

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.5399 of 2018

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code to quash the proceedings in C.C.No.308 of 2013, pending on the file of XIII Additional Chief Metropolitan Magistrate, Hyderabad, registered for the offences punishable under Sections 498-A and 506 IPC and Sections 4 and 6 of the Dowry Prohibition Act.

The 1st petitioner/A2-Smt Maleka is the wife of Mohd. Munawar Khan, mother-in-law of the 2nd respondent-Smt Safia Begum and similarly, the 2nd petitioner is the father in law and whereas the 3rd petitioner-Mohd.Muzafar Khan, is the son of the petitioners 1 and 2 and brother of A1. Thus, the petitioners are relatives of husband of the 2nd respondent.

The 2nd respondent lodged report with the police alleging that she was subjected to cruelty for her failure to meet the illegal demand of dowry and more specifically it is alleged that on 01.05.2012 her husband and in-laws sent her out of the matrimonial house with apparels only and burqa on her, directing not to return without Rs.2 lakhs as dowry. The passion bike and jahez articles are in the custody of the petitioners, which includes jewellery. Thus, the allegations made in the charge sheet disclose that the 2nd respondent was necked out from the house after beating her severely by petitioners 1 and 2 and her husband, A1 on 01.05.2012. But in subsequent paras, it is alleged that the 3rd petitioner also joined hands of the petitioners 1 and 2 in subjecting her to cruelty for her failure to meet the illegal demand of dowry.

Therefore, the allegations made in the charge based on the statements recorded by the police during investigation, discloses commission of offences, *prima facie*, by the petitioners and A1 and filed charge sheet against them.

The present petition is filed under Section 482 Cr.P.C. on the ground that the 2nd respondent does not know the domestic work at home nor she made any attempt to learn from the mother-in-law. As the 2nd respondent did not oblige the advise of elders and her husband at matrimonial house and that she was not accepting the food prepared by mother-in-law; that there was no cordial relationship between the petitioners and the 2nd respondent before A1 leaving India. It is also contended that without any cause or reason, the 2nd respondent foisted a false and frivolous case with the police for undue advantage to abuse process of law. It is also contended that the report was lodged with the police only after A1 left India and the said fact is evidenced by the stamp of immigration authorities dated 05.07.2012 and thus, the complaint was lodged with an intention to harass the petitioners and A1 and thereby requested for quashment of proceedings in C.C.No.308 of 2013.

During hearing, learned counsel for the petitioners contended that when the 2nd petitioner is an employee in the police department and there is no reason for him to demand dowry and that he never demanded dowry. It is also further contended that the present case is foisted falsely only to harass the petitioners when A1 left India on 05.07.2012 and requested the Court to quash the proceedings.

Learned Public Prosecutor opposed the petition on the ground that the specific allegations made in the charge sheet and in the statement recorded under Section 161 Cr.P.C. discloses the *prima facie* commission of offence and in such a case, the Court cannot exercise power under Section 482 Cr.P.C. to quash the proceedings.

Considering the rival contentions and perusing the material available on record, the point that arises for consideration is:

Whether the proceedings in C.C.No.308 of 2013 are liable to be quashed on the ground that the petitioners never demanded any dowry and that the complaint was lodged with an intention to harass the petitioners by the 2nd respondent?

The power of this Court under Section 482 Cr.P.C can be exercised sparingly in exceptional circumstances to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. In ***State of Haryana v. Bhajan Lal***¹, the Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

“(1) 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.

¹ 1992 Supp. (1) SCC 335

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.

(3) Where the 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.

(4) 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.

(5) 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.

(6) 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.

(7) Where a criminal proceeding is manifestly attended with mala fide 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.

The Apex Court in **Mrs Dhanalakshmi vs. R. Prasanna Kumar & Others**² held that 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.

Turning to the facts of the present case, it is very specific in the charge sheet that on 01.05.2012, the husband of the 2nd respondent and her-in-laws necked her out from the matrimonial home with apparels only and burqa on her, directing not to return without Rs.2 lakhs as dowry. It is further alleged that the 3rd petitioner also subjected her to cruelty for her failure to meet the illegal demand of dowry along with other accused. These specific allegations would directly pointing out the active role played by each of the accused or collectively by the accused in subjecting the 2nd respondent to cruelty for her failure to meet the illegal demand of dowry. The statement of witnesses recorded by the investigating agency under Section 161 Cr.P.C. also disclose *prima facie* that the 2nd respondent was subjected to physical and mental cruelty for failure to meet the illegal demand of dowry. When the material on record discloses the commission of offence, the Court cannot exercise power under Section 482 Cr.P.C. to quash the proceedings.

Yet another contention urged before this Court is that A1 left India on 05.07.2012. But the complaint was lodged immediately within the short time to harass the petitioners. It is an undisputed fact that A1 left India and the said fact is supported by stamp of immigration authorities on 05.07.2012, but lodging of report with the police after A1 left India cannot be said to be an after thought

² AIR 1990 SC 494

to harass the petitioners. In any view of the matter, delay in lodging the report is irrelevant at this stage and at best it is one of the factors to be considered while deciding the calendar case at the end of trial. If the prosecution is able to explain the reason for delay, the Court may ignore the delay and record conviction of the accused for any of the offences at the end of trial. Therefore, delay in lodging report is not a ground and can never be said to be an afterthought to harass the petitioners, *prima facie*.

The other ground raised by the petitioners is that the 2nd petitioner is an employee in police department and he is not expected to make any demand, but this question of fact has to be decided after trial and at this stage based on the defence set up by the petitioners the proceedings cannot be quashed by exercising power under Section 482 Cr.P.C. More particularly, when specific allegations are made against the petitioners with procession directly pointing out their active role played by each of them. Therefore, the grounds urged by the petitioners are not sufficient to quash the proceedings exercising power under Section 482 Cr.P.C.

Consequently, 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

07.06.2018
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