

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.5339 of 2018

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code to quash the proceedings in M.C.No.350 of 2016, pending on the file of Additional Metropolitan Sessions Judge for the trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad.

The petitioner is the sole respondent and respondents 2 and 3 are claimants in the maintenance case. The 2nd respondent is the wife, the 3rd respondent is the daughter born during wedlock to the petitioner and the 2nd respondent.

The maintenance case was filed by the 2nd and 3rd respondent asserting their relationship with the petitioner while alleging payment of dowry of Rs.2,50,000/- and presentation of gold and silver articles. They specifically submitted that on 28.12.2015 at about 08.00 PM, when the 1st petitioner was alone in the bed room, the petitioner came to the bed room, which is in the first floor, forced her to fulfil his sexual desires by throwing her on bed and he used to touch her and his acts caused outrage of modesty of the 2nd respondent and that she struggled with the petitioner, the 2nd respondent received major injuries on the chest and other parts of the body. With great difficulty, the 2nd respondent could able to rescue herself from the clutches of the petitioner, got down to the ground floor and informed the same to her in-laws, but they were not reacted properly, in fact they all supported by him. Thereupon, the 2nd respondent went to

the Bhavaninagar Police Station, Hyderabad during intervening night of 28/29.12.2015 and gave information about commission of offence and she was referred to Osmania General Hospital, Hyderabad for examination and treatment and after investigation, the police filed charge sheet before the Court for the offences punishable under Sections 354, 498-A and 323 IPC, which is numbered as C.C.No.155 of 2016.

The 2nd respondent contended that as she did not fulfil the desire of the petitioner, he demanded additional dowry and subjected her to harassment and sexual assault by the brother-in-law of the 2nd respondent. The 2nd respondent further contended that her mother is suffering from old age ailments and that they are financially weak and not in a position to maintain herself and her minor child and that become burden to her mother. The petitioner is working as Area Assistant Manager in JMJ Group of Companies, Abids, Hyderabad, besides dealing with pan masala and gutkha and getting Rs.28,000/- per month. Apart from the employment, the petitioner is carrying on own business in the name and style of Almas Agencies at Moinbagh, Fateh Shah Nagar, Hyderabad and thus, the petitioner is earning Rs.78,000/- per month and nobody depending upon his income. The petitioner being the husband, legally bound to maintain respondents 2 and 3, but totally neglected and refused to maintain them. Therefore, they were constrained to file maintenance case to meet the expenses for medical and other necessities and prayed to award maintenance.

The petitioner filed counter in the maintenance case raising several contentions while admitting the relationship. The main ground raised by the petitioner is that the 2nd respondent voluntarily deserted the company of the petitioner without any reasonable cause and thereby she is not entitled to claim maintenance under Section 125 Cr.P.C. as the question of refusal or neglect to maintain by the petitioner does not arise and prayed to dismiss the petition.

During hearing, learned counsel for the petitioner contended that when the 2nd respondent herself left the company of the petitioner, without any reasonable cause and living separately, she is not entitled to claim maintenance under Section 125 Cr.P.C. and placed reliance in **Deb Narayan Halder v Anushree Halder**¹. The petitioner fairly conceded that he is ready to maintain the 3rd respondent as the petitioner is under legal obligation to maintain. Similarly, the petitioner contended that he is not getting sufficient income and therefore, he is not in a position to provide any maintenance. On the strength of the principle laid down by the Apex Court, he sought for quashment of the proceedings in the maintenance case at the stage of admission itself.

The main ground urged before this Court is that the 2nd respondent voluntarily left the company of the petitioner without any reasonable cause and thereby the petitioner is not liable to pay any maintenance.

Based on the allegations made in the petition in para 7 and also the statement recorded by the police under Section 164(5) Cr.P.C. in Crime No.200 of 2015 of Bhavaninagar Police Station. In

¹ 2003 La Suit (SC) 797

view of the specific contention raised by learned counsel for the petitioner, it is appropriate to extract para 7 of the petition hereunder:

“It is submitted that the 2nd respondent is a graduate having completed B.Sc. degree which was stated by the 2nd respondent in the u/s 164(5) statement before the Hon'ble IX Additional Chief Metropolitan Magistrate at Hyderabad and she is capable of earning and, earning sufficiently as she is working in Vijaya Diagnostic Centre and the 2nd respondent is not entitled to claim maintenance case against the petitioner in view of the decision of the Hon'ble High Court of Delhi in the case of Kavita Prasad (VS) Ram Ashray Prasad, decide in CM(M)1153 of 2008, as such the maintenance case against the petitioner filed by the 2nd respondent is liable to be quashed.”

