THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.5879 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.239 of 2015 on the file of Special Mobile Magistrate of First Class, Nellore, SPSR Nellore District for the offences punishable under Section 406 read with 34 of Indian Penal Code (for short "I.P.C.") and under Section 6 (3) (a) of Dowry Prohibition Act (for short "D.P.Act.").

The petitioners herein are accused No.2 and 3 in the main case.

One K.Krishnaiah filed a private complaint before the Magistrate against the petitioners herein and accused No.1 for the offence punishable under Section 6 (3) (a) of Dowry Prohibition Act and under Section 406 read with 34 of I.P.C. alleging that the marriage of his daughter Sai Sindhu was performed with accused No.1 – Udaya Kumar on 27.05.2011 at Raghava Kalyana Mandapam, Ranganayakulapet, Nellore according to Hindu rites and customs and their marriage was registered with registration No.259 of 2011 and a certificate was also issued to that effect on 28.05.2011.

At the time of marriage besides payment of Rs.5,50,000/- as demanded by accused No.1 and the petitioners herein as dowry, the complainant also presented the following Gold jewellery and silver articles.

Description of the Gold Jewelers:

Sl. No.	Date	Bill No.	Description of item	Weight in Gms-Mgs	Amount in Rs.
1.	08.03.2011	308	Non-set Jewelers	44-600	90,323
2.	08.03.2011	309	1. Plain Bangles. 2.Diamond Design Bangles	51-840	1,06,272
3.	14.11.2010	2702	Diamond Right for Gold	09-700	19,885
4.	13.11.2010		For Diamond 1 piece	46.5 cts	44,175
5	18.04.2011	2703	1.Hair Golden Beads 2.Gold Sarudu 3.Papidi Bottu	99.360	2,03,680
6.	18.04.2011	2705	1.Brass let 2.Gold Chain for boy 3.Gold watch	93.310	1,91,285
7	17.05.2011	2706	1.Matilu, 2.Champa Swaralu. 3.Stone Ear Studs	25.920	53,136
8.	02.02.2011	4709	Sada Bangles	130.400	2,67,320
9.	11.04.2011	4823	1.Mamidi Prindela Haram 2.Plain Big Size Bangles 3.Ruby beaded locket	185.860	3,81,013
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			Total weight of Gold	640-990	13,14,029
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Description of the Silver Articles:

Sl. No.	Date	Description of item	Weight in Gms-Mgs	Amount in Rs.
1.	03.01.2011	1.Corner Plates – 16 2.Binde -2 3.Kancham -2 4.Gaja Lakshmi – 2 5.Medium Size Glass -2	4300-00	1,98,010
2.	04.01.2011	1.Flower Bucket – 2 2.Asta Lakshmi Plate -1	900-000 600-000	67,800
3.	09.02.2011	1.Asta Lakhsmi Plate – 1	637-93	28,361
4	09.02.2011	1. Basket – 1 2.Chebu – 1 3.Silver Ornament	464-000 255-600 503-000	71,414

