

THE HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No.10799 of 2013

ORDER:

This Criminal Petition is filed by the petitioners to quash the proceedings in C.C.No.910 of 2011 on the file of the learned VI Metropolitan Magistrate, Medchal, Cyberabad.

This Criminal Petition was dismissed against petitioner No.1 / A.1 vide order dated:25.09.2013.

2. The contention of the petitioners is that, after the marriage, the respondent No.2 and her husband ie., petitioner No.1 lived happily for three months. Thereafter, petitioner No.1/Accused No.1, at the instance of petitioner Nos.2 to 7/ A.2 to A.7 harassed the respondent No.2, who lodged a complaint on 18-12-2005 was ended in compromise, where under A.2 and A.3 requested two months time to leave the house of respondent No.2 / complainant. It is further contended that on 15.8.2007, A2 and A3 necked the complainant out of the house and on 09.12.2007, having no other option, complainant approached the police station, Alwal and on 15-12-2007, petitioner No.1/A.1 assured to send the other accused out of home and unfortunately, petitioner No.1/A.1 disappeared from the home. Thereafter, due to fear of other petitioners/accused, complainant left the home and living with parents. Later, she received notice for dissolution of marriage and petitioner Nos.2 and 3 filed writ petition against the police and the said writ petition was dismissed. Respondent No.2/complainant waited under the impression that petitioner No.1/A.1 will change his

attitude, but there was no change and hence, lodged a complaint on 02-6-2009. The police after investigation filed charge sheet in C.C.No.910/2011.

3. It is further contended that except petitioner Nos.2 and 3, other petitioners are residing away from petitioner No.1/A.1 and as such they have nothing to do with family affairs. More over petitioners 2 and 3 are aged about 73 and 65 and require the assistance of petitioner No.1/A.1. However, respondent No.2/complainant who is expected to look after the old parents is not interested to look after them and she wants to send them out of the house. It is further alleged that petitioner No.1/A.1 filed O.P. No.1192/2007 for dissolution of marriage and during the pendency of this O.P., complainant filed criminal complaint. The grievance appears to be civil in nature, petitioner No.1/A.1 executed GPA in respect of the property.

4. It is the further contention of the petitioners that petitioner Nos.2 and 3 filed Writ Petition No.15014 of 2008 challenging the action of police directing them to vacate the house. The said writ petition was disposed of on 18.11.2008 recording the submission that the respondent No.2 never went to the police station seeking their help and pressurising them to vacate the house. It is further contended that the complaint does not disclose dishonest intention and ingredients of cheating. The petitioners 2 to 7 filed Criminal Petition No.6846 of 2009 and the Court granted interim stay on 28.8.2009. Despite this interim stay order, police filed charge sheet on 10-09-2009. However,

this Criminal Petition was dismissed on 12.7.2013 as infructuous on the ground that the charge sheet is filed which was taken on file as C.C.No.910/2011.

5. Per contra, the Assistant Public Prosecutor contended that there are specific overt acts attributed to the petitioners. There are specific allegations in the complaint that all the petitioners / accused Nos.2 to 7 with a deceitful intention, at the time of marriage itself cheated the complainant by threatening that they will prevent the marriage and subsequently taken dowry and other articles from the complainant. Accordingly, they have committed criminal breach of trust by defeating the faith reposed by complainant and used the complainant as a mode of money with common intention and also continuously making demand for additional dowry. All the petitioners / accused prior to marriage, refused to perform marriage between respondent No.2 /complainant and petitioner No.1 until their unreasonable demands are not fulfilled along with other accused, made illegal and unreasonable demands of dowry, due to which the complainant refused to marry A.1 and returned engagement ring to A.1. The petitioners /A.2, A3 and A7 visited the house of complainant and created problems and threatened the complainant that they will perform another marriage to A.1 so that they can get more dowry. In the month of March, 2005 A2 and A3 shifted from Godavari Khani to complainant's house and threatened the complainant that they will get the complainant and A.1 divorced. Further, in the month of April, 2005 there

