 1st accused /her husband, A2 & A3, who are the parents-in-law, as to the

demand of additional amount and brining tablets that would be used for abortion and giving them to the *de facto* complainant.

20. It is relevant to refer to the observations of the Hon'ble Supreme Court in paragraphs 25 to 28 of **Preeti Gupta** (2 supra);

(25) A three-Judge bench (of which one of us, Bhandari, J. was the author of the judgment) of this Court in *Inder Mohan Goswami and Another v. State of Uttaranchal and others* (2007) 12 SCC 1 comprehensively examined the legal position. The Court came to a definite conclusion and the relevant observations of the Court are reproduced in para 24 of the said judgment as under:

“Inherent powers under Section 482 Cr.P.C. though wide have to be exercised sparingly, carefully with great caution and only when such exercise is justified by the tests specifically laid down in this Section itself. Authority of the Court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the Court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.”

(26) We have very carefully considered the averments of the complaint and the statements of all the witnesses recorded at the time of filing of the complaint. There are no specific allegations against the appellants in the complaint and none of the witnesses have alleged any role of both the appellants.

(27) Admittedly, appellant No.1 is a permanent resident of Navasari, Surat, Gujarat and has been living with her husband for more than seven years. Similarly, appellant No.2 is a permanent resident of Goregaon, Maharashtra. They have never visited the place where the alleged incident had taken place. They had never lived with respondent No.2 and her husband. Their implication in the complaint is meant to harass and humiliate the husband's relatives. This seems to be the only basis to file this complaint against the appellants. Permitting the complainant to pursue this compliant would be an abuse of the process of law.

(28) It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the Courts in our country including this Court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

21. Hence, in view of the reasons mentioned hereinabove and keeping in view the aforesaid observations of the Hon'ble Supreme

Court, the proceedings against the petitioners – accused Nos.4 & 5 are quashed.

22. The Criminal Petition is, accordingly, allowed quashing the proceedings in C.C. No.38 of 2016 on the file of Additional Judicial Magistrate of First Class, Kavali, SPSR Nellore District, against the petitioners – accused Nos.4 & 5.

As a sequel thereto, miscellaneous petitions if any pending in the Criminal Petition shall stand closed.

Dt. 13.03.2017
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A. SHANKAR NARAYANA, J

