

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRLPMP.Nos.16873 & 17359 of 2016

IN/AND

CRIMINAL PETITION NO.8262 OF 2016

ORDER:

Crl.P.No.8262 of 2016

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in Crime No.176 of 2016 of Station House Officer, Raidurgam Police Station, Cyberabad, Ranga Reddy District, for the offence punishable under Sections 498-A IPC, 3 & 4 of Dowry Prohibition Act.

The petitioners are Accused Nos 1 to 3, are the husband and in laws of the second respondent/defacto complainant.

The second respondent/defacto complainant lodged a complaint on 06.06.2016 with the Station House Officer, Raidurgam Police Station, Cyberabad making serious allegations against the petitioners 1 to 3 herein, contending that the first petitioner laid an evil trap and married her on 10.08.2001 at Vijayawada only for money and support to make out his carrier. The second respondent also stated that the petitioners herein have demanded a huge dowry from second respondent's parents during the marriage and in view of second respondent's well being with her husband, dowry was given by her parents to the petitioners. Further, it is stated in the complaint that right from the day of marriage, the first petitioner was acting on the instructions of

petitioners 2 & 3 and all the petitioners were harassing her on each and every occasion starting from their 'first night' during the second respondent's stay at her home in Moulali, Hyderabad. It is also stated that petitioners paid multiple visits during the second respondent's stay in England. The first petitioner has been doubting about the character of the second respondent from the day of marriage and started harassing the second respondent. the petitioners were bad mouthing with the second respondent and her friends, family and relatives on her back and posing as if they were good and supporting the second respondent while the fact was that they were punishing the second respondent into depression.

It is stated in the complaint that the first petitioner suffers from inferiority complex and his feeling of inferiority complex has proliferated into several other inexplicable neurotic disorders resulting in uncontrollable aggressiveness against the second respondent and their children. The first petitioner was constantly persuaded by his parents to grab all the money that the second respondent used to earn and also to get more money from her parents.

Further, it is averred in the complaint that the first petitioner has been swindling all the earnings of the second respondent and made her financially week. It is stated that the first petitioner had taken money from the second respondent's HDFC Bank bearing A/c No.71774662 and purchased properties and made investments on his name alone. It is also stated that the first

petitioner transferred huge amount of money from the second respondent's HSBC Bank, the transactions of which are given below:

GBP 10,000 (equivalent to Rs.10,00,000) on 18.01.2015

GBP 5,000 (equivalent to Rs.5,00,000) on 04.03.2015

GBP 3,000 (equivalent to Rs.3,00,000) on 23.04.2015

It is also stated in the complaint that the first petitioner gave instructions to the estate agents and diverted deposit of house rents for an amount of GBP 964 (equivalent to Rs.96,400) per month from the second respondent account to his account illegally from July 2015 onwards. The first petitioner gave a declaration to the estate agent that he is the sole owner of two houses in United Kingdom, wherein the second respondent was also a joint owner of the said properties.

The second respondent made certain allegations against her husband i.e. first petitioner about kidnapping of her children. All the more, a specific allegation is made that when the second respondent was in England in the year 2009, petitioners 2 & 3 visited England and harassed her and their mental and physical harassment forced the second respondent to commit suicide, which led her to hospitalize in critical care for four days. At that time, the first petitioner took a promise from the second respondent not to disclose about the incident to her parents.

Further, husband (first petitioner) of the second respondent was harassing her regularly on phone while her in laws (petitioners 2 & 3) were harassing her physically and mentally. During that time Mr. Satish and Mr. Nagendrababu, friends/relatives of third petitioner used to come to home and harassed the second respondent physically, mentally and abused her along with her in laws to get more money from her parents or leave the first petitioner to enable him to marry another woman. It is also stated that petitioners 2 & 3 used badmouth about second respondent in the community and told to several people that they want to get rid of her and get their son to marry another wealthy woman.

After consistent demands by the second respondent asking the first petitioner to come and join, he came to India in September, 2014 and this time, the quantum of harassment increased by the petitioners by humiliating the second respondent forcing her to leave her profession and asked to be as a maid at home and also they imposed conditions such as not to go out of home to meet her friends and parents and confined the second respondent only to look after her kids and in-laws.

