

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.7102 OF 2018

ORDER:

This criminal petition is filed by the petitioners/accused under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.708 of 2017 pending on the file of the VIII Additional Chief Metropolitan Magistrate, Hyderabad, registered for the offence punishable under Section 498-A of Indian Penal Code (for short "I.P.C.").

The respondent No.2 lodged report with the police alleging that petitioner Nos.2 and 3/accused Nos.2 and 3 encouraged accused No.1 to marry another woman and not to provide any maintenance to the respondent No.2 besides making other allegations against accused No.1. Based on the complaint, police registered a case in crime No.108 of 2017 for the offence punishable under Section 498-A of I.P.C. and issued F.I.R.

On the basis of F.I.R., Sub-Inspector of Police took up investigation, examined as many as 5 witnesses during investigation and recorded their statements under Section 161 (3) of Cr.P.C. Based on the evidence collected during investigation including the statements recorded under Section 161 (3) of Cr.P.C., Sub-Inspect of Police concluded that there is *prima facie* material to proceed against accused Nos.2 and 3 along with accused No.1 and filed charge sheet.

As seen from the allegations made in the last three lines of paragraph No.2 of charge sheet, petitioner Nos.2 and 3 herein encouraged the husband of respondent No.2 to marry another woman and not to provide any maintenance to her and her son.

Even in page No.3 of charge sheet, the allegation made against the petitioner Nos.2 and 3/accused Nos.2 and 3 is as follows:

“accused persons A-2 and A-3 encouraged the A-1 to marry with another girl”

In the present petition it is alleged that except the said allegation, no other allegation is made against accused Nos.2 and 3 in the charge sheet and in the statements recorded by police during investigation under Section 161 (3) of Cr.P.C., more particularly the statement of respondent No.2 is only to the effect that the petitioner Nos.2 and 3/accused Nos.2 and 3 encouraged accused No.1 to marry another girl. Therefore, the allegations made in the complaint against accused No.2 and 3 do not constitute offence punishable under Section 498-A of I.P.C. and prayed to quash the proceedings.

This Court before admitting the case, ordered notice and notice was served on respondent No.2. Proof of service is filed, but none appeared for respondent No.2.

During hearing, learned counsel for the petitioners seeks permission of the Court to withdraw the petition in respect of petitioner No.1/accused No.1 only and prayed to allow the petition in respect of petitioner Nos.2 and 3/accused Nos.2 and 3.

The basis for filing charge sheet against the petitioner Nos.2 and 3/ accused Nos.2 and 3 is the evidence collected during investigation including the statements of witnesses recorded under Section 161 (3) of Cr.P.C.

The allegations made in the charge sheet at best go to establish that the petitioner Nos.2 and 3/accused Nos.2 and 3 encouraged accused No.1 to marry another girl and turned him to not to provide any maintenance to her and her son. Such acts of the petitioner Nos.2 and 3 would not constitute an offence punishable under Section 498-A of I.P.C. since the alleged encouragement by the petitioner Nos.2 and 3 is not in connection with any dowry. Therefore, the allegations made against the petitioner Nos.2 and 3 do not constitute any offence punishable under Section 498-A of I.P.C.

This Court can exercise power under Section 482 of Cr.P.C. only to give effect to the orders passed under the Code, to prevent abuse of process of Court or to meet the ends of justice.

In “***State of Haryana v. Bhajan Lal***”¹ the Apex Court considered in detail the powers of High Court under Section 482 of Cr.P.C. 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.

(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

¹ 1992 Supp (1) SCC 335

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.

In view of the guideline No.3, when the allegations made in the complaint do not constitute any offence, this Court can exercise inherent power under Section 482 of Cr.P.C.

In view of my foregoing discussion, I hold that the allegations made against the petitioner Nos.2 and 3 do not constitute an offence punishable under Section 498-A of I.P.C. since the alleged

harassment is not in connection with demand of dowry, that too allegations at best would attract the offence punishable under Section 109 of I.P.C. and no such crime was registered against the petitioners. Therefore, I find that it is a fit case to quash the proceedings in C.C.No.708 of 2017 pending on the file of the VIII Additional Chief Metropolitan Magistrate, Hyderabad, against the petitioner Nos.2 and 3 herein.

In the result, the criminal petition is dismissed as withdrawn against petitioner No.1/accused No.1. The petition is allowed in respect of petitioner Nos.2 and 3/accused Nos.2 and 3. The proceedings in C.C.No.708 of 2017 pending on the file of the VIII Additional Chief Metropolitan Magistrate, Hyderabad, are hereby quashed against the petitioner Nos.2 and 3/accused Nos.2 and 3 herein. No costs.

The miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

27.08.2018
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