

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 10834 OF 2017

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.") to quash the proceedings in crime No. 706 of 2017 of Neredmet Police Station, Rachakonda, registered for the offence under Section 498-A of the Indian Penal Code (for short, 'I.P.C.').

2. The petitioners-accused Nos. 1 to 3 are husband, mother-in-law and brother-in-law of respondent No. 2 respectively. Respondent No. 2 lodged report dated 12-10-2017 with the police alleging that her marriage with petitioner No. 1 is love marriage and it was registered with the Registrar's Office, Neredmet, on 21-11-2013 in the presence of elders of the family. At that time, her parents paid Rs.10,00,000/- as dowry. Thereafter, petitioner No. 1 subjected her to harassment both physically and mentally and drove her to commit suicide. Respondent No. 2 also attempted to commit suicide on one occasion and therefore requested the police to take necessary action against the petitioners. On the strength of the report lodged by respondent No. 2 with the police, a crime was registered and issued F.I.R.

3. The main contention of the petitioners is that petitioner No. 1 was confined illegally in the house of respondent No. 2; later, he was taken to Tirupati and performed marriage at Tirupati and again performed marriage at Hyderabad and a copy of the wedding invitation is placed on record to show that date of marriage of respondent No. 2 with petitioner No. 1 is on 21-03-2011. Petitioner Nos. 2 and 3 are staying at a different place whereas petitioner No. 1 is staying with respondent No. 2 at her parents' house. Respondent No. 2 invented a

different date of marriage *i.e.* 21-11-2013. Petitioner No. 1 never subjected respondent No. 2 to cruelty as defined under explanation to Section 498-A I.P.C. and that petitioner Nos. 2 and 3 are staying away to the house of respondent No. 2. When respondent No. 2 contended that her marriage was performed on 21-11-2013 suppressing the performance of marriage twice at Tirupati and Hyderabad, the complaint can be thrown out at the threshold since she suppressed material facts and requested this Court to quash the proceedings.

4. During hearing, learned counsel for the petitioners contended that certain procedure has to be followed before registration of a crime as recommended by the Law Commission of India and placed reliance on ***Chander Bhan Vs. State***¹. Registration of a crime without conducting necessary investigation and forwarding F.I.R. to the magistrate concerned is a serious illegality and apart from that, respondent No. 2 herself subjected petitioner No. 1 to cruelty confining him in the house. Therefore, the proceedings are to be quashed and requested this Court to pass appropriate orders by exercising inherent jurisdiction under Section 482 Cr.P.C.

5. Learned Public Prosecutor (T.S.) contended that in view of the directions issued by the Apex Court in ***Rajesh Sharma Vs. State of U.P.***², the Court has to refer the matter to the committee directing the S.H.O. concerned to follow the procedure but learned counsel for the petitioners did not heed to the request made by learned Public Prosecutor while contending that it is a special case to be considered and quash at the threshold of the investigation.

6. The powers of this Court under Section 482 Cr.P.C. are limited and such powers can be exercised only to give effect to the orders passed, to prevent the

¹ 2008 L.S. (Del.) 1473

² 2017 (2) ALT (CrI.) 393 (SC)

abuse of process and to meet the ends of justice. When the investigation is at foetus stage, the Court is required to advert to the allegations made in the report lodged with the police and decide whether the allegations made in the complaint are disclosing commission of any offence even if the facts narrated in the report are accepted on its face value. Here, the allegation is that respondent No. 2 was subjected to harassment both physically and mentally and drove her to commit suicide and she accordingly made an attempt to commit suicide. This allegation would directly fall within the first part of explanation to Section 498-A I.P.C. The first part of explanation to Section 498-A I.P.C. reads as under:

"Explanation:- For the purposes of this section, "cruelty" means:-

- (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."*

Therefore, the allegations made in the report lodged by respondent No. 2 with the police, which is the basis for setting the criminal law into motion, disclosed commission of offence *prima facie* punishable under Section 498-A I.P.C. The contention of the petitioners is that respondent No. 2 suppressed the earlier two marriages one at Tirupati and the other at Hyderabad. The petitioners themselves admitted about performance of marriage of respondent No. 2 with petitioner No. 1 once at Tirupati and the other at Hyderabad and there is no suppression in registration of the marriage on the subsequent date *i.e.* on 21-11-2013. Non-disclosure of marriages performed either at Tirupati or at Hyderabad of respondent No. 2 with petitioner No. 1 does not go to the root of the case and it is not a suppression of fact since the date of registration of the marriage is also relevant. Hence, suppression of material facts *i.e.* date of

marriage either at Tirupati or Hyderabad while disclosing the registration of marriage in the petition is not a ground to quash the proceedings.

