

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.1578 OF 2014

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.111 of 2013 on the file of Judicial First Class Magistrate, Rayadurg, Ananthapur District, registered for the offences punishable under Section 498-A of Indian Penal Code (for short "I.P.C.") and under Sections 3 and 4 of Dowry Prohibition Act.

Respondent No.1 Smt.M.Nirmala Bai, lodged a written report with the police on 30.05.2013 alleging that her marriage was performed on 27.11.2012 with accused No.1, the petitioner No.1 herein – N.Hanumanthu Naik in the presence of elders at Neseepeta, Efrath Church in Rayadurg town. At the time of marriage, parents of defacto complainant paid Rs.1,50,000/- cash and presented 12 tulas of gold as dowry to the petitioner No.1/accused No.1 and spent Rs.12,00,000/- for performing marriage. After marriage, she joined with accused No.1 and lived happily for few days at Karmika Nagar, Yousifguda, Hyderabad along with accused Nos.2 to 6/petitioner Nos.2 and 3 and other accused (proceedings against accused Nos.4 to 6 are quashed vide order dated 21.03.2018 passed in CrI.P.No.9631 of 2013). Later, petitioner No.1 and his family members, who are accused Nos.2 to 6, started harassing the respondent No.1 both physically and mentally demanding additional dowry from her parents to get a car or Rs.4,00,000/- cash or alternatively to get the property of her parents registered in the name of petitioner No.1. The same was brought to the notice of her parents, who in turn expressed their inability to meet the illegal demand and it was settled in the

panchayat held in the presence of elders, but all the accused did not change their attitude and made baseless allegations suspecting the character of respondent No.1 with an intention to get additional dowry. The petitioner No.1 called his brother-in-law to Hyderabad and sent his wife to her parents house at Rayadurg.

On 27.12.2012 accused No.1 sent a letter to the respondent No.1 with regard to her illegal contacts with others. Again on 09.02.2013 respondent No.1 and one Mood Thippeswamy @ Thipperudra, who is junior paternal uncle of respondent No.1, went to the house of the petitioner No.1, but on seeing them, he pushed both the respondent No.1 and her junior paternal uncle, abused them in filthy language and threatened them with dire consequences. On that day, respondent No.1 and her junior paternal uncle stayed in the church nearby her residential house and returned to Rayadurg. Later on 03.03.2013 respondent No.1 and her parents went to the house of petitioner No.1 and found the same was locked. Accused Nos.1 to 6 subjected the respondent No.1 to harassment and cruelty to pay additional dowry and requested to take necessary action against the petitioners herein and other accused.

On the strength of the same, police registered the case in Crime No.57 of 2013 for the offence punishable under Section 498-A of I.P.C. and Sections 3 and 4 of Dowry Prohibition Act, issued F.I.R., took up investigation. During investigation, investigating agency examined as many as 18 witnesses, recorded their statements under Section 161 (3) of Cr.P.C., visited scene of offence, prepared rough sketch of scene of offence on 20.06.2013. After completion of investigation, based on material collected during investigation, investigating agency concluded that there is material against the

petitioners herein and other accused, filed charge sheet against the accused.

Petitioner Nos.1 to 3/accused Nos.1 to 3 herein filed the present petition under Section 482 of Cr.P.C. to quash the proceedings in C.C.No.111 of 2013 on the file of Judicial First Class Magistrate, Rayadurg, Ananthapur District on the ground that the complaint lodged with the police and the charge sheet filed before the Magistrate by the police after completion of investigation, does not disclose any specific allegation against the petitioner to attract the offence punishable under Section 498-A of I.P.C. and Sections 3 and 4 of Dowry Prohibition Act while denying the allegations made in the written statement and that the present report was lodged with the police only with a view to wreck vengeance in view of private complainant lodged by husband/accused No.1 before XXIII Special Magistrate, Hyderabad in C.C.No.105 of 2013 registered for the offence punishable under Sections 387 and 506 of I.P.C., and in the absence of any specific allegation against the petitioners, the proceedings cannot be continued as it would amount to harassment of innocent accused and prayed to quash the proceedings against the petitioners.