was a mediation before the Church priest before whom A2 and A3 agreed to vacate the house so that the complainant and the A1 live peacefully but the same was not obliged by them. In the month of August, 2005 A4 came to the house of complainant for taking treatment for his accident and since then he settled in the house of complainant. All the accused started harassing the complainant mentally and physically for want of additional dowry and to meet their financial needs. The complainant, however, alleged that she availed loan of Rs.1,20,000/- and built 2 rooms on the first floor and A.2 to A.4 shifted there.

6. Further, on 15.8.2007, A.2 and A.3 necked the complainant out of the house stating that they will send a divorce notice. Thereafter, petitioner / A1 disappeared from the house on 21-12-2007. All the accused abused complainant in filthy language and threatened the complainant that they will kill the complainant and her parents with the help of anti-social elements. A.5 and A.6 stated that no police can do anything to them. Further, the complainant stated that the ground floor portion of the house was locked by the complainant but A2 to A7 break opened the lock and occupied even the ground floor. Thus, A2 to A7 who are petitioners, abused the complainant in filthy language, harassed mentally and physically and threatened with dire-consequences, which resulted into cruelty and mental trauma to the complainant in the hands of accused.

7. Respondent No.2 having received notice, did not appear neither in person nor through Counsel to advance arguments.

8. Heard the learned Counsel for petitioners/accused, learned Public Prosecutor and perused the material placed on record.

9. Now, the point that arises for consideration is:

Whether there is any prima facie material to prosecute the petitioners in this Criminal Petition ?

10. A perusal of the record clearly go to suggest that the marriage between the respondent No.2 / complainant and petitioner No.1/A.1 was solemnised on 04.10.2000. Petitioners / A.2 and 3 are parents , petitioners 4 to 6 are elder brothers and petitioner No.7 is sister of petitioner No.1/A1. Accordingly, A.2 and A7 are parents, brothers and sister. As per the cause title, petitioners are residing in different places. In the complaint as well as in the charge sheet, there is a specific allegation that A2 and A3 shifted from Godavari Khani to the complainant's house in March, 2005 and they are living with petitioner No.1/ A1 and respondent No.2/complainant. It is also averred in the complaint and charge sheet that the complainant who is working as Teacher availed additional loan and built two rooms on the first floor and A2 to A4 shifted there. It is also averred that three days prior to the marriage, accused/petitioners demanded the complainant to bring dowry and also threatened that they will stop the marriage which is going to be performed with A1 unless their unlawful demands are not fulfilled for which

the complainant refused to marry A1 and returned engagement ring to A1. With the intervention of elders, the matter was pacified and accordingly marriage was performed on 04.10.2000 at Trimulgherry. After marriage, they lived happily for three months and thereafter A1 started ill treating the complainant for not bringing sufficient dowry at the instance of other petitioners/accused.

11. The learned Counsel for petitioners while arguing on the subject matter relied upon the judgement of the High Court of Andhra Pradesh in Criminal Petition No.3093 of 2006, dated:02.08.2006 wherein the High Court observed as under:

“There is no specific allegation regarding the demand made by A-3 and A-4 for dowry and also alleged harassment. A-3 is unmarried sister of A-1 and A-4 is unmarried brother of the first respondent. It is patently importable to believe that unmarried sister and brother of her husband demanded dowry at the time of marriage. Moreover, the alleged demand is on 28.8.2004 and the report is filed in the month of December, 2005. It is obvious that the alleged demand by unmarried sister and brother is only for the purpose of impleading them as accused. Now-a-days, it has become common practice of implicating the unmarried brothers and sisters of the husband in respect of the offences under section 498-A I.P.C. The Apex Court also observed that Section 498-A I.P.C. is being misused and that the higher Courts have to go to the rescue of the innocent sisters and brothers of the husband.”

