

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.2713 of 2011

ORDER:

The petitioners/A2 and A3 seek to quash the proceedings against them in C.C.No.669 of 2009 on the file of XIII Additional Chief Metropolitan Magistrate, Hyderabad which was taken cognizance for the offences under Sections 498A, 494, 109, 120B IPC and Sections 4 and 6 of Dowry Prohibition Act, 1961.

2a) Petitioners/A2 and A3 are parents and *defacto* complainant is the wife of A1. The complainant allegations are that the marriage between complainant and A1 was held on 17.11.2004 at Sri Raja Rajeshwari Gardens, Sikh Village, Secunderabad. At the time of marriage, on the demand of accused, parents of the complainant paid Rs.25 lakhs cash as dowry, 50 Tolas of gold ornaments, 5kgs. silver and other household arties besides Rs.1 lakh as Adapaduchu Lanchanams to the sister of A1. Few days the couple lead happy marital life.

b) A1 completed MS Computers, MBA (IT). On 23.02.2005, he went to London saying that he got software job with salary of Rs.4 lakhs per month in Indian currency and he promised after getting visa he would take the complainant along with him. Thereafter, he stopped communicating with the complainant. When the complainant called him, he used to disconnect the calls. A1 returned back to India on 25.05.2005 but he did not meet her nor made any phone call. All the efforts made by the parents of the complainant to send the complainant to A1 failed. At last, they convinced the accused and

send the complainant to the house of A1 to A3 but they harassed her mentally and physically with the active assistance of relatives.

c) In October, 2005 the parents of the complainant went to the house of A1 to invite the accused on the occasion of Dasara festival, but the accused bluntly refused to go. While the things were going on, in December, 2006 A1 all of a sudden went to the house of complainant and demanded her parents to give him Rs.5 lakhs within one week to do business. The parents of the complainant expressed their inability to arrange that huge amount within that short time. On that A1 threatened if they failed to arrange the amount, he would give divorce to the complainant.

d) In January, 2007 the parents of the complainant went to the house of A1 to A3 and requested them to take back the complainant to their house. The accused bluntly refused and demanded a house site admeasuring 865 sq.yds. situated in Qutbullapur, Hyderabad stands in the name of complainant's father. Further, A1 to A3 all in one voice curtly stated that unless and until Rs.5 lakhs were arranged and the said site was transferred in favour of A1, they would not admit the complainant into their house. A3 who is the mother-in-law of the complainant, is the Sarpanch of Kanuru Gram Panchayat and A2 who is the father-in-law of the complainant, is politically influenced person. A1 to A3 openly proclaimed that if the complainant's father failed to fulfil their demand, they would perform another marriage to A1. Thereafter, complainant's parents made innumerable visits to the house of accused and made requests to take the complainant but they bluntly refused. LW3— P.Satyanarayana who was the mediator for the marriage of complainant and

A1 also intervened and requested the accused not to spoil the life of complainant but they paid deaf ears.

e) Whiles, in the month of November, 2008 on knowing that the accused were making hectic efforts for the second marriage of A1, the parents of complainant went to their house and requested not to make such efforts to spoil the life of the complainant. The accused kept silent for two or three months and finally on 20.05.2009, all the accused colluded together and performed the marriage of A1 with A4 at Tirumala and thereafter A1 to A3 came to the house of complainant in the end of May, 2009 and informed about the second marriage of A1 with A4, warned and threatened her not to lodge any complaint and if she made such efforts they would kill her and her parents. Due to political influence of accused, the parents of the complainant could not do anything. To further harass the complainant, A1 filed O.P.No.279 of 2009 under Section 13(1)(ia) and (ib) of Hindu Marriage Act, 1955 seeking divorce with all false allegations on the file of Judge, Family Court, Vijayawada which is pending disposal.

Hence, the complaint.

f) The private complaint filed by the complainant was referred to police under Section 156(3) Cr.P.C. by XIII Additional Chief Metropolitan Magistrate, Hyderabad. The police after investigation filed Final Report requesting the Court to close the case *for lack of evidence*. Thereupon, the complainant filed protest petition. The learned Magistrate after recording the sworn statement of complainant passed an order on 17.11.2009 allowing the

petition and permitting the complainant to proceed with her case as a private case.

Hence, the quash petition by petitioners/A2 and A3.

3) Notice on 2nd respondent/complainant could not be served and hence substitute service was ordered. None appeared on her behalf. Heard arguments of Sri Challa Ajay Kumar, learned counsel for petitioners and learned Additional Public Prosecutor (TG).

4) Severely fulminating the order of the trial Court in accepting the private complaint, learned counsel for petitioners would submit that complaint itself is an after thought as it was filed after A1 filing O.P.No.279 of 2009 for dissolution of marriage which is pending. Learned counsel argued that the allegations in the complaint are all false and invented for the purpose of unnecessarily implicating the parents of A1. He further argued that learned Magistrate has not followed the procedure contemplated under Section 200 Cr.P.C. inasmuch as he has not examined any other witness except the complainant before taking cognizance of the complaint. He thus prayed to allow the criminal petition and quash the proceedings.

5) In oppugnation, learned Additional Public Prosecutor argued that the family of accused is politically influenced one as A3 is the Sarpanch of Kanuru Village and in that view, the parents of A1 daringly performed the second marriage of A1 with A4 in spite of marriage between A1 and complainant was legally subsisting. Further, they brazenly demanded house site and Rs.5 lakhs from the parents of the complainant to admit the

complainant into their house, which demand the parents of the complainant could not fulfil. Keeping grudge, Accused Nos.2 and 3 performed the marriage of A1 with A4. In view of specific allegations against all the accused, Additional Public Prosecutor argued, petition may be dismissed.

6) On a perusal of the record, I find considerable force in the submission of learned Additional Public Prosecutor. The FIR and the sworn statement of the complainant would reveal atrocious acts of all the accused including A2 and A3. After return from London, A1 did not take back the complainant to his house. In spite of many requests made by the parents of the complainant, A2 and A3 did not heed and at last her parents left her in the house of A1 where she was subjected to physical and mental harassment. In December, 2006, A1 telephoned to her parents and demanded Rs.5 lakhs for doing business. All the accused also demanded the house site admeasuring 865 sq. yds. situated at Qutbullapur, Hyderabad which stands in the name of her father. The complaint allegations would show that the parents of complainant prostrated before accused with a request not to spoil her life, but in spite of it, A2 and A3 performed the second marriage of A1 with A4 at Tirumala on 20.05.2009. After solemnization of marriage, A1 to A3 came to the house of complainant in the end of May, 2009 and informed about the second marriage and warned and threatened her parents not to lodge any complaint. Thus, as submitted by learned Additional Public Prosecutor, there are specific allegations against all the accused including A2 and A3. Though learned counsel argued that learned Magistrate has not properly followed the procedure contemplated under Section 200 Cr.P.C., he could not substantiate

the same. The said section says that the Magistrate while taking cognizance of an offence on complaint shall examine on oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate. In the instant case, when the complaint filed protest petition, the Magistrate recorded her sworn statement and having convinced that there existed a *prima facie* case, permitted her to continue her case as a private case. Non-examination of other witnesses before passing the order of accepting her complaint, in my view, is not a violation of Section 200 Cr.P.C. as the said section says that Magistrate has to examine other witnesses, if any, were present along with complainant. It goes without saying, if the sworn statement of the complainant alone infuses confidence, the Court can take cognizance of her complaint. I find no merits in the petition.

7) This Criminal Petition is accordingly dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 17.09.2018
Murthy

U. DURGA PRASAD RAO, J