

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.5556 of 2011

ORDER:

Petitioners/A1 to A14 seek to quash the proceedings against them in C.C.No.73 of 2009 on the file of Judicial First Class Magistrate, Gadwal registered for the offences under Sections 498A, 504, 506 r/w 34 IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961.

2a) The complainant is the wife of A1; A2 and A4 are brothers; A3 and A5 are sisters-in-law; A6 is the mother and A7 to A14 are sisters and brothers-in-law and their children of A1.

b) Brief facts of the case are that the marriage between complainant and A1 was performed on 10.02.2008 as per Muslim rites and customs; during marriage her parents gave Rs.50,000/- cash, gold and silver ornaments worth Rs.1 lakh and other house hold articles; some time they led happy marital life in Raichur Town and thereafter, with the instigation of A2 to A14, A1 started harassing her both mentally and physically for additional dowry of Rs.60,000/- for running optical shop; the brothers of the complainant arranged the demanded amount and A1 opened optical shop in the name and style "Sufi Opticals" at Pertlaburuju, Raichur Town; thereafter, some time they lived happily; again on 08.07.2008, all the accused beat her blue and black demanding additional dowry of Rs.1 lakh and threatened if she failed to arrange the demanded amount, they will not allow her to matrimonial home and also

threatened to perform second marriage to A1; on 08.07.2008, A1 left the complainant in her parents' house at Raichur;

c) On 10.07.2008, A1 issued legal notice to the complainant to which she sent reply through her counsel; again on 14.08.2008, A1 sent another legal notice by changing the advocate; complainant sent reply to the said notice, but A1's advocate wantonly not received the same; complainant having waited for reasonable time, lodged a written complaint before the SHO, Gadwal Town PS to take necessary action against the accused but there is no response from the concerned police hence she sent a telephonic message to the Superintendent of Police, Mahabubnagar on 21.09.2008, who in turn directed the concerned SHO to take necessary steps in this regard but in vain; having no other go the complainant filed private complaint before the JFCM, Gadwal; the learned Magistrate forwarded the same to the Gadwal police to take action.

d) Basing on the said complaint, police registered Cr.No.128 of 2008 and after investigation filed charge sheet before the Judicial First Class Magistrate, Gadwal who took cognizance and registered as C.C.No.73 of 2009 for the offences under Sections 498A, 504, 506 IPC and Sections 3 and 4 of Dowry Prohibition Act.

3) Heard arguments of Sri C.Sharan Reddy, learned counsel for petitioners and learned Addl. Public Prosecutor for the State (Telangana). Sri Shafath Ahmed Khan, learned counsel filed Vakalat for 1st respondent but there is no representation.

4a) Severely fulminating the charge sheet allegations as false, motivated and retaliative, learned counsel for petitioners would strenuously argue that none of the accused had ever harassed the complainant for additional dowry or on other issues and on the other hand, complainant herself left the society of A1 and went away to her parents and filed a false complaint by roping all the relations of her husband with a wicked view to see that they are incarcerated and moved around the courts.

b) Learned counsel would further submit that A6 is the mother and A2 and A4 are brothers of A1; A3 is the wife of his brother—A2; similarly A5 is the wife of another brother—A4. The other accused are A1's sisters, brothers-in-law and their children. The brothers and sisters were married long back and leading independent lives and they have nothing to do with the marital affairs of A1 and complainant, whereas A6 is an aged lady. Thus, A2 to A14 have nothing to do with the affairs of A1 and his wife. However, all of them are roped in the criminal case on a vague and omnibus allegation that they instigated A1 to demand additional dowry and prompted him to harass the complainant which allegation on the face of it is palpably false because some of the accused are children of brothers and sisters of A1 and it is highly preposterous to allege that they too instigated A1 to demand additional dowry from the complainant and her parents. He would thus argue that the complaint allegations themselves are mischievous, motivated and bereft of truth.

Citing the decisions in *Neelu Chopra and another v. Bharti*¹ and *Geeta Mehrotra and another v. State of Uttar Pradesh and another*², learned counsel argued that a casual reference of various relations of the husband without making specific allegations will not attract the offence under Section 498-A IPC or other related offences.

c) Nextly, learned counsel argued that the charge sheet allegations even if presumed to be true, still the complaint is liable to be rejected for want of jurisdiction. In expatiation, he would submit that even as per the complaint and charge sheet allegations, the act of harassment for additional dowry, legal cruelty and the acts of intimidation etc. took place in Raichur. However, the complainant lodged report before the Gadwal Town PS within whose jurisdiction no offence took place. However, the police of Gadwal Town Ps registered a crime and investigated the same and filed charge sheet which was taken cognizance by Judicial Magistrate of First Class, Gadwal and therefore C.C.No.73 of 2009 is not maintainable for want of jurisdiction. In this regard, he relied upon the decisions in *Y.Abraham Ajith and others v. Inspector of Police, Chennai and another*³; *Bhura Ram and others v. State of Rajasthan and another*⁴ and *Geeta Mehrotra's* case (2 supra). He thus prayed to allow the petition.

