

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.5236 OF 2018

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to quash the proceedings against the petitioners, who are A.2 and A.3, in Crime No.12 of 2018 of Women Police Station, Nizamabad, registered for the offence punishable under Sections 498-A of the Indian Penal Code, 1860 (for short 'I.P.C.') and Section 4 of the Dowry Prohibition Act, 1961 (for short 'the Act').

The first petitioner is the father-in-law and the second petitioner is the sister-in-law of the second respondent.

The second respondent herein lodged a complaint with the police alleging that on the date of first night of marriage, she discovered that her husband/A.1 is not physically fit. On hearing the same, her parents were shocked, she informed the same to in-laws, they made her to believe their words and to wait there for a period of one month, but even after one month there are no changes in the physical fitness and that herself and her parents requested the petitioners and other accused to undergo for medical examination of the physical fitness of A.1, but they were not willing to disclose the same and instead, they started threatening her with dire consequences. On the strength of these allegations, the police registered the above crime and issued F.I.R., which is impugned in this petition.

The only ground raised before this Court is that the report lodged with the police is bereft of any specific details and specific role played by each of the accused and the petitioners herein,

except making omnibus allegations that the petitioners along with other accused subjected her to cruelty. Thus, making omnibus allegations are not sufficient to register the crime against the petitioners and other accused, to undergo ordeal of trial for years together standing in accused dock and prayed to quash the proceedings.

The other ground for quashment is that the police have no territorial jurisdiction and that the complaint was lodged with a view to wreck vengeance against the petitioners and her husband.

During hearing, Sri N.Hanuman Naik, learned counsel for the petitioners while reiterating the grounds urged in the petition has placed reliance on the Judgment of the Apex Court in **Geeta Mehrotra & Anr. v. State of U.P. & Anr.**¹ in support of his contention and prayed to quash the proceedings against the petitioners in the above crime.

The Public Prosecutor for the State of Telangana would contend that the allegations made in the written complaint lodged with the police by the second respondent would disclose the commission of cognizable offence and absence of specific details in the first information report is not a ground to quash the proceedings and prayed to dismiss the petition.

Considering the rival contentions, perusing the material available on record, the points that arise for consideration are,

01. Whether the absence of minute details like date, time and place of offence etc., is a ground to quash the proceedings at the threshold?

¹ CrI.A.No.1674 of 2012

02. Whether the proceedings in Crime No.12 of 2018 of Women Police Station, Nizamabad, can be quashed on the ground the first respondent lacks territorial jurisdiction?

03. Whether the complaint is lodged with a view to wreck vengeance against the petitioners?

POINT No.1:

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 Code. 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**².

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

² 1930 Lah 465 31 Cr LJ 482

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 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 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**³. 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 Constitutional Bench judgment of the Apex Court

³ 1972 Cr LJ 1545 (A)

in **State of Haryana v. Bhajan Lal**⁴, 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;

(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,

⁴ 1992 Supp. (1) SCC 335

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.

Similarly, in **Madhavrao Jiwaji Rao Scindia & anr. etc. vs. Sambhajirao Chandrojirao Angre & ors. etc⁵**, 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.⁶**; **Ganesh Narayan Hegde vs. S. Bangarappa & Ors.⁷**; and **M/s Zandu Pharmaceutical Works Ltd. & Ors. vs. Md. Sharaful Haque & Ors.⁸**).

⁵ 1988 AIR 709

⁶ AIR 1990 SC 494

⁷ (1995) 4 SCC 41

⁸ AIR 2005 SC 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 of this Court vide **Bhajan Lal** case (referred supra), **Janata Dal vs. H.S. Chowdhary and Others**⁹, **Rupan Deol Bajaj (Mrs.) and Another vs. Kanwar Pal Singh Gill and Another**¹⁰, and **Indian Oil Corp. vs. NEPC India Ltd. and Others**¹¹.

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 examine the issue before this Court. As I have already extracted the few allegations made in the F.I.R., in the earlier paragraphs, it is clear from the report lodged with the police by the second respondent, the petitioners and other accused made certain demands and for her failure to meet such demand, they subjected her to cruelty as defined in Explanation to Section 498-A I.P.C. But no specific details like time, date and place etc., were mentioned in the said report.

⁹ 1992 (4) SCC 305

¹⁰ 1995 (6) SCC 194

¹¹ 2006 (6) SCC 736

Learned counsel for the petitioner mainly based on the Judgment of the Apex Court in **Geeta Mehrotra & Anr. v. State of U.P. & Anr.**,¹² to contend that in the absence of any specific details and the role played by each of the accused, the court can quash the proceedings, and in paragraph 19 of the Judgment, the Apex Court is of the opinion that mere causal 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 specifically if it happens soon after the wedding and finally, at paragraph 27 of the Judgment the Apex Court held that merely by making a general allegation that they were also involved in physical and mental torture of the complainant-respondent No.2 without mentioning even a single incident against them as also the fact as to how they could be motivated to demand dowry when they are only related as brother and sister of the complainant's husband, the court was pleased to quash the criminal proceedings.