5	05.02.2011	1. Silver Bouls – 3 2.Devuni Samanulu 3.Single Plate – 1 4.Devuni Plates Big – 2	302-700 975-200 490-700 1615-000	1,51,585
6.	05.02.2011	Devuni Patalu		11,000
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		Total	11,044-130	5,28,170
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The dowry amount of Rs.5,50,000/- was transferred to the account of accused No.3, petitioner No.2, who is the mother of accused No.1 and mother-in-law of deceased Sai Sindhu bearing No.016801402611 in Dhana Lakshmi Bank at Kukatpalli Branch, Hyderabad on 06.04.2011 from the Complainant's account bearing No.30841985930, State Bank of India, Railway Feeders Road, Nellore. He also filed counter foil evidencing transfer of amount. On 16.05.2012 the complainant sent an amount of Rs.32,800/- through Dhana Lakshmi Bank, Nellore to accused No.1 for their first marriage anniversary. After marriage accused No.1 and Sai Sindhu shifted to United States in connection with the employment of accused No.1 and while they are living together at United States, there were petty quarrels between them and the petitioners herein and accused No.1 subjected her to cruelty. When the Sai Sindhu and accused No.1 returned to India, they demanded a car and purchase of agricultural land in the name of accused No.1 and when the deceased Sai Sindhu expressed her inability to purchase the property as demanded by the accused, she was subjected to both mental and physical cruelty and accused No.1 also caused a fracture to her middle finger of the hand and later she committed suicide due to unbearable harassment. Before the death of Sai Sindu, some immovable property was purchased under 5 registered sale deeds worth Rs.10,00,000/- at Prakasam District as demanded by accused No.1. On 06.02.2015 accused No.1 telephoned to the complainant and informed that Sai Sindhu hanged herself and she was shifted to the hospital for treatment. On 09.02.2015 accused No.1 informed that Sai Sindhu was declared as dead, by Doctors, who treated her. A case was registered in Case No.15-00606 by the Police Station at No.201, West Mission Street, Sanjose, CA 95110 and accordingly a certificate of death was issued in Registration No.3201543001201 by the Health Officer, State of Kalifornia, Country Santa Clara. Thus, accused No.1 and both the petitioners are responsible for the death of the Sai Sindhu. After the death of the Sai Sindhu, a complaint was lodged with the police concerned in India and a case in Crime No.42 of 2015 for the offence punishable under Section 406 read with 34 of I.P.C. and Section 6 (3) (a) of Dowry Prohibition Act and issued F.I.R.

At the time of marriage of the Sai Sindhu with accused No.1, accused No.1 and the petitioners received cash as dowry besides presentation of 80 sovereigns of gold and silver articles weighing about 11 Kg.44 gms silver and they are in custody of both silver and gold besides dowry amount, which was transferred to the account of accused No.3, petitioner No.2 herein. After the death of deceased Sai Sindu, the dowry amount, gold and silver articles were not returned, thereby they are liable for punishment under Section 6 (3) (a) of Dowry Prohibition Act and Section 406 read with 34 of I.P.C.

The Magistrate after following necessary procedure, took cognizance for the offence punishable under Section 6 (3) (a) of Dowry Prohibition Act and Section 406 read with 34 of I.P.C.

The present criminal petition is filed mainly on the ground that there is absolutely no material to show that the deceased was subjected to cruelty so also entrustment of gold and silver articles and cash to either of these petitioners. Learned counsel for the petitioners also relied on the judgment of Apex Court rendered in "***Bobbili Ramakrishna Raju Yadav v. State of Andhra Pradesh***[1]" with regard to holding of "Sridhana articles" etc., and that the allegations made in the complaint would not attract the offence punishable under Section 6 (3) (a) of Dowry Prohibition Act and Section 406 read with Section 34 of I.P.C.

During hearing, learned counsel for the petitioners would contend that these petitioners were falsely implicated and in view of the judgment of Apex Court rendered in "***Bobbili Ramakrishna Raju Yadav v. State of Andhra Pradesh"*** (referred supra) the petitioners herein are not supposed to be in custody of any of the "Sridhana Articles" or cash, which were presented at the time of marriage and if the principles laid down in the above judgment is applied to the present facts of the case, the petitioner cannot be proceeded with for the offence punishable under Section 6 (3) (a) of D.P.Act since the deceased Sai Sindhu is expected to carry those articles with her and that the allegations made in the complaint would not constitute an offence punishable under Section 6 (3) (a) of D.P.Act and under Section 406 read with 34 of I.P.C.