7. The other contention raised by learned counsel for the petitioners is that certain guidelines were issued by Delhi High Court in **Chander Bhan** (*supra*) but the investigating agency did not follow the guidelines issued by the Law Commission of India reiterated in the above judgment. Strangely, learned counsel for the petitioners did not accede to the request to refer the matter to the committee as directed by the Apex Court in **Rajesh Sharma** (*supra*) and insisted the Court to decide the petition and quash the proceedings.

8. Section 482 Cr.P.C. saves the inherent powers of the High Court and its language is quite explicit when it says that nothing in the 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 the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A procedural Code, however exhaustive, cannot expressly provide for all time to come against all the cases or points that may possibly arise, and in order that justice may not suffer, it is necessary that every Court must in proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions of the Code. It is well-established principle that every Court has inherent power to act *ex debito justitiae* to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court. As held by the Privy Council in **Emperor Vs. Khwaja Nazir Ahmad**³ with regard to Section 561-A of the Code of Criminal Procedure, 1898 (Section 482 Cr.P.C. is a verbatim copy of the said provision) gives no new powers. It only provides that those which the Court already inherently possesses

³ 2008 (1) SCC 474

shall be preserved and is inserted, lest it should be considered that the only powers possessed by the Court are those expressly conferred by the Code and that no inherent power had survived the passing of the Act. The leading case on the powers of the Court under Section 482 Cr.P.C. is ***State of Haryana Vs. Bhajanlal***⁴, wherein the Apex Court laid down certain guidelines following the earlier judgment in ***R.P.Kapur Vs. State of Punjab***⁵. The Court can exercise power under Section 482 Cr.P.C. where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code or where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. In the present case, the report lodged with the police dated 12-10-2017 disclosed commission of offence punishable under Section 498-A I.P.C. *prima facie* accepting the allegations made in the complaint for limited purpose of deciding the present petition. In such case, when the investigation is not yet commenced, the Court cannot exercise inherent power under Section 482 Cr.P.C. to quash the proceedings. In ***State of Orissa Vs. Saroj Kumar Sahoo***⁶, the Apex Court held that the Court cannot exercise power under Section 482 Cr.P.C. to stifle a legitimate prosecution. The High Court, being the highest Court of a 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

⁴ 1992 Supp. (1) SCC 335

⁵ AIR 1960 SC 866

⁶ (2005) 13 SCC 540

or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. Earlier to this judgment, the Apex Court in ***Kurukshetra University Vs. State of Haryana***⁷ declared the law in the same lines. Thus, from the law declared from ***Saroj Kumar Sahoo*** (*supra*) and ***Kurukshetra University*** (*supra*), when investigation is not yet commenced or when it is at foetus stage, this Court cannot quash the proceedings by exercising inherent jurisdiction under Section 482 Cr.P.C.

9. Though learned Public Prosecutor (T.S.) requested this Court to follow the guidelines laid down in ***Rajesh Sharma*** (*supra*), learned counsel for the petitioners readily rejected his request. However, this Court is bound by the law declared by the Supreme Court since the law declared by the Apex Court is a binding precedent under Article 141 of the Constitution of India.

10. In view of my foregoing discussion, I find no ground to quash the proceedings and the petition is liable to be dismissed.

11. The criminal petition is accordingly dismissed. However, the S.H.O., P.S. Neredmet, Rachakonda, is directed to refer the matter to the committee constituted in terms of ***Rajesh Sharma*** (*supra*). Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 16-11-2017.

JSK

M.SATYANARAYANA MURTHY, J.

⁷ AIR 1977 SC 2229