Section 154 Cr.P.C. deals with F.I.R. and it is only information to police in cognizable cases to set the criminal law into motion and the law is well settled that the F.I.R. is not a substantive piece of evidence and it need not contain minute details as it is not encyclopedia of facts. Therefore, the report is for limited purpose of giving information to the police about

¹² CrI.A.No.1674 of 2012

commission of cognizable case and after registering the crime and issuing F.I.R. investigating agency will take up the investigation and collect evidence and based on the principle that the details of the act of each individual were not mentioned in the F.I.R., the quashment of the proceedings is appears to be not correct.

The Apex Court, though quashed the proceedings at the crime stage in the above facts of the case, the Court did not consider the purpose of lodging the report with the police about intimating the commission of cognizable offence to the police having jurisdiction and its evidentiary value. Therefore, it is difficult to apply the principle laid down in the above judgment to the present facts of the case.

Moreover, while considering the application under Section 482 Cr.P.C., this Court need not meticulously go into the evidence available on record if it discloses the commission of any offence, the Court can decline to exercise power under Section 482 Cr.P.C. subject to the law laid down by the Apex Court in **Bhajanlal** case referred supra.

In any view of the matter, the present stage of this case is only at stage investigation and the investigation is not commenced as per the record. When the investigation is at fetus stage, the Court would not normally exercise power under Section 482 Cr.P.C. to stifle the legitimate prosecution when the facts are incomplete and hazy in view of the law declared by the Apex Court in **State Of Orissa & Anr. Vs. Saroj Kumar Sahoo**¹³. Therefore,

¹³ (2005) 13 SCC 540

at this stage, it is premature to decide the role of the petitioners based on the allegations made in the complaint.

The Apex Court in **Pawan Kumar v. State of Haryana**¹⁴ has gone to the extent of holding that cruelty or harassment need not be physical but mental torture can also be treated as cruelty.

In **Kuppusetti Subbharao @ Subramaniam v. State of A.P.**¹⁵ the Apex Court held that the very thrust of offence under Section 304-B IPC 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 Apex Court also held that while deciding the cases under Section 498 and 304-B IPC, the Court has to keep in mind the intention of the legislature in incorporating such provision and decide the matter.

In **Sushil Kumar Sharma vs. Union of India & Ors**¹⁶ the Apex Court reiterated the object of Section 498 holding that the object of which Section 498-A IPC 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, it was 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

¹⁴ AIR 1998 SC 958

¹⁵ 2009 Cri LJ 3480 (SC)

¹⁶ (2005) 6 SCC 281

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.

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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."

Thus, in view of the law declared by the Apex Court in various judgments referred supra, the Court must keep in mind

the very object of the legislation itself while deciding such case, but in the present case, she lodged a report giving information about the commission of a cognizable offence to the police and the investigation is at fetus stage as the investigation is not commenced as per the material placed on record. Therefore, at this stage, by applying the principle laid down in **Saroj Kumar Sahoo** case (referred supra), it is difficult to exercise power under Section 482 cr.P.C. to quash the proceedings. Hence on the ground of lack of minute details in the report lodged with the police the proceedings in Crime No.12 of 2018 cannot be quashed. Accordingly, the point is answered against the petitioner and in favour of the respondents.

POINT No.2:

The second ground urged by the counsel for the petitioners is that the Women Police Station, Nizamabad, lacks territorial jurisdiction as the offence did not take place within the territorial limits of the police who is the first respondent herein. Section 154 Cr.P.C. deals with only information in cognizable cases and even if any complaint is received and for any reason the police finds that they have no territorial jurisdiction, the option open to them is to transfer F.I.R. to the competent police, having territorial jurisdiction over the area, but that is not a ground to quash the proceedings at this stage, and therefore, the first respondent is directed to verify its territorial jurisdiction to proceed further and if the first respondent finds that it lacks territorial jurisdiction follow the procedure for transfer of F.I.R. from its file to the concerned

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police having jurisdiction. Therefore, at this stage, it is not a ground to quash the proceedings.

Accordingly, point No.2 is answered against the petitioner.

Point No.3

The third ground urged by the counsel for the petitioners is that the complaint is filed only to wreck vengeance against the petitioners as the second respondent issued legal notice dated 04.01.2018 calling upon her in-laws for amicable settlement of the problem, but in reply her husband issued notice 27.01.2018, but taking advantage of the exchange of notices, he contended that the complaint is lodged with a view to wreck vengeance.

According to the guidelines laid down by the Apex Court in **Bajan Lal** case (referred supra), it is one of the considerations. But after elaborate consideration of the judgment in **Bajan Lal** case (referred supra) and in **Saroj Kumar Sahoo** case (referred supra), it can be concluded that when the investigation is at fetus stage, the proceedings in the F.I.R. cannot be quashed, since no material is collected as on date, whether the second respondent lodged a report to wreck vengeance against the petitioners or not can be decided only after recording statement of witnesses under Section 161(3) Cr.P.C., but not at this stage, based on the legal correspondence or exchange of legal notices, hence, it is difficult for me to conclude at this stage that the second respondent lodged the complaint to wreck vengeance against the petitioners and other accused, consequently, I find that it is not a ground to quash the proceedings. The point is answered against the petitioners.

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In view of the foregoing discussion on points 1 to 3, I find no ground to quash the proceedings at this stage and the petition is liable to be dismissed, however liberty is given to the petitioners to renew their request at appropriate stage.

In the result, the criminal petition is dismissed.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:06.06.2018
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