

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.7817 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. by the petitioners/A2 and A3 to quash the proceedings in C.C.No.350 of 2018 pending on the file of I Additional Chief Metropolitan Magistrate, Visakhapatnam, registered for the offences punishable under Sections 498-A, 325, 341, 506 IPC and Sections 3 and 4 of the Dowry Prohibition Act.

The 2nd respondent – Lanka Jaya, wife of A1 and daughter-in-law of petitioners/A2 and A3 lodged report with the police making serious allegations that she was subjected to cruelty by seven persons including the petitioners, who are in-laws for her failure to meet the illegal demand of Rs.2 lakhs as additional dowry. The complaint is registered as case in Crime No.39 of 2017 by the Station House Officer, Women Police Station, Visakhapatnam and issued FIR and later took up investigation and recorded statements of LWS1 to 7 under Section 161(3) Cr.P.C. and having concluded that there is *prima facie* material to proceed against the accused, filed charge sheet before the Magistrate against A1 to A3 only. In turn the Magistrate took cognizance of offence for the above offences, deleting A4 to A7 from the array of the accused.

The present petition is filed on the ground that there are no specific allegations against the petitioners directly pointing out the involvement of the petitioners in the commission of offence referred supra. It is also contended that the 2nd respondent filed M.C.No.425 of 2018 pending on the file of I Additional Family Court, Visakhapatnam claiming maintenance and that the husband of the 2nd respondent also filed F.C.O.P.No.1034 of 2017 pending on the file of Family Court, Visakhapatnam. During pendency of the M.C and F.C.O.P., the 2nd respondent lodged report with false

allegations and that the material if accepted on its face value do not constitute above offences.

During hearing learned counsel for the petitioners contended that in the absence of any allegation in the charge sheet, the Court cannot proceed against the petitioners in trial. The entire charge sheet does not disclose the role of the petitioners with precession and details. He also pointed out in second page of the charge sheet that in the earlier complaint dated 06.02.2017 on the file of Women Police Station against the husband and the in-laws as there is no change in the attitude of her husband/A1 the present complaint is filed. Hence, requested to quash the proceedings.

Learned Public Prosecutor opposed the petition on the ground that when the allegations in the charge sheet directly pointing out the complicity of the petitioners about the subjecting the 2nd respondent to harassment including causing injury and dislocation of teeth and also confined her in a room without providing food is suffice to conclude that the petitioners subjected the *de facto* complainant to cruelty for her failure to meet the illegal demand of dowry and requested the Court to dismiss the criminal petition.

The relationship between the petitioners and the 2nd respondent is not in dispute and the petitioners are in-laws of the 2nd respondent and wife of A1, who is not a party before this Court. The marriage of the 2nd respondent with the son of the petitioners was performed on 27.10.2012 in Krishna Mandir, Seethammadhara, Visakhapatnam and on the date of marriage, her parents gave Rs.6,00,000/- towards dowry, 3 tulas gold chain to her husband, and in-laws, sister-in-laws Pediredla Lakshmi, Pedireddla Bharathi, Pediredla Praveena, Lenka Surekha on their demand. The parents of the 2nd respondent gave 4 tulas gold haram, 1 ½ tulas gold junkalu and mettelu, ½ tula gold rings-2 to her. After the marriage of the 2nd

respondent, her husband and in-laws looked after her well for six months since then started harassment to bring additional dowry of Rs.2,00,000/- from her parents' house and confined her in a room and used to keep food once for three parts of a day. Later they necked out from the house to bring additional dowry of Rs.2 lakhs from her parents' house and forcibly took her gold worth Rs.2 lakhs and performed her sister-in-laws marriage and the same was informed to the parents of the 2nd respondent by her. Later her parents gave Rs.2 lakhs to her in-laws and then onwards they looked after her well for six months and again started harassment to bring additional dowry of Rs.2 lakhs or else told her to go to her parents' house and caused dislocation of teeth.

Curiously, in the present petition for one reason or the other, learned counsel for the petitioner did not place on record the statements of the witnesses recorded during investigation under Section 161(3) Cr.P.C., which is basis for filing charge sheet. It is an undisputed fact that the material collected during investigation including the statements under Section 161(3) Cr.P.C., are part and parcel of the charge sheet. Therefore, by placing proforma of charge sheet without placing statements made to pass appropriate order on the ground that there was no specific allegation. The charge sheet is prepared by the concerned officials of the police department, the basis for preparation of charge sheet or the statements recorded by the police during investigation and other evidence collected. In the absence of statements recorded under Section 161(3) Cr.P.C., during investigation by the police it is difficult to accept the contention of the petitioner that there was no allegation against the petitioners with minute details. If the allegations made in the charge sheet are taken into consideration and accepted on its face value, there is a direct incriminating material against the petitioners with precession that the petitioners, who are in-laws of the 2nd respondent received Rs.6 lakhs as dowry to attract the

offence punishable under Section 3 of the Dowry Prohibition Act and moreover on their demand, they collected Rs.2 lakhs as additional dowry and looked after her well for six months and thereafter started again demanding additional dowry of Rs.2 lakhs with a threat to sent her back and necked her out. Added to that she was subjected to cruelty by causing physical harm i.e. dislocation of teeth of complainant by the petitioners along with A1. If these allegations are taken into consideration and accepted on its face value, the allegations made in the charge sheet are sufficient to proceed against the petitioners for the above offences.

Failure to produce the statement of record under Section 161(3) Cr.P.C. and insisting the Court to pass order of quash on the basis of charge sheet is not acceptable for the reason that the basis for filing charge sheet is evidence collected during investigation, though the statements are not substantive piece of evidence at this stage. When the petitioner approached this Court requesting to exercise power under Section 482 Cr.P.C. he has to approach with **clean** hands by producing entire material before the Court, but instead of producing material, learned counsel requested for quashing of proceedings.

The scope of Section 482 Cr.P.C. is limited and this Court can exercise such power only to implement the order passed by the Court or to prevent abuse of process of law or to meet the ends of justice, but at this stage, this Court need not examine minute details and record its conclusion based on the material produced before the Court, which is substantive piece of evidence. In view of the law declared by the Apex Court and In view of the limited scope of powers under Section 482 Cr.P.C., at this stage, it is difficult to exercise to quash the proceedings, keeping in mind

the guidelines issued by the Apex Court in **State of Haryana v Bhajanlal**¹

laid down the following seven guidelines:

“(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 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.”

¹ 1992 Supp(1) SCC 335

So also in **Umesh Kumar v. State of Andhra Pradesh and another**², the Apex Court expressed doubt about the maintainability of the petition filed under Section 482 Cr.P.C., when the proceedings are at committal stage and held that the scope of Section 482 Cr.P.C. is well defined and inherent powers could be exercised by the High Court to give effect to an order under Cr.P.C. to prevent abuse of the process of Court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its *prima facie* satisfaction about the existence of sufficient ground for proceedings against the accused and the Court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed along with the petition labelled as evidence without being tested and proved, cannot be examined. Law does not prohibit entertaining the petition under Section 482 Cr.P.C. for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the Court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the Court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial. It is further held that proceedings at committal stage is like a still born child and cannot be quashed.

Keeping in mind, the law declared by the Apex Court in various judgments referred above and considering the allegations made in the charge sheet alone without any other material, since the statements were not produced before this Court, it is highly difficult to accept the contention

² 2013 (10) SCC 591

of learned counsel for the petitioners for quashment of proceedings. Therefore, I find no merits in the petition and the same is deserves to be dismissed at this stage.

Accordingly, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

26.07.2018
kvrn

M.SATYANARAYANA MURTHY,J

