HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No.7967 of 2011

ORDER:

This Criminal Petition is filed by the petitioners/accused No.2 and 3 under section 482 of Cr.P.C., to quash the proceedings in C.C. No.525 of 2011 on the file of learned X Metropolitan Magistrate at Malkajgiri.

2. The contention of the petitioners is that there is no iota of evidence to connect the petitioners with the alleged crime. There is no material showing that the petitioners have demanded any dowry from the parents of the respondent No.2 prior to marriage or subsequent to her marriage. The charge sheet and the statement of witnesses are silent as to whom dowry amount was paid and who actually received.

3. The further contention of the petitioners is that in pursuance of Memorandum of Understanding (in short, MOU) both the parties (ie., respondent No.2 and her husband) filed divorce on the ground of mutual consent and it was dismissed. Subsequently, she filed O.P. No.1152/2012 and obtained exparte decree of divorce, remarried and living happily.

4. Per contra, it is contended by the learned Public Prosecutor that there are specific overt acts attributed to the petitioners; that they have demanded additional dowry, harassed and threatened the complainant physically and mentally and beaten her black and blue and hence, it is a fit case for dismissal.

5. From the record, it appears that the marriage between the complainant –respondent No.2 and her husband-G. Krishna Mohan, who is the son of petitioners herein was solemnized on 28.2.2009 at RTC Kalyanamandapam, Baghlingampalli, Hyderabad. The allegations are that, at the time of engagement, A.1-husband of complainant and his parents demanded dowry of Rs.20.00 lakhs. After mutual discussion among them, petitioners (parents of A.1) herein, agreed for Rs.10.00 lakhs dowry. At the time of engagement, on demand, parents of the complainant paid Rs.5.00 lakhs in cash and remaining Rs.5.00 lakhs, agreed to pay before marriage. In the month of October and November, 2008 the father of respondent No.2 gave two cheques each of Rs.1.00 lakh. Father of complainant handed over 1.00 lakh cheque to the accused and requested that they will pay remaining dowry of Rs.1.00 lakh on the day of marriage. Accordingly, remaining 1.00 lakh was paid at the time of marriage due to financial problems.

It is further alleged that her husband forced her to travel by bus though complainant's office is situated beside her husband-A.1's office. Many times, A.1 warned with ego not to compare with him for the status of traveling in a car and told her that her position and status is travel only by city bus. When A.1 went to U.S.A in May, 2009, complainant/ respondent No.2 stayed with parents of A.1 nearly for three months. At that time, petitioners used to abuse the defacto complainant in vulgar language in front of neighbours and relatives and they never provided food and they treated the defacto complainant as maid servant. Thereafter, her husband shifted to Canada from USA and on 1.8.2009, complainant also went to Canada. Her husband taken away her credit card and used for his personal and lavish expenses.

It is further alleged in the complaint that, on 09-8-2009, her husband came late in the night in drunken condition and picked up quarrel with complainant and beaten her mercilessly. Simultaneously, he also tried to kill her. On 04-10-2009, her husband shifted to USA (New Jersey). Thereafter, A.1 sent complainant to the house of his sister on 17-10-2009 with an evil intention on the name of busy work and she stayed there till 14-11-2009. Her husband never looked after her welfare. On 09-5-2010, her husband came in midnight at about 1.30am in heavy drunken condition and quarreled with her and beaten her black and blue and abused in filthy language which cannot be reproduced for the sake of courtesy. The very next day ie., 10.5.2010 she was sent to India by force. Thereafter, she along with parents went to the house of petitioners and when questioned about their evil acts, they threatened and demanded additional dowry of Rs.5.00 lakhs, otherwise, they will perform second marriage to their son–A.1. Once again, she was sent to USA on 01.09.2010 on several requests and assurances of her parents. Then also, he behaved in cruel manner and he did not change his attitude. He resigned his job and used to sit and watch 24 hours TV and used to take alcohol and cigarettes. On 27-11-2010, her husband beat her brother and necked him out. On 30.11.2010, her husband sent back her to India. On

04.01.2011, parents of the complainant held a panchayat before elders and well wishers in which petitioners were warned to maintain peace and good relation with complainant. But to their deaf ears, again demanded an amount of Rs.5.00 lakhs additional dowry, otherwise petitioners stated that they will perform second marriage to their son-husband of complainant. These are the allegations in the complaint and also in the charge sheet.