During pendency of the petition, the petitioner No.1/accused No.1 has withdrawn his claim. Hence, the petition was dismissed as withdrawn against petitioner No.1/accused No.1 only vide order dated 17.02.2014. Thus, the petitioner Nos.2 and 3/accused Nos.2 and 3 i.e. father and mother of petitioner No.1/accused No.1 are only prosecuting the present petition and prayed to quash the proceedings on the same grounds.

During hearing, this Court ordered notice to respondent No.1. Accordingly notice was served, proof of service was filed, but none appeared for respondent No.1.

During hearing, learned counsel for the petitioner Nos.2 and 3 mainly contended that in the absence of specific allegations, based on omnibus allegations, the Court cannot continue the proceedings against the petitioner Nos.2 and 3/accused Nos.2 and 3, who are in-laws of respondent No.1 and placed reliance on the judgments of Apex Court rendered in “**Geeta Mehrotra v. State of U.P.**”¹ “**Neelu Chopra v. Bharti**”²

Learned counsel for the petitioners also brought to the notice of this Court the order passed in CrI.P.No.9631 of 2013 by this Court on 21.03.2018 filed by accused Nos.4 to 6 in the same case, whereby the proceedings in C.C.No.111 of 2013 on the file of Judicial Magistrate of First Class, Anantapur were quashed. Learned counsel for the petitioners contended that when the proceedings were quashed against accused Nos.4 and 6, the proceedings against these petitioners/accused Nos.2 and 3 also liable to be quashed, who are similarly placed and the allegations made against the petitioner Nos.2 and 3 are also one and the same in the statements recorded by the police under Section 161 (3) of Cr.P.C., in the report lodged with the police and prayed to quash the proceedings.

Considering the contentions of the learned counsel for the petitioner Nos.2 and 3 and perusing the material available on record, the sole point that arose for consideration is as follows:

¹ AIR 2013 SC 181

² (2009) 10 SCC 184

Whether the allegations made in the charge sheet on its face value would constitute offence under Section 498-A of I.P.C. and Sections 3 and 4 of Dowry Prohibition Act? If not, whether the proceedings in C.C.No.111 of 2013 pending on the file of Judicial Magistrate of First Class, Rayadurg be quashed by exercising jurisdiction under Section 482 of Cr.P.C.

P O I N T:

Section 482 of Cr.P.C saves 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. It is an obvious proposition that when a Court has authority to make an order, it must have also power to carry that order into effect. If an order can lawfully be made, it must be carried out; otherwise it would be useless to make it. The authority of the Court exists for the advancement of justice, and if any attempt is made to abuse that authority so as to produce injustice, the Court must have power to prevent that abuse. In the absence of such power the administration of law would fail to serve the purpose for which alone the Court exists, namely to promote justice and to prevent injustice. Section 482 of Cr.P.C confers no new powers but merely safeguards existing powers possessed by the High Court. Such power has to be exercised sparingly in exceptional cases and this power is external in nature to meet the ends of justice.

To give effect to any order under Code means, the first class of order, which the section embraces are orders that may be necessary to give effect to any order under this Court. When a Court has authority to make an order, it must also have the power to carry out the order into effect. The power to enforce obedience to the mandates

of the Court necessarily springs from the very existence of the authority to issue the mandates and, if that power is not expressly given by the statute, it must be deemed to be inherent in the Court, vide “**Emperor v. Sukhdeo**³”.

