HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL PETITION NO.5499 OF 2011

ORDER:

This criminal petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed by the petitioners/accused 1 to 3 requesting to quash the proceedings against them in C.C.No.908/2010 on the file of the Court of the learned XV Additional Chief Metropolitan Magistrate, Hyderabad.

2. I have heard the submissions of Sri P.Hari Prasad Reddy, learned counsel, representing Mrs.D.Sangeetha Reddy, learned counsel appearing for the petitioners/accused 1 to 3 and of the learned public prosecutor – State of Telangana, representing the 2nd respondent-State. Though the 1st respondent was served with notice and proof of service was filed as per the note of the Registry, she did not enter appearance.

3. The facts required to be stated at the out set are as under: "On the report of the 1st respondent/informant against the accused 1 to 3, a case in Cr.No.70 of 2006 was registered by the Women Police Station, South Zone, on 24.03.2006, for the offences punishable under Sections 498A and 406 of IPC and Sections 4 and 6 of Dowry Prohibition Act, 1961. After investigation, a charge sheet was filed before the court of the learned XIII Additional Chief Metropolitan

Magistrate, Hyderabad, opining that the evidence collected during the investigation established that the accused persons have committed the offences afore-stated. The learned Magistrate took cognizance and has taken the case on file and ordered for issue of summons to the petitioners/accused 1 to 3. However, presently the case is said to be pending on the file of the XV Additional Chief Metropolitan Magistrate, Hyderabad. Be that as it may, the summary of allegations in the charge sheet is to the following effect. 'The 1st respondent/ informant, Dr.Shameem Sultana, (hereinafter, 'informant') is the legally wedded wife of A1; their marriage was performed at Hyderabad, on 03.03.2000; they were both studying in Unani College at Kurnool. At the time of marriage, an amount of Rs.1,50,000/- net cash as 'Jode-ki-Rakham' was paid and a lavish dinner was arranged for 800 persons; 10 tolas of gold jewellery, motor cycle, furniture sets, valuable household articles etcetera were given; besides the said items, costly gifts were presented by the relatives; 50 pairs of complete cloth sets, Jahez articles etcetera were also presented. Right from the first day of marriage, A1 started demanding money from the parents of the informant and blamed her stating that she has not brought valuable Jahez articles and other gifts from parents' house; A1 started beating her mercilessly; thus, her marriage became a very big tragedy for her and her family; A1 looks like a semi-crack and an insane person; A1 always misbehaved with the informant and her parents and treated them in a rude manner; on the instigation of the parents-in-law and sister-in-law of the informant, A1 harassed her and ill-treated her; they also abused her and asked her to return back to her brother's house and refused to allow her into the matrimonial home; A1 to A3 started torturing her on one pretext or the other; A1, at the instance of his parents, insisted that the informant's mother's house in Dabeerpura, Hyderabad, must be transferred in his name or that of his father; in-fact, on 20.03.2006, the informant went to see her husband and apologise and beg for mercy from her parents-in-laws and her husband by intending to state that if she has committed any mistake she may be pardoned; however, A1 to A3 kicked her out of the house and used vulgar and indecent language against her and her parents; and, in that incident, she suffered grievous injuries; she then left for her parents house at Hyderabad, where she is staying for the last over eight months helplessly; having lost all her hopes of leading a happy marital life, she took separate suitable accommodation and started a clinic along with her husband; after first delivery, A1 left the house and went away to Kurnool to stay with his parents; since December, 2004, A1 prolonged the issue of joining the informant; hence, she gave the report.'

