

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.6248 OF 2018

ORDER:

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code') by the petitioners - accused Nos.3 to 7 to quash the proceedings against them in Calendar Case NO.502 of 2015, pending on the file of the learned X Metropolitan Magistrate, Cyberabad at Malkajgiri, Ranga Reddy District, Telangana State, registered for the offences punishable under Sections 498-A and 406 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

2. The petitioners herein are accused Nos.3 to 6, while respondent No.1 - Javvadi Venkata Prabhakara Chary, who is father-in-law of accused No.1, is the *de facto* complainant in the aforesaid Calendar Case. Accused Nos.2 and 3 are parents of accused No.1, accused Nos.4 and 5 are sister and brother-in-law of accused No.1 and accused Nos.6 and 7 are the paternal uncles of accused No.1.

3. Respondent No.1 herein lodged a report, dated 26.11.2013 with the police alleging that:

“ i) the marriage of her daughter - LW.4 with accused No.1 was performed on 04.10.2009 at Visakhapatnam. At the time of marriage, accused No.1 demanded Rs.15.00 lakhs cash as dowry apart from household articles, worth Rs.5.00 lakhs. The parents of accused No.1 used to dictate terms to LW.4 and she accepted and adjusted with accused No.1 and other accused. After marriage, accused No.1 made his wife to resign her job and join her

matrimonial house with his parents. During that time, LW.4 was pregnant and she was made to attend all house-hold works.

ii) While the matter stood thus, on 05.02.2010, accused No.1 and LW.4 went to Australia, and during their stay, accused No.1 used to comment her that she was fat and ugly looking and also used to beat her. Further, accused Nos.2 to 4 used to call accused No.1 over phone and instigate him to get marry another girl, so that they can get more dowry. Sometimes later, LW.4 also started working to fulfill financial demands of her husband and gave the amount to him. Subsequently, she became pregnant and she came to her in-laws for 'Srimantham' ceremony. During that time, accused Nos.1 to 5 locked up LW.4 in a room and accused No.4 forcibly took the gold ornaments saying that she could get more dowry for expenses incurred for the function. Accused Nos.1 to 5 started beating and abusing LW.4, accused Nos.6 and 7 started kicking her.

iii) Later, the victim - LW.4 was taken to her parents' house. Thereafter, accused No.2 used to call her over phone stating that the child in her womb is not born through him, and that she should get DNA test. Due to harassment, she had a premature delivery during eighth month and gave birth to a male child on 18.11.2011. After informing the same to the accused, accused Nos.2 to 7 came to her house and demanded Rs.20.00 lakhs as additional dowry stating that accused No.1 would be burdened more for the maintenance of LW.4 as well as her child. When she and her parents expressed their inability, the accused started abusing respondent No.1 and his daughter - LW.4, beat her and threatened with dire consequences if she discloses about their harassment to others.

iv) After some time, LW.4 left her son with them and went to Australia to continue her job and thereafter, she took her son, but accused No.1 did not visit her to see her and her son. After repeated phone calls, accused No.1 came to the house of friend of LW.4 with whom she was living and spent few minutes with their son and abusing them left that place. After some time, she came to know that accused No.1 obtained divorce in a Court of Australia.

v) Therefore, she gave report with the police, who after examining the same, registered it as a case in Crime No.674/2015 for the aforesaid offences.

vi) After completion of investigation, the police filed charge sheet based on the evidence collected for the aforesaid offences.”

4. The main contention of the petitioners before this Court is that they are innocent of any offences, and even if the allegations are accepted as it is, they do not constitute any offence and that when she is a divorced wife of accused No.1, the relationship between the petitioners and LW.4, daughter of respondent No.1, ceased to subsist, thereby respondent No.1 is not entitled to prosecute the case for any of the offences.

5. Learned counsel for the petitioners reiterated the contents, more particularly, when LW.4 is divorced wife of accused No.1, her father, respondent No.1 cannot maintain the prosecution against the petitioners as there was no subsisting relationship between them, and thereby prosecution of petitioners for various offences is illegal, and placed reliance on the recent two judgments of the Hon'ble Supreme Court in **Mohammad Miyan v. The State of Uttar Pradesh¹** and **K. Subba Rao v. The State of Telangana, rep.by its Secretary, Department of Home²**. On the strength of the principles laid down in the said judgments, the learned counsel for the petitioners requested this Court to quash the proceedings against the petitioners.