Similarly, paras 1 and 2 of the statement recorded by the IX Additional Chief Metropolitan Magistrate, Hyderabad under Section 164(5) Cr.P.C., are extracted hereunder:

“I am resident of Edibazar, Hyderabad. I am householder. I studied up to B.Sc. My marriage was performed about 4 years ago in accordance with our religious customs. My husband name is Mohd Mahboob and he do business. After the marriage I joined with my husband in in-laws house and started conjugal life and we blessed with a female child namely, Muzaina and now she is aged about one and half year. At the time of marriage with my husband, my parents presented dowry of Rs.2,50,000/- in cash and also presented gold of (4) tulas and silver ornaments about (25) tulas apart from household articles. Even after the marriage, my husband and in-laws not satisfied with the dowry presented and within few days of the marriage they started harassment demanding additional dowry from my parents. Furthermore, my husband at the instigation of family members i.e. parent-in-laws, two brothers of my husband and wife of one brother namely,

Ruksana W/o Masood, and two sisters of my husband namely, Shaheen and Parveen and who were already married before my marriage. They all used to ill-treat me by words and acts as they like directly and indirectly with an intention to harass me to bring additional dowry. Particularly my husband demanded to bring additional dowry of Rs.2,00,000/- from my parents.

Further, as we all reside in the same locality in different houses, but they used to come to our house regularly and taking advantage of the same. They harassed me physically and mentally. Apart from such harassment one Mohammed, the husband of Shaheen (Elder sister of my husband) misbehaved with me and one day he entered into kitchen room and also physically touched me by expressing his sexual desire and forced me to have sex with him, but I refused bluntly and I told him that I will complain to my husband and parent-in-laws and then he threatened me dire consequences to kill me if I disclose anything and further he will make propaganda against me. With regard to demand of dowry and such physical and mental harassment caused by my husband and his relatives, on several occasions I told to my parents also over the phone and whenever I meet them personally.

A bare look at para 7 of the petition, it is clear that the mother of the 2nd respondent is suffering from old age ailments and financially weak and not in a position to maintain herself and minor child and she will become burden to her mother. She is only house wife and look after her minor daughter and that she has no other independent income. Therefore, the allegations made in the maintenance case would not amount to deserting voluntarily, *prima facie*. Even if the entire allegations in the maintenance case and the statement recorded by the Magistrate under Section 164(5) Cr.P.C.

the cause for her living separately is due to sexual assault against her and subjecting her to cruelty by the husband and his relatives. In view of paras 1 and 2 of the statement recorded by the Magistrate, the above facts are true or not to be decided based on evidence adduced by both parties before the Court and it is a disputed question of fact. Therefore, this Court cannot exercise such inherent jurisdiction under Section 482 Cr.P.C. to quash the proceedings on the ground that the 2nd respondent voluntarily deserted the company of the petitioner.

The judgment of the Apex Court in **Deb Narayan Halder** referred supra, is not in dispute, but that is the case where wife was denied maintenance on the ground that the evidence on record after full-fledged trial or enquiry, established that she voluntarily left the company of her husband and living separately. The said judgment was based on facts of the case and the matter reached the Supreme Court only after deciding maintenance case on merits after adducing evidence by the Court. Therefore, the principle laid down in the above judgment cannot be applied to the present facts of the case for the reason that in the present case enquiry in the maintenance case was not yet commenced and no witnesses were examined.

In view of the law declared by the Apex Court in **Mrs. Dhanalakshmi vs. R. Prasanna Kumar & Others.**², the jurisdiction of this Court is limited and this Court cannot appreciate evidence available on record while exercising power under Section 482 Cr.P.C. At best, the Court may quash the proceedings only in certain circumstances enumerated under Section 482 Cr.P.C. and

² AIR 1990 SC 494

the Apex Court laid down the seven guidelines in **State of Haryana v. Bhajan Lal**³ 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, providing efficacious redress for the grievance of the aggrieved party;

³ 1992 Supp. (1) SCC 335

(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.

But none of the grounds raised in the present petition would fall within parameters of **Bhajanlal**'s case referred supra. Therefore, I am not inclined to quash the proceedings at this stage and consequently, the criminal petition is liable to be dismissed. However, it is left open to the petitioner to raise such contentions in the maintenance case and on raising such contentions the concerned Court will decide the case in accordance with law.

With the above observation, the criminal petition is dismissed at the stage of admission.

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

JUSTICE M. SATYANARAYANA MURTHY

06.06.2018
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