4. A1 to A3 in support of their request for quashing the case against them submitted as follows: "All the above and other allegations in the report lodged by the informant/1st respondent with the police are false and concocted. A1 to A3 are innocent. On 13.12.2004 itself, A1 pronounced Talaq and informed the same to informant through her counsel, on 23.12.2004. A1 also obtained divorce certificate from Quazi's office, Hyderabad, on 26.02.2005. The divorce notification was also published in Urdu daily news paper dated 02.03.2005. Thereafter, elders held a meeting and both parties entered into a compromise and a deed of compromise or settlement, dated 13.03.2005, was executed and was signed by both parties. The terms of the said deed reflect that the informant has undertaken not to file any Civil and Criminal cases against A1 and/or his relatives in future. Having agreed for the terms of the compromise, she received Rs.1,40,000/- towards full and final settlement. However, she later lodged the subject report with false averments. Since two years prior to the lodging of the present report, A1 was staying in Adoni of Kurnool District, along with his parents. The informant is doing Unani practice at Hyderabad. A2 and A3, who are the parents of A1, have nothing to do with the family affairs of A1 as they were staying at Adoni. Hence, the averments in the report of the informant are false and the charge sheet was filed by the police against A1 to A3 under the influence of the informant without conducting any investigation by simply reiterating the averments in her report. The final report and the material on record do not disclose any case much less a *prima facie* case for proceeding against the accused. The ingredients of the offence are not attracted and the accused have not committed any offences much less the alleged offences. No incident as alleged in the report had taken place, on 20.03.2006 or any other date and when the A1 pronounced Talaq, on 13.12.2004, and informed the same to the informant and her counsel and when the matter was settled by means of compromise before elders and relatives and when the informant-LW1 received huge money as per terms of settlement, which was reduced into writing, there was no relationship and there was no occasion or necessity for the informant to approach A1 to A3. The informant suppressed the true and material facts and gave the report to the police with all false and concocted allegations for the purpose of implicating the accused in the case. In the circumstances the prosecution of the petitioner-accused would be an abuse of process of law. Hence, the case against A1 to A3 may be quashed."

5. As already noted the first respondent, having not entered appearance is not resisting the application of the petitioner-accused 1 to 3.

6. However, Learned Public Prosecutor stated that in view of the averments in the report of the informant and the charge sheet, which was filed after detailed investigation, there is a *prima facie* case against A1 to A3 to frame charges and proceed against them and that their contentions are not tenable and that they can raise all their defences during trial and that there are no grounds to quash the proceedings against the petitioners-accused 1 to 3.

7. I have given earnest consideration to the facts and submissions and I have perused the material record.

8. In the first place it is apt to refer to the legal position. At the stage of considering a request for quashing the proceedings against the accused, the prosecution is under an obligation to place only that much material against the accused which may be sufficient enough in the circumstances of a given case to draw a presumption that the accused have committed an offence. Further, in **Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others [1990 Cri L.J. 1869]**, the Supreme Court held as follows: "From the above discussion it seems well settled that at the Section 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their facie value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case." In **Union of India v. Prafulla Kumar Samal and**

another [1979CriLJ154], the supreme Court held as follows: "The Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. In exercising his jurisdiction under Section 227 the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial." A decision has to be made in the instant matter, keeping in view the above legal position.

9. The informant's case is that after estrangement she was living with her parents and that A1 is staying at Adoni along with his parents, A2 and A3. However, according to the informant, on 20.03.2006, she went to the place of the accused to see her husband and apologise and beg for mercy from her parents-in-laws and her husband by intending to state that if she has committed any mistake she may be pardoned; however, A1 to A3 kicked her out of the house and used vulgar and indecent language against her and her parents. However, A1 denied any such incident. The documents filed by A1 to A3 disclose that A1 pronounced Talaq, on 13.12.2004, and executed a divorce declaration in the presence of witnesses. In the declaration, it is stated that the meher amount is also paid. One of the documents filed and relied upon by the accused is the settlement deed, dated 13.03.2005, executed between the petitioner and the informant. A plain perusal of the contents of the said settlement deed discloses that A1 pronounced Talaq and had given written divorce intimation to the informant-LW1, on 13.12.2004, and that the same was got published in Siyasat, Urdu daily, dated 02.03.2005, for further intimation and that in the meanwhile, a meeting was held and the matter was compromised and amicably settled before the elders and well-wishers of both the parties subject to the terms and conditions in the said settlement deed. In view of the unrebutted contentions of the accused it is apt to refer to, some of the terms of the settlement, which are verbatim as under:

> "2. That the 1st party hereby declare that the 2nd party has pronounced divorce to her on 13.12.2004 before her and witnesses, and subsequently the Qazi Shariath Pana Balda Shalibanda, Hyderabad, A.P., issued Divorce Certificate.
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> 3. That the 1st party hereby declare that she has received a sum of Rs.1,40,000/- (Rupees one lakh and Forty thousand only) by way of D.D. bearing No.071031, dated 12.03.2005, drawn on State Bank of India, Osman Gunj Branch, Hyderabad towards her full and final settlement amount including the Fair Provision maintenance. She has received the divorce certificate and also gone through the Divorce notice published in siasat urdu daily news paper, dated 02.03.2005. She has also received a sum of Rs.4,000/- (Rupees four thousand only) towards the Iddat and Fair provision maintenance from the office of the Qazi Shalibanda, Hyderabad A.P.
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> 4. The 2nd party hereby declare that she is having in her custody jewellery 5 tolas of gold, clothes and other Medical Surgical instruments total worth Rs.60,000/- belonging to the 2nd party and the 2nd party hereby declare that he will not claim the same from the 1st party in future and forgo the same.
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> 5. The 1st party hereby declare that she blessed with a male child through the 2nd party now aged about 4 years namely Mohd-Shuja Musaeb.
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> 6. The 1st party hereby declare that after receiving the above said amount of Rs.1,40,000/- (one lakh and forty thousand only) entire jahez and jewellery, presentations as per list she is not having any further claim from the 2nd party in future.

