

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.8361 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in C.C.No.727 of 2017 on the file of XIX Metropolitan Magistrate, Cyberabad, Kukatpally, against the petitioners/Accused Nos. 1 to 8, registered for the offences punishable under Sections 498(A) IPC, Sections 3 & 4 of Dowry Prohibition Act.

The second respondent/defacto complainant lodged a written report with the police on 13.01.2017 making serious allegations that, she was subjected to cruelty by these petitioners for her failure to meet the illegal demand of dowry and that the petitioners demanded additional dowry to attract offences punishable under Sections 3 & 4 of Dowry Prohibition act.

On the strength of the report lodged with the police, Crime No.40 of 2017 was lodged by the Chandanagar Police Station, Cyberabad District, registered for the offences mentioned supra and issued F.I.R.

During investigation, the Sub-Inspector of Police based on the F.I.R examined as many as four witnesses and recorded their statements under Section 161(3) Cr.P.C, and having concluded that there is *prima facie* material against these petitioners to proceed further for the offences punishable under Sections 498(A) IPC, Sections 3 & 4 of Dowry Prohibition Act, filed charge-sheet before the Magistrate. The XIX Metropolitan magistrate,

Cyberabad, Kukatpally, took cognizance against the petitioners for the offences punishable under Sections 498(A) IPC, Sections 3 & 4 of Dowry Prohibition Act. The present criminal petition is filed to quash the proceedings in C.C.No.727 of 2017 on the file of XIX Metropolitan magistrate, Cyberabad, Kukatpally, against the petitioners/Accused Nos. 1 to 8, registered for the offences punishable under Sections 498(A) IPC, Sections 3 & 4 of Dowry Prohibition Act, mainly on four grounds.

The first ground is that, the incident allegedly took place on 05.01.2017, whereas, the written report was lodged with the police on 13.01.2017, thereby, there is a delay of more than six days in lodging the report with the police. The second ground is that, on 05.01.2017, the second respondent/defacto complainant was caught red-handedly with another person (L.W.7 in the complaint) while in compromising position, thereby, lodged the report with the police as an after thought. The third ground is that, on 05.01.2017, Accused Nos. 2,3 & 4 were at Bangalore, the boarding passes issued by the concerned airport authorities, establish *prima facie* that they did not involve in the above crime, thus raised a plea of *alibi*. The fourth ground urged is that the complaint was filed by the second respondent only to harass the petitioners, on account of pendency of C.C.No.727 of 2017 on the file of XIX Metropolitan Magistrate, Cyberabad, Kukatpally, at the instance of these petitioners limited his submissions to the above grounds. Therefore, it is urged in the petition that the proceedings are liable to be quashed.

During hearing, learned counsel for the petitioners Sri K. E. Hari Prasad reiterated the contentions urged in petition and sought for quashment of the proceedings in C.C.No.727 of 2017 on the file of XIX Metropolitan Magistrate, Cyberabad, Kukatpally, based on the alleged harassment of the petitioners for the offences punishable under Sections 498(A) IPC, Sections 3 & 4 of Dowry Prohibition Act, at the instance of the defacto complainant and her paramour, so also on the plea of alibi.

In view of the specific grounds urged by the learned counsel for the petitioners during hearing, I would like to discuss each of the ground in seriatim.

The **first** ground is that the written report was lodged by the second respondent/defacto complainant with the police after six days.

As seen from the material on record, the incident of subjecting the second respondent to harassment and cruelty to meet the illegal demands of the petitioners for payment of additional dowry allegedly took place on 05.01.2017 and the complaint was lodged with the police on 13.01.2017. No doubt, there is delay in lodging the written report. But, that by itself is not a ground to quash the proceedings. If, for any reason, the prosecution failed to explain the delay during trial, it is a ground to acquit the petitioners and if, the prosecution is able to explain the delay in lodging report to the satisfaction of Court, subject to proof of commission of offence, the Court may record conviction against these petitioners after trial. Therefore, the delay in lodging report with the police is a matter of explanation during trial and at this

stage, the proceedings against these petitioners cannot be quashed on the ground of delay in lodging the report with the police.