To prevent abuse of the process of any Court, the authority of the Court exists for the advancement of justice, and if any attempt is made to abuse that authority, so as to produce injustice, the Court must have power to prevent that abuse. In the absence of such power the administration of law would fail to serve the purpose for which alone the Court exists, namely, to promote justice and to prevent injustice. It would be an abuse in the process of the Court to allow a suitor to litigate over again the same question which has been already decided against him. The High Court would, in the exercise of its inherent jurisdiction, reject an application for the transfer of a criminal case, where such an application based upon the same facts had already been refused. The words “process” is a general word meaning, in effect, anything done by the Court. In exercise of the powers under this section the High Court would be justified to quash the proceedings if it finds that the institution or continuance of criminal proceedings amounts to abuse of the process of the Court or if quashing of those proceedings would otherwise secure the ends of justice. Where there is no material before the Magistrate on the basis of which he can issue process against the accused to stand trial, it will be gross abuse of the process of the Court if the accused is put to trial, hence the proceedings should be quashed at the threshold. Similarly, where it is not shown that there is any abuse of process of the Court, the proceeding will not be quashed. The jurisdiction of the

³ 1930 Lah 465 31 Cr LJ 482

High Court in quashing the complaint or the first information report is very limited. The High Court is justified in quashing the complaint when no offence is made out on the allegations made in the complaint or the documents accompanying it per se.

The words used in under Section 482 of Cr.P.C “or otherwise to secure the ends of justice, the High Court has been given powers under this section, in addition to what it possesses under its Charter and Letters Patent, to interfere in order to secure the ends of justice. If the High Court feels that the ends of justice require that an order should be made in an application, although the application is not contemplated by the Code the High Court will entertain the application and make the necessary orders to secure the ends of justice. The Court while deciding a law point may decide it rightly or wrongly. An application under this section will not lie on the ground that the Court has decided a point of law incorrectly and has resulted in gross injustice to the applicant. Vide “**Ramji Singh v. State**”⁴. Thus, the inherent powers of the Court can be exercised sparingly in extraordinary circumstances and with great circumspection.

The scope of Section 482 of Cr.P.C was time and again discussed in catena of perspective pronouncements of the Apex Court and in a classic judgment of the Apex Court in “**State of Haryana v. Bhajan Lal**”⁵, seven guidelines were laid down and they are as under:

- (a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

⁴ 1972 Cr LJ 1545 (A)

⁵ 1992 Supp. (1) SCC 335

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) where the uncontroverted 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;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence justification and this case does not call for the exercise of extraordinary or inherent powers of the High Court to

quash the F.I.R. itself. [307B] State of West Bengal v. S.N. Basak, [1963] 2 SCR 52; distinguished.

Similarly, in “**Madhavrao Jiwaji Rao Scindia & anr. etc. vs. Sambhajirao Chandrojirao Angre & ors. etc⁶**”, the Apex Court laid down a specific test to be applied by the Court as to whether the uncontroversial allegations as made *prima facie* establish the offence. In the above judgment, it is stated that 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 vs. R. Prasanna Kumar & Ors.⁷**”; “**Ganesh Narayan Hegde vs. S. Bangarappa & Ors.⁸**”; and “**M/s Zandu Pharmaceutical Works Ltd. & Ors. vs. Md. Sharaful Haque & Ors.⁹**”).

It is neither feasible nor practicable to lay down exhaustively as to on what ground the jurisdiction of the High Court under Section 482 of the Code should be exercised. But some attempts have been made in that behalf in some of the decisions by Apex Court vide **State of Haryana vs. Bhajan Lal** (referred supra), “**Janata Dal vs. H.S. Chowdhary and Others¹⁰**”, “**Rupan Deol Bajaj (Mrs.) and**

⁶ 1988 AIR 709

⁷ AIR 1990 SC 494

⁸ (1995) 4 SCC 41

⁹ AIR 2005 SC 9

¹⁰ 1992 (4) SCC 305

***Another vs. Kanwar Pal Singh Gill and Another*¹¹**, and ***“Indian Oil Corp. vs. NEPC India Ltd. and Others*¹²”**.

Those guidelines though elliptic, followed by the Court while exercising power under Section 482 of Cr.P.C, the power of the Court is to decide whether the allegations made in the charge sheet on its face value would constitute an offence and meticulously cannot go into the details of the allegations to conclude that whether the case would end in acquittal or conviction at the stage of deciding a petition under Section 482 Cr.P.C. Therefore, keeping in mind the limited scope of jurisdiction of this Court, I would like to decide the dispute before this Court based on the allegations made in the charge sheet and other material.