> 7. That both the parties hereby declare that the Divorce took place between the parties and entire marital relation has been ceased between the Ist party and 2nd party and they are no more wife and husband since the date of divorce i.e., 13.12.2004, without interference of each other.
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> 8. That the 1st party hereby declare that she will not file any Civil or Criminal cases against the 2nd party or his relatives in future failing which she will be liable to pay damages to the 2nd arty."

A1 to A3 also produced the copy of the demand draft for Rs.1,40,000/- referred to in the deed of settlement between the parties. The above terms of the deed of settlement executed between the A1 and the material brought on record reflect that the A1 and the informant LW1–Dr.Shammem Sultana, got separated and are living separately from 13.12.2004. However, the present report was lodged by the informant, on 24.03.2006, that is, long after the said estrangement or separation between the spouses. In this backdrop of facts and circumstances, the learned counsel for the petitioners-accused urges that to create a cause of action, in the report lodged with police by the informant-LW1, it was falsely alleged that she went to the house of the accused, on 20.03.2006, to tender an apology and apologised and begged for mercy by stating that if she has committed any mistakes she may be excused and that at that time she was kicked out and that vulgar and indecent language was used against her, though no such incident has happened. He would further distinctively submits that the informant-LW1 is not a gullible woman and that she is an educated woman and that she is a Doctor by profession and that when Talaq was pronounced to the knowledge of the informant on 13.12.2004 and when there was separation between the spouses even by that date and when the informant-LW1 received huge sum by way of demand draft as per the terms of deed of compromise-cum-settlement dated 13.03.2005 signed by both A1 and the informant-LW1 and when the relationship has come to an end once and for all, there was no need or occasion for the informant to again approach the accused in March 2006 and in deed there are no contacts between the parties after the settlement that was arrived at between the A1 and the informant –LW1 and that the contents of the report are invented to create a cause of action and that, therefore, the report lodged with the police is a false report and that it was filed to harass the petitioners/accused and that since about two years prior to the lodging of the report by the informant, the parties are living separately and that A1 was staying at Adoni, Kurnool District, along with his parents while LW1, the informant was doing Unani practice at Hyderabad. From the examination of the facts borne out by the record, including the report lodged with the police by the informant-LW1 and the final report, it is manifest that there is sufficient evidence to safely conclude that the informant-LW1 and the A1 to A3 were and are living at different places since

13.12.2004 and that neither the report lodged by the informant-LW1 on 24.03.2006 nor the charge-sheet leisurely filed in the year 2009 furnished the legal basis to the Magistrate to take cognizance of the offences alleged against the petitioners-accused.

10. In this regard it is apt to refer to the decision of the Supreme Court in **G.V. Rao v. L.H.V. Prasad & Others [(2000) 3 SCC 693]** wherein it was held as under:

> '….there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their cases in different courts.'

In matters of this nature, where the matters are amicably settled and the disputes are given a quietus once and for all, the Court has to proceed with caution while taking cognizance against the accused and the Court should not encourage prosecutions of the husband and parents by reopening the settled matters. In the light of the peculiar facts & the broad probabilities of the case, the total effect of the evidence, the documents produced before the Court, the basic infirmities appearing in the case, the legal position obtaining and the submission of the accused, which remained un-refuted, this Court finds that there is acceptable merit in the submissions of the petitioners-A1 to A3.

11. On the above analysis this Court holds that the contentions of the petitioners/accused merit consideration and that their prosecution in the calendar case would amount to abuse of process of law and that therefore, they are entitled to the relief claimed in the petition.

12. In the result, the criminal petition is allowed and the proceedings against the petitioners-accused 1 to 3 in C.C.No.908/2010 on the file of the Court of the learned XV Additional Chief Metropolitan Magistrate, Hyderabad, are hereby quashed. The bail bonds of the petitioners/A1 to A3, if any, shall stand cancelled.

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

M.SEETHARAMA MURTI, J

17.08.2017
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