

THE HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL PETITION No.11901 of 2013

ORDER:

This petition, under Section 482 of Cr.P.C., is filed by A.2 to A.4 seeking to quash the proceedings in C.C.No.1012 of 2013 on the file of IX Metropolitan Magistrate, Miyapur at Kukatpally.

2. A.1 is the husband of complainant-first respondent herein, who is not a party to the quash proceedings. Petitioner No.1-A.2 is the father; petitioner No.2-A.3 is the mother; and petitioner No.3-A.4 is the uncle of A.1. The contention of the petitioners-A2 to A.4 is that there is no iota of truth in the allegations made in the complaint and they are invented only for the purpose of implicating the petitioners in the case irrespective of the fact that the petitioners did not have any specific role and participation in the alleged commission of offence. The present proceedings are instituted as a counterblast to the divorce O.P. filed by A.1 in O.P.M.C.No.3798 of 2012 on the file of Family Court, Bangalore on 12.10.2012. Only after initiation of the said divorce proceedings, the first respondent-complainant lodged the complaint on 04.01.2013. The petitioners are no way concerned with the disputes between the wife and husband i.e. first respondent and A.1.

3. In fact, immediately, after the marriage in 2004, the first respondent and A.1 left to U.S.A. and stayed there till April, 2011. While staying at U.S.A., disputes arose between the couple due to the attitude of first respondent. The petitioners, who are residents of Bangalore, absolutely, have no role in the disputes between them.

Even accepting the allegations at their face value, no offence is made out against the petitioners much less an offence under Section 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act. The first respondent lodged the complaint making an omni bus accusation and no specific overt acts are attributed against them.

4. It is further contended that after filing divorce petition i.e. O.P.M.C.No.3798 of 2012 before the Family Court at Bangalore, the first respondent came over to Hyderabad, broke open the doors and gained entry into the house. Subsequently, she tried to sell away all the household articles and gave advertisements in Websites. On coming to know about the attempts of the first respondent, her husband-A.1 filed O.S.No.12 of 2013 for grant of interim injunction and for appointment of Advocate-commissioner. Advocate-commissioner was appointed on 23.4.2013 and on enquiry during the inspection, the first respondent informed her about the selling of the articles to various individuals.

5. It is the further contention of the petitioners that the Apex Court time and again, held that the parents and family members of husband cannot be automatically roped into the case without any specific accusation with reference to any specific instance or with regard to any specific demand.

6. Per contra, the learned Public Prosecutor contended that there are specific overt acts and prima facie material against the petitioners to prosecute for the offences alleged.

7. The learned counsel appearing for the first respondent-complainant contends that there is demand from A.1 to A.4 regarding dowry and they harassed the complainant on the pretext

she did not conceive any child. The petitioners herein along with A.1 tortured the complainant and that there is prima facie material against the petitioners herein to prosecute for the offences.

8. Heard the learned counsel for the petitioners, learned counsel for first respondent and learned Public Prosecutor for second respondent. Perused the material available on record.

9. Now the point that arises for consideration in this petition is whether there is any *prima facie* material to prosecute the petitioners for the alleged offences?

10. The marriage of A.1 with first respondent-complainant took place on 27.11.2004 at Valsad, Gujarat as per Hindu rites and customs. Immediately, within two weeks after the marriage, A.1 left to U.S.A. for prosecuting his studies. Thereafter the first respondent-complainant joined A.1 at Dallas and started living with him. It is the allegation in the complaint that A.1 was quite indifferent towards the complainant and most of the time when he used to be at home, he used to talk with his parents and sister. It is further alleged that whenever his parents and sister visit their house, they used to create misunderstandings between the wife and husband and as a result, A.1 used to become wild, used abusive language and threaten her for divorce. Later the complainant was diagnosed to be having polycystic syndrome and was treated for the same. Subsequently, she had an ectopic pregnancy and had to undergo laparoscopic surgery to remove the fallopian tube and other two times she had miscarried around 10 and 12 weeks.

11. The investigating officer, after thorough investigation, filed the charge sheet stating that at the time of marriage of complainant

with A.1, as per demands of A.1 to A.4, an amount of Rs.10.00 lakhs was paid in cash, gold and diamond jewellery about 150 tulas, totally worth Rs.12.00 lakhs and diamond worth Rs.5.00 lakhs. In the absence of A.1, A.2 to A.4 started behaving indifferently. After sometime, she joined A.1 at Dallas, Texas in U.S.A. and right from the day, A.1 was quite indifferent towards her and he used to talk most of the time with his parents and sister. The complainant's sister-in-law was residing at St. Louis, U.S.A., who got divorced, used to visit them and create misunderstandings between the complainant and A.1, due to which, A.1 used to become wild at complainant and used to use abusive language against her and threatened to divorce her. After her miscarriage, her father-in-law, who is A.2, told her that she was infertile and would never get a child and that had he been in place of A.1, he would have kicked her out of the house. When the complainant and A.1 tried to adopt a child at A.P. Women Development and Child Welfare Department (Shishu Vihar) at Hyderabad, A.1's parents abused the complainant and poisoned the mind of A.1 against her.

12. The further allegations in the charge sheet is that after reaching Bangalore, the petitioners herein started putting all sort of false allegations on her and her parents. In the absence of petitioners 1 and 2 herein, the uncle of A.1, who is the petitioner No.3 herein constantly tortured her to leave their house.

13. In the case of **Pritam Ashok Sadaphule & Others v. State of Maharashtra and Another**((2015) 11 SCC 769), the Apex Court, at para 17, observed as under:

“17. We have carefully perused the allegations pointed out by the learned counsel, from the complaint of Respondent 2 Hima Pritam Sadaphule, dated 4-2-2010. There can be no doubt whatsoever, that the allegations levelled against Appellants 2 to 5 do not justify any inference, which would lead to the conclusion, that they could be held responsible, for an offence in the nature of Section 498-A of the Penal Code. In the above view of the matter, we are satisfied in accepting the prayer made in the instant appeal, with reference to Appellants 2 to 5, and to order quashing of the first information report dated 6-3-2010, and the proceedings that may have arisen therefrom, including the charge-sheet dated 27-7-2010.”

In the said case, the allegations are that the father, mother, brother, sister i.e. the entire family of husband tortured, humiliated and harassed the wife-complainant and that she was beaten up by them for no reasons. The complainant and her husband came back from U.K. on 8.7.2008, and again her husband continued the same ill-treatment, harassment, emotional and mental torture, humiliation. During the said period, her husband's family members also abused her, humiliated and harassed and tortured her emotionally and mentally and threatened her with dire consequences.

14. In the instant case, as already observed, specific overt acts are attributed against the petitioner Nos.1 & 3, who are A.2 and A.4 about the demand of dowry apart from that, there is specific attribution in the charge sheet and complaint regarding their harassment and torture meted out to the complainant. But however, there is no prima facie material or specific overt act attributed to the second petitioner, who is A.3. In view of the clear specific overt acts attributed to the petitioner Nos.1 and 3, who are A.2 & A.4, I am of the considered view that there is prima facie material to prosecute them and there is nothing to suggest an abuse of process of court or any prejudice caused to them in continuing

the proceedings. But, in view of the lack of material and specific overt acts as against petitioner No.2, the impugned proceedings are liable to be quashed as against her.

15. In the result, the Criminal Petition is dismissed as against petitioner Nos.1 & 3, who are A.2 & A.4. So far as petitioner No.2-A.3 is concerned, the Criminal Petition is allowed and the impugned proceedings are quashed as against her.

Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

06th February 2018
Tsr

JUSTICE N.BALAYOGI