Sri B.Vijaysen Reddy, learned counsel for the respondent No.1, contended that the counterfoil annexed to the complaint would clearly show that an amount of Rs.5,50,000/- was transferred to the account of accused No.3, who is the petitioner

[1] 2016 (1) ALD (Crl.) 361 (SC)

No.2, at the time of marriage. This itself suffice to conclude that the Sridhana amount was entrusted to the accused No.3, petitioner No.2 herein. When smt.Sai Sindhu died, the petitioners are under the obligation to refund the amount and return the gold and silver articles. The Apex Court in ***Bobbili Ramakrishna Raju Yadav v. State of Andhra Pradesh*** (referred supra) pointed out about the usual practice prevailing in families in India about carrying Sridhana articles with the girl, but here accused No.1 and Sai Sindhu shifted their residence to United States in connection with the employment of accused No.1, normally the people who are going to United States may not carry huge quantity of silver and gold jewellery. Therefore, the principle laid down in the above judgment cannot be applied to the present facts of the case. If really, those silver and gold articles are shifted to United States, there must be some evidence to that effect. Therefore, at this stage, the proceedings cannot be quashed and prayed for dismissal of the petitioner.

The main contention of the defacto complainant is that the defacto complainant transferred dowry amount of Rs.5,50,000/- to the account of accused No.3, petitioner No.2, who is the mother of accused No.1 and mother-in-law of deceased Sai Sindhu bearing No.016801402611 in Dhana Lakshmi Bank at Kukatpalli Branch, Hyderabad on 06.04.2011 from his account bearing No.30841985930, State Bank of India, Railway Feeders Road, Nellore, though the dowry is prohibited under Section 3 of D.P.Act. Counterfoil evidencing the transfer of the amount is annexed to the complaint as per the allegations made in the complaint. If really, such transfer took place from the account of the defacto complainant to the account of accused No.3, petitioner No.2, it is nothing but an entrustment of the amount, which was paid on demand of the petitioners and accused No.1 as consideration at the time of marriage and failure to return the said amount would *prima facie* establish the offence under Section 6 (3) (a) of D.P.Act.

Section 6 (3) of D.P.Act reads as follows:

> 6. (3) Where the woman entitled to any property under sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being: 3[Provided that where such woman dies within seven years of her marriage, otherwise than due to natural causes, such property shall,— 2[Provided that where such woman dies within seven years of her marriage, otherwise than due to natural causes, such property shall,—"
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> (a) If she has no children, be transferred to her parents; or
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> (b) If she has children, be transferred to such children and pending such transfer, be held in trust for such children.] 5[(3A) Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section (1) 3[or sub-section (3)] has not, before his conviction under that sub-section, transferred such property to the woman entitled thereto or, as the case may be, 6[her heirs, parents or children] the Court shall, in addition to awarding punishment under that sub-section, direct, by order in writing, that such person shall transfer the property to such woman or, as the case may be, 6[her heirs, parents or children] within such period as may be specified in the order, and if such person fails to comply with the direction within the period so specified, an amount equal to the value of the property may be recovered from him as if it were a fine imposed by such Court and paid to such woman or, as the case may be, 6[her heirs, parents or children]. 4[(3A) Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section (1) 2[or sub-section (3)] has not, before his conviction under that sub-section, transferred such property to the woman entitled thereto or, as the case may be, 5[her heirs, parents or children] the Court shall, in addition to awarding punishment under that sub-section, direct, by order in writing, that such person shall transfer the property to such woman or, as the case may be, 5[her heirs, parents or children] within such period as may be specified in the order, and if such person fails to comply with the direction within the period so specified, an amount equal to the value of the property may be recovered from him as if it were a fine imposed by such Court and paid to such woman or, as the case may be, 5[her heirs, parents or children]."

Here in this case, Sai Sindhu died issue less, but in such case the dowry amount, gold and silver articles must be transferred to her parents, who actually paid and presented those gold jewellery and silver articles respectively. Whether those gold and silver articles were entrusted to the petitioners herein at the time of marriage of Sai Sindhu with accused No.1 is a disputed question of fact, at this stage which cannot be decided.