6. The learned Counsel for the petitioners placed reliance in the case of HARESH LALSINGH GADHAVI v. STATE OF GUJARAT AND ANOTHER IN CRIMINAL PETITION No.4899/2015, dated:24.11.2015 held as under:

> "Rude and uncultured behaviour as well as perfunctory abuses are mundane matters and would not attract the rigors of Section 498A of the IPC. There has to be something more to attract Section 498A of the IPC. Even if I accept the entire case of the prosecution, there is nothing against the father-in-law and the married sister-in-law. Whatever little has been alleged is against the mother-in-law, and that too, hurling of abuses, using of perfunctory words, etc. They may be morally guilty of not treating the daughter-in-law with respect in an Indian Society, but such moral acts fall short of an offence under Section 498A of the IPC."

7. Similarly, in the present case, the complaint and the charge sheet shows that the entire allegations are against her husband. It is also evident from the record that the complaint was presented on 01-3-2011 and admittedly subsequent to the complaint, there was an M.O.U dated:08-3-2011 between respondent No.2 and her husband wherein it was agreed that both the parties will move an application before family court for

mutual consent divorce by filing all necessary applications. O.P.No.1152 of 2012 was filed by the petitioner (complainant) for divorce on the ground of cruelty and desertion against her husband. As per the terms of the MOU annexed to the Criminal Petition, the complainant/respondent No.2 agreed to receive 6.00 lakhs as permanent alimony from her husband and to withdraw present case in Crime No.94 of 2011 for the offences under section 498-A, 506 and 323 IPC and section 4 and 6 of Dowry Prohibition Act. In pursuance of the said M.O.U dated:8.3.2011, O.P. No.315 of 2011 under section 13(b) was filed before the learned District Judge, Family Court, Ranga Reddy District. The same fact was referred in O.P.No.1152 of 2012 filed by petitioner (complainant) wherein she herself stated before the police that in Crime No.94/2011, her husband with mala fide intention reported that he would compromise with the petitioner so as to escape from seizing his passport. After passport was released, he left to USA without prior permission of the police or the Court. Under the guise of compromise, the respondent played the trick of filing mutual consent divorce petition vide O.P.No.315/2011, but the same was dismissed for non-appearance of the respondent-husband of complainant.

8. It is also a fact that already an amount of Rs.4.00 lakhs was paid to respondent No.2 during the pendency of O.P.No.315/2011, remaining 4.00 lakhs was due to be paid from the date of grant of mutual consent divorce for which a cheque

was issued towards security. It is also evident that respondent No.2 filed O.P. No.1152 of 2012 and obtained exparte decree of divorce on 07-1-2013.

9. During the course of arguments, it is reported that respondent No.2-complainant again married and living happily with second husband.

10. The learned Counsel for petitioners further relied upon the judgement of the Apex Court in GEETA MEHROTRA AND ANOTHER v. STATE OF U.P. AND ANOTHER[1] in AIR 2013 SUPREME COURT 181, where the Apex Court held as under:

> "It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while setting down in her new matrimonial surrounding.
>
> Further, held that, the complainant-wife secured an ex parte decree of divorce, the same could have weighed with the High Court to consider whether proceeding initiated prior to the divorce decree was fit to be pursued in spite of absence of specific allegations at least against the brother and sister of the complainant's husband and whether continuing with this proceeding could not have amounted to abuse of the process of the court."

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[1] AIR 2013 SUPREME COURT 181

11. By reading of the above decisions, it is seen that there is no specific date and mode of cruelty or the instance of demanding additional dowry attributed to the petitioners. Allegations made against the petitioners are perfunctory abuses only and they would not attract the rigors of Section 498-A, 506 and 323 IPC and section 4 and 6 of Dowry Prohibition Act. It is also agreed that as per M.O.U., dated:8.3.2011, agreed to withdraw the complaint, in pursuance of which mutual consent petition was filed by both ie., respondent No.2 and her husband which was dismissed for non-prosecution and subsequently, respondent No.2 filed O.P. No.1152 of 2012 and obtained exparte decree of divorce and thereafter, she married again and living happily with second husband.

12. Hence, from the above facts and circumstances of the case, I am of the considered view that there was Memorandum Of Understanding dated:8-3-2011 between the complainant and her husband. According to which, he filed O.P.No.315/2011 which was dismissed for non-prosecution in the absence of her husband. Subsequently, she filed O.P. No.1152/2012 and obtained exparte decree of divorce and thereafter, again married and is living happily. Therefore, the proceedings initiated by respondent No.2 prior to exparte decree of divorce obtained by her, in the absence of specific allegations against the petitioners who are in-laws of respondent No.2 and in the circumstances, continuation of impugned proceedings certainly

amounts to abuse of process of the Court. Therefore, the impugned proceedings in C.C. No.525 of 2011 on the file of learned X Metropolitan Magistrate at Malkajgiri are liable to be quashed and are accordingly quashed, in sofar as petitioners are concerned.

13. In the result, this Criminal Petition is allowed.

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

JUSTICE N. BALAYOGI

Dated:07-3-2018

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HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No.7967 of 2011

Dated:07-03-2018

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