The marriage of respondent No.1 and petitioner No.1 is not in dispute, but the dispute is only with regard to harassment allegedly meted-out by the respondent No.1 in the hands of petitioners herein and other accused. The specific allegation made against the petitioners/accused Nos.2 and 3 is that the petitioner No.3 did not allow her son to spent time with the defacto complainant during night time and when respondent No.1 enquired about the gold ornaments entrusted to them, her mother-in-law – petitioner No.3, father-in-law, petitioner No.2 and one Gowri Bai, Yohan Naik started harassing her by taunting. Thereafter, the same was informed to her parents. Later, her parents, grandfather and maternal uncle Sriramulu Naik and her bother Dasaradh Naik went to the Hyderabad on 03.03.2013 and found the house was locked. Thereafter, respondent No.1 lodged report with the police on the same day, but the petitioner No.1 though contacted, he did not

¹¹ 1995 (6) SCC 194

¹² 2006 (6) SCC 736

respond to the phone calls of police also while declaring that he already filed private complaint and everything will be decided in the Court itself and not willing to come to the police station. Thus, the allegation made against the petitioner Nos.2 and 3 is that they subjected the respondent No.1 to harassment when she questioned about the gold ornaments, whereas in the statement recorded by the police under Section 161 (3) of Cr.P.C, the respondent No.1 did not specifically state anything about the harassment caused by the petitioner Nos.2 and 3 except alleging that the petitioner Nos.2 and 3 and others with a view to dissolve the marriage took away the gold ornaments, cash and subjected her to cruelty both physically and mentally and that they insisted to bring a new car or to pay Rs.4,00,000/- or alternatively execute a registered sale deed conveying the property of her parents without disclosing the date, time and place of incident.

Similarly, mother of the respondent No.1 reiterated the contents of statement of respondent No.1, but there is a little improvement that the respondent No.1 was subjected to cruelty for her failure to meet the illegal demand for payment of additional dowry, whereas statement of father of respondent No.1 is silent on this aspect.

Similarly other witnesses stated in the same lines without disclosing any specific details as to the incident.

Coming to the contents of charge sheet, it is bereft of any details including the acts of petitioner Nos.2 and 3 as to how they subjected the respondent No.1 to harassment except a bald allegation that the accused No.1 harassed and tortured the respondent No.1 with strong support of accused Nos.2 and 3 with an intention to get

additional dowry. Except this allegation, there are no details either in the statements of witnesses recorded under Section 161 (3) of Cr.P.C. during investigation or in the charge sheet, at least in the report lodged with the police by the respondent No.1.

In view of the judgments referred supra in **Mrs. Dhanalakshmi; Ganesh Narayan Hegde** and **M/s Zandu Pharmaceutical Works Ltd. & Ors.**, cases (referred supra), this Court while deciding a petition under Section 482 of Cr.P.C need not meticulously go into the evidence available on record collected during investigation by the police and if the allegations made in the charge sheet on its face value would constitute an offence, the Court can decline quashing the proceedings. Therefore, the statements recorded by the investigating officer under Section 161(3) cannot be gone into at this stage, even though they are taken on its face value.

The first ground urged before this Court by the petitioner Nos.2 and 3 that there were no specific allegations against the petitioner Nos.2 and 3 either in the written report, statements recorded under Section 161 (3) Cr.P.C. during investigation or in the charge sheet. In the absence of any specific allegation, the proceedings against the petitioners are liable to be quashed.