12. The learned Counsel for petitioners further relied upon the judgement in the case of SUSHIL KUMAR SHARMA V. UNION OF INDIA AND OTHERS in 2005 AIR SCW 3569 held as under:

“18. The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignomy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. As noted above the object is to strike at the roots of dowry menace. It is equally undisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence.”

13. In the instant case, there is a prima facie material that all the petitioners/accused are living with complainant and her husband. In the month of March, 2005 A-2 and A-3 joined A-1 and during their living period, complainant built two rooms on the first floor where they are residing. A2, A3 and A7 visited the complainant and A1 and created problems threatening to perform another marriage to A1 ie., husband of the complainant so that they can get more dowry. It is also alleged that since the complainant is working as Teacher, they all demanded to

hand over her salary and also threatened that they will approach the Principal and staff of the School where she is working and made derogatory statements stating that she will be removed from the School. There was also mediation before the Church priest who asked A2 and A3 to vacate the house so that the complainant and A2 live peacefully, but the same was not obliged by them and harassment was continued which further resulted into cruelty, in the hands of accused.

14. There are also specific overt acts against A4. In the month of August, 2005 he came to the house of complainant for taking treatment for his accident and since then, he settled in her house and all of them hatched a plan and accordingly came to the house of complainant on one pretext or other and started harassing the complainant mentally and physically for want of additional dowry and to meet their financial needs. It is further specifically alleged that in the month of March, 2007 A2 entered into the school where she was working and enquired about her provident fund amount and other monetary benefits. She was forced to resign her job in the month of March, 2007. A4 ie., petitioner No.4 brought one of his daughters to the house stating that she will live with him and the house belongs to him and since then A4 is also living in the house. On 15.8.2007, A2 and A3 necked complainant out of the house stating that they will send a divorce notice. On 09-12-2007, having no other alternative, complainant approached police, Alwal who in turn summoned A1/petitioner and A1 assured that he do not want

divorce and that he is willing to live with complainant and that he will send the other accused soon and till then, complainant and A1 will stay in rented house and accordingly A1 gave in writing on 15-12-2007 but unfortunately, A1 disappeared from the house on 21.12.2007.

Further, there is also specific allegation that the petitioners abused the complainant in filthy language and threatened to kill complainant and her parents with the help of anti-social elements. Petitioners 5 and 6 stated that no police can do anything to them. Further, A2 and A6/petitioners 2 and 6 threatened complainant that they visit the complainant's brother workplace and kill him saying that no one can do anything to the accused persons. A2 and A3 filed writ petition with false, fabricated and concocted stories before the High Court directing the police, Alwal not to register any crime against them and the same was dismissed. An attempt was also made to sell the property of her husband by creating forged and fabricated documents and to cause wrongful loss to the complainant. When the complainant locked the ground floor portion of house, A2 to A7 break opened the lock and occupied even the ground floor. The complainant also filed an application before the State Human Rights Commission in the month of July, 2008 to trace out the whereabouts of A1 and the matter got posted for enquiry of Police, Alwal.

15. In view of the above discussion, it is clear that specific overt acts are alleged in the complaint which would be decided during the trial but not in an application to quash the proceedings. Thus, I am of the considered view that in view of the specific overt acts attributed in the FIR, there is prima facie material to prosecute the petitioners who are residing in the same house along with complainant. There is every possibility that harassment has been meted out to complainant / respondent No.2 by petitioners / accused. There is nothing on record to suggest that there is any abuse of process of law or caused prejudice to the petitioners. Hence, I find no reasons to quash the proceedings in C.C.No.910 of 2011.

16. In the result, the Criminal Petition is dismissed while vacating the Interim stay granted vide order dated:25-09-2013.

Miscellaneous Petitions, if any, pending in this Petition shall stand closed.

JUSTICE N. BALAYOGI

Dated:26-02-2018

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THE HONOURABLE SRI JUSTICE N. BALAYOGI



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