5) Learned Additional Public Prosecutor opposed the petition contending that the complaint and charge sheet would squarely reveal the

¹ (2009) 10 SCC 184

² (2012) 10 SCC 741

³ (2004) 8 SCC 100

⁴ AIR 2009 SC 2666

atrocities committed by all the accused including A1 and therefore, the quash petition is not maintainable.

6) The point for consideration is:

“Whether there are merits in this petition to allow?”

7) **POINT:** I gave my anxious consideration to the material on record and the submissions of learned counsel. A careful scrutiny of complaint and charge sheet would reveal specific allegations against A.1 alone. We will find in the allegations that after marriage the complainant and A.1 lived together at Raichur town for a period of two months happily and thereafter the attitude of A.1 and his family members changed towards complainant. A.1 at the instigation of other accused started beating complainant mercilessly and he used to abuse her in filthy language on several occasions for want of additional dowry of Rs.60,000/- to run an optical shop. On the intimation of complainant, her brothers once provided an amount of Rs.60,000/- to A.1 and with that amount he opened an optical shop under the name and style “Sufi Opticals” in Petlaburju Raichur town. Thereafter, A.1 lived with complainant happily for few days. However, again on 08.07.2008 all the accused harassed complainant for additional dowry of Rs.1,00,000/- and threatened that they would allow her to live with A.1 only on fulfillment of their demand. They abused her as if she could not conceive due to her fault and if she disassociate with A.1 they would perform another marriage to him. It is further alleged that A.1 brought the complainant to her parents and left her. I gave my anxious consideration to the aforesaid allegations.

As stated supra, the main accusation is against A.1 for his ill-treating and beating complainant for additional dowry of Rs.60,000/- and unable to bear his ill-treatment, the brothers of the complainant allegedly gave him Rs.60,000/-, with which A.1 started an optical shop. No doubt in the process, a reference was made also against other accused as if on their goading A.1 ill-treated her and further, they abused her for not conceiving etc. It is pertinent to note that some of the accused in the complaint are the children of the brothers and sisters of A.1 and of them, some are even teenagers. For instance, in the complaint itself A.9 & A.10 are referred as aged 17 years and 18 years respectively. Admittedly, all the brothers and sisters of the accused are married and leading their independent life. In this backdrop, as rightly argued by learned counsel for petitioners it will be highly unbelievable that the rest of the accused instigated A.1 to ill-treat her and they also harassed her. No specific and independent overtacts are mentioned against A.2 to A.14 except alleging that all of them conjointly instigated A.1 and they also harassed her. Thus allegations on the face of it are quite unbelievable.

a) In *Neelu Chopra*'s case (1 supra), the Apex Court was dealing with the appeal in respect of a quash petition relating to the offences under Sections 406, 498-A r/w Section 114 IPC, wherein emphasizing the need for specifying the individual overtacts of each accused, it was observed thus:

***“Para 8:** It seems from the order taking cognizance that the learned Magistrate has mentioned about the version of the complainant is supported by Bhagwati and Dharampal to the fact that the*

ornaments were entrusted to Krishan Saroop and Rajesh while clothes were entrusted to Rakhee and they refused to hand over the same. Even their statements could not be better than the vague complaint. Even about the clothes, the date on which they were handed over to Rakhee who happens to be the daughter of the present appellants and the other details are very significantly absent. It was also the version of the complainant that she was beaten in support of which she has filed a certificate from AIIMS Hospital, New Delhi. However, in the complaint, it is not seen as to on which date she was beaten and by whom. It is significant to note that the matter against Rakhee, the fourth original accused has already been dropped as she was in fact not even the resident of the same house.

Para 9: *In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence.”*

The Apex Court ultimately quashed the FIR against the accused.

In *Geeta Mehrotra’s* case (2 supra) also, similar view was expressed by the Apex Court.

b) Needless to emphasize, the above rulings squarely apply to the instant case. Sofaras petitioners/A.2 to A.14 are concerned, the travesty of allegation is that, even minors were imputed for committing the offence under Section 498-A IPC. Therefore, in my considered view, continuation of criminal proceedings against them would amount to abuse of process of the Court. A.1 is concerned, he stands on a different footing in view of the *prima facie* nature of allegations levelled against him. Sofaras the

argument relating to the lack of jurisdiction is concerned, the petitioner/A.1 can approach the Trial Court.

8) In the result, this Criminal Petition is partly allowed and the proceedings in C.C.No.73 of 2009 on the file of Judicial First Class Magistrate, Gadwal, are quashed sofaras petitioners/A.2 to A.14 are concerned. Petition is dismissed as it relates to petitioner/A.1. However, liberty is given to him to approach the Trial Court and file a discharge application on the ground of jurisdiction, in which case, the Trial Court having regard to the material, shall pass an appropriate order thereon.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: 22.10.2018

Murthy/Scs

**U. DURGA PRASAD RAO, J**