In “**Geeta Mehrotra v. State of U.P.**” (referred supra) the Apex Court held that “mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.” The Apex Court advertent to the

law laid down in various judgments concluded that the contents of the FIR does not disclose specific allegation against the brother and sister of the complainant's husband except casual reference of their names, it would not be just to direct them to go through protracted procedure by remanding for consideration of the matter all over again by the High Court and make the unmarried sister of the main accused and his elder brother to suffer the ordeal of a criminal case pending against them specially when the FIR does not disclose ingredients of offence under Sections 498-A, 323,504,506 of Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act.

In “**Neelu Chopra v. Bharti**” (referred supra) the Apex Court held as follows:

“In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not be all and end of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence.”

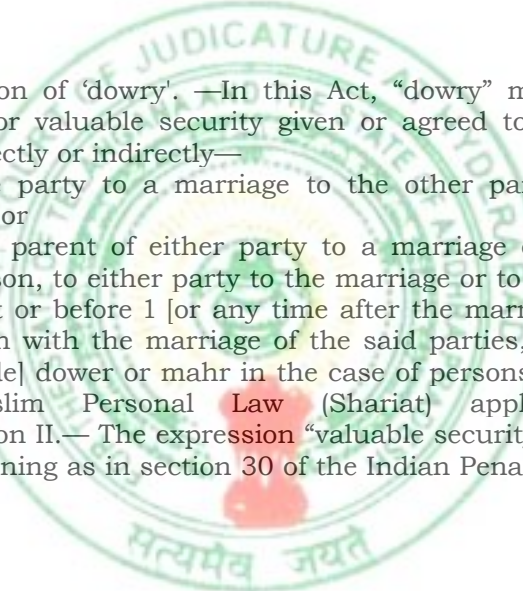
From the principles laid down in the above two judgments, it is clear that to continue the proceedings against any relative of the husband of the defacto complainant, there must be specific allegation and the active role played by each of such relative, otherwise the proceedings are liable to be quashed.

Section 498-A of I.P.C. deals with subjecting the wife to cruelty by husband or relative of husband for her failure to fulfill the illegal demand for payment of dowry. The explanation thereto explained what amounts to cruelty. "Cruelty" means (a) any willful 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.

Thus, subjecting the wife by husband or relative of husband for her failure to fulfil demand for payment of additional dowry would certainly fall within the ambit of cruelty under Clause (b) of Section 498-A IPC.

Section 2 of Dowry Prohibition Act defined 'dowry', which reads as follows:



2 Definition of 'dowry'. —In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly—
(a) by one party to a marriage to the other party to the marriage; or
(b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before 1 [or any time after the marriage] 2 [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies. 3 [***]
Explanation II.— The expression “valuable security” has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).

The basic essential ingredients to attract Section 498A are:

- a) The woman must be married
- b) She must be subjected to cruelty or harassment; and
- c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.

A bare glance of the section shows that the word 'cruelty' covers any or all of the following elements:

- (i) Any 'willful' conduct which is of such a nature as is likely to drive the woman to commit suicide; or

- (ii) any 'willful' conduct which is likely to cause grave injury to the woman; or
- (iii) any 'willful' act which is likely to cause danger to life, limb or health whether physical or mental of the woman.

I have already discussed about the allegations made against the petitioner Nos.2 and 3 along with other accused in various documents referred supra and nowhere the witnesses stated any specific act or role played by each of the petitioner Nos.2 and 3 along with other accused except making omnibus allegations that they demanded additional dowry and subjected the respondent No.1 to cruelty for her failure to meet the illegal demand without specifying the date, time and place.

The Apex Court in "**Pawan Kumar v. State of Haryana**¹³" has gone to the extent of holding that cruelty or harassment need not be physical but mental torture can also be treated as cruelty.