Learned counsel for the petitioner mainly placed reliance on ***Bobbili Ramakrishna Raju Yadav v. State of Andhra Pradesh*** (referred supra), wherein the Supreme Court held that the "sridhana articles" given to the bribe one has to take into consideration the common practice that these articles are sent along with the bride to the matrimonial house. In this case, the petitioners are residing at Hyderabad, whereas Sai Sindhu and accused No.1 resided in United States at the time of death of Sai Sindhu. Even if the principle laid down in the said judgment is applied to the present facts of the case, deceased Sai Sindhu is supposed to carry those articles to her matrimonial house. If the deceased Sai Sindhu and accused No.1 resided in India separately, then there is possibility of using those articles by deceased Sai Sindhu, but when they shifted their residence to United States in connection with the employment of accused No.1, they cannot be allowed to carry such huge quantity of gold and silver except with the permission of Customs and other authorities etc. Whether such permission was obtained to carry those gold and silver articles along with deceased Sai Sindhu to United States is a question of fact to be decided. It is not the case of the petitioners that the deceased Sai Sindhu, her husband – accused No.1, stayed in a separate house at Hyderabad. When they are living with these petitioners whenever they visited India and going back along with the articles without obtaining any permission from the Customs and other authorities to shift those articles, the Court can come to necessary conclusion during trial. At this stage, based on the contentions of the learned counsel for the petitioners the proceedings cannot be quashed.

Learned counsel for the petitioners pointed out certain discrepancies in the evidence with regard to demand made by accused No.1 for purchase of agricultural lands to the defacto complainant, respondent No.1 herein. No doubt, there is a little discrepancy with regard to demand for purchase of property in the statement given by the defacto complainant in P.R.C.No.04 of 2016 pending on the file of Special Judicial Magistrate of First Class (Mobile Court), Nellore, SPSR Nellore District. The evidence of defacto complainant in P.R.C.No.04 of 2016 shows that accused No.1 made a demand for purchase of agricultural land at Prakasam District, but he did not state whether he purchased the property or not as demanded by accused No.1. In the present petition, the defacto complainant allegedly stated that he purchased agricultural land under five (5) registered documents and filed copies of those documents. Such discrepancy is not a ground to quash the proceedings at this stage. Therefore, it is difficult to quash the proceedings on account of such discrepancy since the complaint and statement of defacto complainant disclosed entrustment of Rs.5,50,000/- to accused No.3, petitioner No.2 herein by way of transfer from the account of defacto complainant to the account of accused No.3, petitioner No.2 herein at the time of marriage. Moreover, there is no material to show that the gold and silver articles were taken to United States along with the deceased Sai Sindhu and accused No.1 since the deceased Sai Sindhu and accused No.1 stayed with the petitioners before they left India.

As the allegations made in the complaint, on their face value, accepting in its entirety would constitute *prima facie* offence punishable under Section 6 (3) (a) of D.P.Act and Section 406 read with 34 of I.P.C.

The Apex Court in **"State of Haryana v. Bhajan Lal[2]"** laid down seven guidelines. According to guideline No.1 where the allegations made in the first information report or the complaint, even if they are taken on 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 quash the proceedings by exercising jurisdiction under Section 482 of Cr.P.C.

In "**Madhavrao Jiwaji Rao Scindia etc. vs. Sambhajirao Chandrojirao Angre[3]"**, the Apex Court held that the legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence.

The inherent power is to be exercised *ex debito justitiae*, to do real and substantial justice, for administration of which alone Courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal. (Vide ***Mrs. Dhanalakshmi*** v. ***R. Prasanna Kumar and Ors.[4])***

Moreover, in **R.P. Kapur v. State of Punjab**[5], the Apex Court held as follows:

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[2] 1992 Supp. (1) SCC 335
[3] 1988 AIR 709
[4] AIR 1990 SC 494
[5] AIR 1960 SC 866

> (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
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> (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
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> (iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
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> (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

In view of the guidelines laid down by the Apex Court in the judgments referred supra, if the facts, on face value, are taken into consideration, it constitutes an offence, *prima facie* if proved. The Court cannot interfere, except when the Court comes to a conclusion that it is an out come of abuse of process of law. But at this stage, it is difficult for me to conclude that the present complaint was filed as an abuse of process of law. Thus, the limited jurisdiction under Section 482 of Cr.P.C can be exercised only in exceptional circumstances.

Therefore, I find no ground to quash the proceedings at this stage. Consequently, the petition is liable to be dismissed.

Accordingly, the petition is dismissed. No costs.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

08.02.2017
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