6. Notice was ordered to respondent No.1 and proof of service was also filed, but none appeared.

7. Learned Public Prosecutor for the State of Telangana

¹. Crl.Appeal No.1048/2018 (Arising out of SLP (Crl.) No.4122/2016, dated 21.08.2018

². CDJ 2018 SC 865

supported the case of prosecution in all respects.

8. As seen from the complaint lodged by respondent No.1 herein, the marriage between accused No.1 and LW.4 was performed on 04.10.2009 at Visakhapatnam and allegedly paid certain cash as dowry, besides presentation of house-hold articles worth of Rs.5.00 lakhs. It is also clear from the allegations made in the complaint that accused No.1 obtained divorce from Australian Court, dissolving the marriage between LW.4 and accused No.1. The date of divorce is not disclosed in the charge sheet or in the statements recorded by the police during investigation. However, in the private complaint filed which is referred under Section 156 (3) of the Code to the police, there is a specific recital as to the obtaining divorce from the Australian Court dissolving the marriage between accused No.1 and his wife - LW.4. In paragraph No.8 of the private complaint, it is specifically mentioned that accused NO.1 obtained divorce in Australian Court, which is not valid as daughter of the complainant and accused No.1 are Hindus, married under the Indian Law, and only Court in India are competent to grant divorce, as such, complaint filed in O.S.No.14 of 2013 on the file of the learned Judge, Family Court, Ranga Reddy District at L.B. Nagar for declaring the divorce granted by the Australian Court as null and void and the said case is pending for adjudication.

9. Admittedly, in the said suit, no interim order was obtained suspending the divorce granted by the Australian Court. Thus, the relationship between accused No.1 and LW.4 as husband and wife

ceased to subsist, and thereby filing of a complaint against divorced husband and his relations is contrary to the law declared by the Apex Court in **Mohammad Miyan¹**, in the facts of above decision, divorce was obtained four years back from the date of filing the complaint even according to the admission made in the complaint by the wife herself. In the present case, the facts are identical and divorce was obtained by accused No.1 from the Australian Court, which is, now, subject matter of the case pending before the learned Judge, Family Court, Ranga Reddy District at L.B.Nagar. When the marriage is dissolved between LW.4 and accused No.1 as wife and husband, the petitioners herein ceased to be the relatives of husband of LW.4. Therefore, there cannot be any prosecution for the offences punishable under Section 498-A and 406 IPC and Sections 3 and 4 of the Act, 1961.

10. Yet another contention raised before this Court is that, roping of all the relatives of the husband for the offence punishable under Section 498-A IPC is a serious illegality, and in the absence of any specific allegation against the petitioners, continuation of proceedings against them would cause hardship to them and the complaint cannot be used as a tool or device to harass the petitioners. In the case on hand, though certain *prima facie* allegations are made, they do not specify the dates of incident in the entire complaint and in the statements recorded under Section 161 (3) of the Code. In the absence of such specific allegations attributing specific overt acts to each of the accused, the proceedings against them cannot be continued in a criminal Court in

view of the law laid down by the Apex Court in **K. Subba Rao**², and earlier to this judgment, the Apex Court in **Preeti Gupta v. State of Jharkand**³, expressed the same view and held that exaggerating versions of small incidents are reflected in the report and, therefore, the allegations are to be scrutinized with great care and circumspection, and further held that the allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The Apex Court has gone to the extent of a serious relook of the entire provision is warranted by the legislation, as the said provisions are being abused as a tool for harassment of the relatives of husband to settle private disputes is an abuse of process of the Court. Even if these principles are applied to the present facts of the case, in the absence of any specific overt acts against each of the petitioner, the proceedings against them cannot be continued. Hence, the proceedings in Calendar Case No.502 of 2015, pending on the file of the X Metropolitan Magistrate, Cyberabad at Malkajgiri, against the petitioners for the aforesaid offences are hereby quashed.

11. Accordingly, the present Criminal Petition is allowed.

Consequently, the Miscellaneous Petitions, if any, pending in the present Criminal Petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

September 07, 2018
Mgr

³. (2010) 7 SCC 667