The Apex Court in "**Kuppisetti Subbharao @ Subramaniam v. State of A.P.**¹⁴" held that the very thrust of offence under Section 304-B is dowry death. The evils sought to be curbed are distinct, and separate from persons committing offending acts. The Court went on to say that there could be no impediment in law to liberally construe words or expressions relating to persons committing offence.

The Supreme Court also held that while deciding the cases under Section 498-A of I.P.C., the Court has to keep in mind the intention of the legislature in incorporating such provision and decide the matter.

¹³ AIR 1998 SC 958

¹⁴ 2009 Cri LJ 3480 (SC)

In view of the law declared in the above judgments, it is clear that the allegations referred in the charge sheet must be clear and specific disclosing the active role played by each of the petitioner with details. On verification of material available on record, it is clear that except making bald allegation that petitioner Nos.2 and 3 along with other accused Nos.4 to 6 subjected the respondent No.1 to cruelty for her failure to meet the illegal demand of payment of additional dowry or providing car to accused No.1; alternatively to get the property of her parents conveyed by executing registered sale deed. Thus, the said allegations are not suffice to proceed against the petitioner Nos.2 and 3 for the offence punishable under Section 498-A of I.P.C. and sections 3 and 4 of Dowry Prohibition Act in view of the judgments of Apex Court rendered in “**Neelu Chopra v. Bharti**” and “**Geeta Mehrotra v. State of U.P.**” (referred supra).

In “**Bhaskar Lal Sharma v. Monica**”¹⁵ the Apex Court considered what amounts to cruelty and ingredients of Section 498-A of I.P.C. in para 29 and proof of an offence punishable under Section 498-A I.P.C. In para 37 of the judgment, the Supreme Court held as follows:

“Ex facie no case has been made out under Section 498A of the IPC so far as the appellants are concerned. The allegations relating to the place where the marriage took place has nothing to do with an offence under Section 498A of the IPC. Allegations that appellant No.2 kicked the respondent with her leg and told her that her mother to be a liar may make out some other offence but not the one punishable under Section 498A. Similarly her allegations that the appellant No.2 poisoned the ears of her son against the respondent; she gave two used lady suits of her daughter to the complainant and has been given perpetual sermons to the complainant could not be said to be offences punishable under Section 498A. Even threatening that her son may be divorced for the second time could not bring out the offence under Section 498A of the IPC.”

¹⁵ (2014) 3 Supreme Court Cases 383

In “**Sushil Kumar Sharma vs. Union of India & Ors**¹⁶” the Apex Court reiterated the object of Section 498-A of I.P.C. holding that the object of which Section 498-A of I.P.C. was introduced is ample, reflected in statements and objects and reasons while enacting the criminal law second amendment and in paragraphs 10 & 19 of the said judgment, the Supreme Court held as follows:

"10. The object for which Section 498-A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting the Criminal Law (Second Amendment) Act 46 of 1983. As clearly stated therein the increase in the number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short "CrPC") and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in-laws and relatives. The avowed object is to combat the menace of dowry death and cruelty.

19. 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 ignominy 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 a licence to unscrupulous persons to wreak 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 framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed.

In paragraph 40 in **Bhaskarlal Sharma's** case, the Supreme Court discussed about quashability of the case by relying on **Bhajanlal's case** held as follows:

“The jurisdiction of the High Court to quash an order of summoning and/or a criminal proceeding as also this Court

¹⁶ (2005) 6 SCC 281

are well known. The parties have relied upon the decisions of this Court in *State of Haryana vs. Bhajan Lal* [1992 (Supp.) 1 SCC 335]. We may notice the categories 1, 3, 5 and 7 mentioned in Para 102 of the said decision, which are as under:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(3) Where the uncontroverted 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.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In "***Pashaura Singh v. State of Punjab and another***¹⁷", the Supreme Court held that subjecting woman to cruelty by husband and his relatives and in the absence of proof of demand of dowry or harassment by accused, High Court found that only allegation made in FIR was the appellant-accused and his family members started harassing appellant's wife for not bringing more dowry. But there was no demand for dowry, nor was there any specific entrustment of dowry articles to accused as alleged in FIR and held that offence under Section 498-A is not made out.