In January, 2015, petitioners 1 to 3 started harassing the second respondent to sell the property in Hyderabad which was given to her by her parents. When the second respondent resisted the petitioners' demand, they manhandled her and threatened her to do away with her life and kids life. Unable to bear with the harassment of the petitioners, the second respondent was forced to

attempt to commit suicide again on 08.02.2015, however, she was admitted in Apollo Hospital where her husband (first petitioner) was working. Unable to bear with their cruel acts, the second respondent/defacto complainant lodged a complaint with the Station House officer, Raidurgam Police Station, Cyberabad, Ranga Reddy District on 06.06.2016.

On the strength of those allegations, the police registered Crime No.176 of 2016 on the file of Station House Officer, Raidurgam Police Station, Cyberabad, Ranga Reddy District, for the offences punishable under Sections 498-A IPC, 3 & 4 of Dowry Prohibition Act against the petitioners i.e. husband and in-laws.

Challenging the proceedings, the present criminal petition is filed mainly on the ground that the petition was filed as a counter blast for the petition in O.P.No.1241 of 2015, pending on the file of Judge, Family court, Ranga Reddy District for grant of guardianship and custody of both the children and it is pending for adjudication. O.P.No.1242 of 2015 was also filed by the first petitioner under Section 13(1)(i), (i-a) of Hindu Marriage Act, 1955, for dissolution of marriage and the same is pending on the file of Judge, Family Court, Ranga Reddy District.

Learned counsel for the petitioners contended that none of the allegations made in the complaint satisfies the ingredients of offences punishable under Section 498-A IPC and Sections 3 & 4 of Dowry Prohibition Act. In the absence of satisfying the ingredients, the proceedings cannot be continued and prayed to quash the

proceedings in Crime No.176 of 2016 on the file of Station House Officer, Raidurgam Police Station, Cyberabad, Ranga Reddy District.

The second respondent/defacto complainant filed a lengthy counter affidavit almost reiterating the allegations made in the complaint, mainly pointing out that the allegations made in the complaint would constitute offences punishable under Section 498-A IPC and Sections 3 & 4 of Dowry Prohibition Act and narrated each and every incident regarding her harassment by the petitioners 1 to 3 and stated in the counter affidavit that the allegations made in the complaint are sufficient to satisfy the ingredients of the offences punishable under Section 498-A IPC and Sections 3 & 4 of Dowry Prohibition Act and prayed to dismiss the criminal petition.

During hearing, learned counsel for the petitioners Sri B. Chandrasen Reddy while reiterating the contentions urged in the petition, drawn attention of this Court about the pendency of O.P.Nos.1241 of 2015 and 1242 of 2015 on the file of Judge, Family Court, Ranga Reddy District and the allegations made therein. Learned counsel for the petitioners also drawn attention of this Court to the date of filing of the petitions before the Court and lodging complaint by the second respondent to demonstrate that those two complaints were lodged by the second respondent as a counter blast to drive the petitioners to come to her terms and not otherwise. Lodging said complaint by the second respondent is nothing but abuse of process of law and such proceedings cannot

be continued and thereby prayed to quash the proceedings in Crime No.176 of 2016 on the file of Station House Officer, Raidurgam Police Station, Cyberabad, Ranga Reddy District.

Learned counsel for the second respondent Ms. S, Vani reiterated the contentions raised in the counter affidavit.

As seen from the allegations made in the complaint, the second respondent was subjected to cruelty by all the three petitioners on different occasions at different places, including her stay at England. The specific allegations made against the petitioners in the criminal petition is that in the month of January, 2015, husband of the second respondent and his parents harassed her to sell away the property in Hyderabad which was gifted to her by her parents and offer the sale proceeds to them. When the second respondent did not agree to sell the property, the petitioners gave life threat to the second respondent and her children. Moreover, on account of such harassment, the second respondent made an attempt to commit suicide on 08.02.2015. Thus, the allegations made against the petitioners, if proved, would constitute offences Sections 498-A IPC, 3 & 4 of Dowry Prohibition Act.

Section 498-A of I.P.C deals with husband or relative of husband of a woman subjecting her to cruelty, and defined as 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.

Explanation to Section 498-A of I.P.C describes "cruelty" 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.

Therefore, driving the second respondent to commit suicide on account of mental and physical harassment by the petitioners, for her failure to meet their illegal demand, *prima facie* constitutes an offence punishable under Section 498-A IPC.

Further, the other offences allegedly committed by the petitioners are punishable under Sections 3 & 4 of Dowry Prohibition Act.