The **second** ground is that, on 05.01.2018 itself, the second respondent/defacto complainant was caught red-handedly in compromising position with L.W-7 in the present case. Crime was registered and later filed charge sheet was registered as C.C.No.23 of 2017 before the IX Metropolitan Magistrate, Kukatpally at Miyapur, Cyberabad Commissionerate for the offence punishable under Section 497 IPC and on account of registration of crime against the second respondent/ she alleged lodged the complaint on 13.01.2017. This contention cannot be accepted, for the reason that the petitioners did not place on record any material pertaining to the calendar case for the offence punishable under Section 497 IPC on the file of IX Metropolitan Magistrate, Kukatpally at Miyapur, Cyberabad Commissionerate. Even otherwise, pendency of calendar case against these petitioners on the file of IX Metropolitan Magistrate, Kukatpally at Miyapur, Cyberabad Commissionerate, cannot form a basis for quashing the proceedings, as it depends upon the time and place of occurrence. Therefore, on this ground also, it is difficult to exercise power of this Court under Section 482 Cr.P.C to quash the proceedings against the petitioners at this stage.

The **third** ground raised before this Court is plea of *alibi*. Section 11 of the Indian Evidence Act permits the parties to adduce evidence, though not relevant to prove certain facts. Therefore, plea of *alibi* is purely a disputed question of fact and

such question cannot be accepted at this stage, while exercising power under Section 482 Cr.P.C.

According to Section 11 of the Indian Evidence Act, when facts not otherwise relevant become relevant:-- Facts not otherwise relevant are relevant --

1. if they are inconsistent with any fact in issue or relevant fact;
2. if by themselves or in connection with other facts they make the existence or non-existence of any fact in issue or relevant fact highly probable or improbable.

Therefore, the extent of improbability or probability of the petitioners' presence in Chandanagar or probability of their presence at Bangalore, can be explained by adducing evidence, though they are not relevant for deciding the real issue in this case. At best, such question can be decided only during trial, based on the evidence adduced by these petitioners or based on the facts elicited during cross-examination of the witnesses. It is a well settled law that, *Alibi* must be proved with absolute certainty (vide **Rajesh Kumar Vs. Sharamvir & Ors**¹) and burden of proof is always on the accused. (**Binay Kumar Singh v. State of Bihar**²).

Based on such contention that Accused Nos. 2 to 4 were at Bangalore on the relevant date, is not a ground to quash the proceedings, since the burden is upon the petitioners to prove that they were present elsewhere and there is improbability about their presence at the scene of offence.

¹ 1997 (4) SCC 496

² 1997 (1) SCC 283

The **fourth** ground urged before this Court is that the report was lodged by the defacto complainant only with a view to harass these petitioners. It appears from the record that there is bitter enmity between the parties to the proceedings, on account of several disputes and there are pending proceedings, both criminal and civil, including divorce, maintenance, etc. In such case, it is difficult to conclude that the complaint was lodged only to harass these petitioners on account of pending proceedings.

In the present petition, the petitioners challenged the proceedings in C.C.No.727 of 2017 on the file of XIX Metropolitan Magistrate, Cyberabad, Kukatpally, but, did not file even the statements recorded under Section 161(3) Cr.P.C during investigation and other evidence collected during investigation by the Investigating Agency, for the best reasons known to the petitioners and the basis for filing charge sheet is evidence collected during investigation, as it forms part of charge-sheet. But, insisting the Court to quash the proceedings without producing any material collected during investigation is repressible and on the basis of proforma of charge-sheet, this Court cannot exercise power under Section 482 Cr.P.C to quash the proceedings.

While deciding a petition under Section 482 Cr.P.C, the Court has to look into the allegations made in the complaint and the material, if any annexed to the complaint to find out whether the complainant made out any *prima facie* case to constitute an offence under the provisions of any penal law and this Court cannot appreciate the evidence but evaluate the material on

record, in view of the limited scope and jurisdiction of this Court under Section 482 Cr.P.C.

The power of this Court under Section 482 Cr.P.C is inherent and notwithstanding anything contained in the provisions of Cr.P.C be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under Cr.P.C, 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**³ this 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.
- (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

³ 1992 Supp. (1) SCC 335

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.

Therefore, when the allegations made in the charge sheet *prima facie* disclosed commission of an offence punishable under the provisions of the Indian Penal Code and Dowry Prohibition Act, this Court cannot exercise its inherent power to quash the proceedings.

In the present case, the allegations made in the proforma of charge-sheet without annexing copies and the evidence collected by the Investigating Agency thereto, including the statements

recorded under Section 161(3) Cr.PC, disclosing commission of offences punishable under Sections 498(A) IPC, Sections 3 & 4 of Dowry Prohibition Act, *prima facie*. Therefore, in view of my foregoing discussion, I find no ground to quash the proceedings, based on the material placed on record by the learned counsel for the petitioners and the criminal petition is liable to be dismissed.

In the result, criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

Date: 14.08.2018
SP

JUSTICE M. SATYANARAYANA MURTHY