In "***Preeti Gupta v. State of Jharkhand***¹⁸" the Apex Court held that "the criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must

¹⁷ (2010) 11 Supreme Court Cases 749

¹⁸ AIR 2010 SC 3363

take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law.”

Keeping in view the law laid down in various judgments referred supra, the basic requirement to continue the proceedings against the petitioner Nos.2 and 3 is that there must be a specific allegations about the active role played by each petitioner in subjecting the respondent No.1 to cruelty for her failure to meet the illegal demand of additional dowry and in the absence of such allegations, the proceedings against the petitioner Nos.2 and 3 are liable to be quashed in view of the judgments of Apex Court rendered in “**Neelu Chopra v. Bharti**” and “**Geeta Mehrotra v. State of U.P.**” (referred supra). Hence, on this ground also the proceedings are liable to be quashed.

The other ground raised by the learned counsel for the petitioner Nos.2 and 3 is that when the proceedings against accused Nos.4 to 6 in C.C.No.111 of 2013 on the file of Judicial Magistrate of First Class, Raidurg, Anantapur District are quashed by order dated 21.03.2018 in Crl.P.No.9631 of 2013, the proceedings against the petitioner Nos.2 and 3, who are similarly placed are liable to be quashed since the allegations made against the petitioner Nos.2 and 3 and the petitioners in Crl.P.No.9631 of 2013 are one and the same.

No doubt, the allegations made against the accused Nos.4 to 6 against whom the proceedings are already quashed vide order in Crl.P.No.9631 of 2013, the proceedings against the petitioner Nos.2

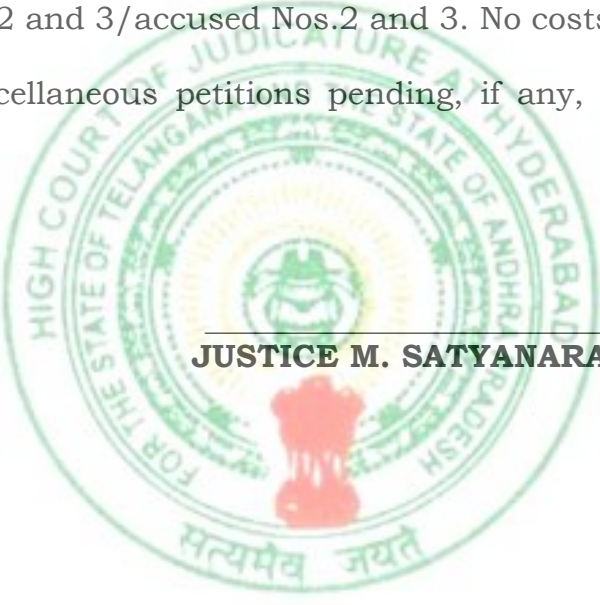
and 3 are liable to be quashed in view of the law declared by the Apex Court in “***D.B. Negandhi v Registrar of Companies***¹⁹”.

In view of my foregoing discussion, I find that it is a fit case to quash the proceedings in C.C.No.111 of 2013 on the file of Judicial First Class Magistrate, Rayadurg, Ananthapur District, against the petitioner Nos.2 and 3/accused Nos.2 and 3. The point is answered accordingly.

In the result, the criminal petition is allowed. The proceedings in C.C.No.111 of 2013 on the file of Judicial First Class Magistrate, Rayadurg, Ananthapur District, are hereby quashed against petitioner Nos.2 and 3/accused Nos.2 and 3. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

11.06.2018
Ksp



JUSTICE M. SATYANARAYANA MURTHY

¹⁹ (2017) 15 SCC 661