Section 4 of Dowry Prohibition Act deals with Penalty for demanding dowry and according to it if any person demands directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall

not be less than six months but which may extend to two years and with fine which may extend to ten thousand rupees.

Here, the alleged act referred above would constitute an offence punishable under Section 4 of Dowry Prohibition Act *prima facie*. Therefore, the contention that the allegations made in the complaint would not constitute an offence, as those allegations did not satisfy the ingredients of Sections 498-A IPC, 3 & 4 of Dowry Prohibition Act is without any substance.

Hence, the above allegations are suffice on the face value of it to constitute an offence punishable under Sections 498-A IPC, 3 & 4 of Dowry Prohibition Act.

Moreover, the other contention regarding their absence at place of occurrence cannot be decided at this stage while deciding a petition under Section 482 Cr.P.C while exercising inherent power, which can be exercised sparingly in exceptional circumstances. The inherent power under Section 482 Cr.P.C can be exercised except to give effect to the orders passed by this Court, to prevent abuse of process of the Court and to meet the ends of justice.. Such inherent power should not be exercised by the Court to stifle the legitimate prosecution. This Court being the highest Court of the State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. While exercising

jurisdiction under Section 482 of the Cr.P.C., it is not permissible for the Court to act as if it was a trial Court. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. (vide **State Of Orissa v. Saroj Kumar Sahoo**¹)

One of the contentions raised by the learned counsel for the petitioner is that the complaint is lodged only on coming to know about filing of two petitions i.e. O.P.No.1241 of 2015, pending on the file of Judge, Family court, Ranga Reddy District to declare the first petitioner as guardian and custody of both the children and it is pending for adjudication. O.P.No.1242 of 2015 is also filed by the first petitioner under Section 13(1)(i), (i-a) of Hindu Marriage Act, 1955 for grant of divorce. No doubt, this complaint is lodged subsequent to filing of these two petitions. But, at this stage, it is difficult to decide whether the complaint was lodged with a malafide intention or not, in view of filing of petition. Moreover, the allegations made are serious in nature and the acts allegedly committed by the petitioners drove the second respondent to make an attempt to commit suicide, on more than one occasion she was admitted in hospital for few days in intensive care unit both in

¹ (2005) 13 SCC 540

England and at Hyderabad. Such acts would *prima facie* amount to cruelty, as per explanation to Section 498-A I.P.C.

Apart from that, the investigation is at fetus stage. The Courts normally cannot exercise its power under Section 482 Cr.P.C, to quash the proceedings, as per the law laid down in **Saroj Kumar Sahoo**¹ case. Therefore, at this stage, it is difficult to quash the proceedings only on the ground that the complaint was lodged subsequent to filing of two petitions. Therefore, this contention of the petitioners does not stand on any legal scrutiny of this Court to quash the proceedings.

The law laid down by the Apex Court in **State of Haryana v. Bhajan Lal**² is that when the allegations are made in the F.I.R or the complaint, if they are taken on its face value are accepted, they do not *prima facie* constitute an offence or make out an offence, the Court can exercise its inherent power to quash the proceedings. Similarly, when the complaint is lodged to wreck vengeance with personal grudge as an abuse of process of law, the Court can exercise jurisdiction under Section 482 Cr.P.C. In view of guideline no.1 of **Bhajanlal**² case, the allegations made in the complaint on its face value, accepting in its entirety would constitute *prima facie* offence.

But, here, the contention raised before this Court is that the complaint was lodged by the second respondent against the petitioners only to wreck vengeance against them. But, it is a

² (1992) Supp 1 335

disputed question of fact which cannot be decided by this Court while exercising power under Section 482 Cr.P.C.

Hence, I find no ground to quash the proceedings at this stage and the criminal petition is liable to be dismissed.

In the result, the criminal petition is dismissed.

Consequently, miscellaneous petitions, if any, pending in this Petition shall also stand dismissed. No costs.

Crl.P.No.17359 of 2016

This miscellaneous petition is filed to vacate the order passed in Crl.P.No.8262 of 2016 on 16.06.2016.

In view of the orders passed by this Court in Crl.P.No.8262 of 2016, no further orders are need be passed in Crl.P.No.17359 of 2016.

Crl.P.No.16873 of 2016

This miscellaneous petition is filed to extend the interim order passed in Crl.P.No.8262 of 2016 on 16.06.2016.

In view of the dismissal of Crl.P.No.8262 of 2016 today, this criminal miscellaneous petition is also dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Dated:13.02.2017

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