

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.2642 of 2011

ORDER:

Petitioners/A1 and A7 seek to quash the proceedings against them in C.C.No.328 of 2010 on the file of XIII Additional Chief Metropolitan Magistrate (Mahila Court) at Hyderabad, which was taken cognizance for the offences under Section 498A IPC and Sections 4 and 6 of Dowry Prohibition Act, 1961.

2) A1 is the husband of *de-facto complainant*; A2 and A3 are parents; A4 and 5 are brothers and A6 and A7 are sisters of A1.

a) The private complaint filed by the complainant was referred to police under Section 156(3) Cr.P.C. by VI Additional Chief Metropolitan Magistrate, Hyderabad. Basing on the said complaint, the police of Humayun Nagar PS registered a case in Cr.No.219 of 2007 and after investigation filed charge sheet against A1 to A7. The learned Magistrate took cognizance of the same and registered as C.C.No.328 of 2010 for the offence under Section 498A IPC and Sections 4 and 6 of Dowry Prohibition Act, 1961.

b) The charge sheet allegations are that the marriage between *defacto* complainant and A1 was held on 03.04.2000 at Hospet, Karnataka State; at the time of marriage, her parents gave Rs.1,00,000/- as Ghoda Joda amount; ten tolas of gold ornaments and TVS XL Motorcycle besides Jahez articles worth Rs.1,00,000/-; they lived happily for some time and during their wedlock they blessed with one female child and thereafter, they shifted to Hyderabad and

setup family at H.No.10-3-292/4/1, City Heights, V.N.Colony, Hyderabad; as A1 is working as Teacher in Bellary, he used to visit Hyderabad every week and also during the holidays; her parents-in-law also used to visit Hyderabad frequently; while so, all the accused harassed her on the pretext that she brought meagre amount of dowry and less Jahez arties and demanded her to bring more dowry and other Jahez articles; she informed the same to her parents; subsequently A1 warned that he will give divorce if she did not fulfil the demand; so, her parents with a great difficulty arranged Rs.1,00,000/- and paid to A1; for some time the accused kept quiet and thereafter started demanding for additional dowry and harassed both physically and mentally.

Hence, the quash petition by petitioners/A1 to A7.

3) Heard arguments of Sri M.Damodar Reddy, learned counsel for petitioners and learned Additional Public Prosecutor (TS) and Sri Syed Jameel Ahmed, learned counsel for respondent No.2/ complainant.

4) Severely fulminating the charge sheet allegations, learned counsel for petitioners would submit that absolutely no case was made out against the accused for the offences under Section 498A IPC and Sections 4 & 6 of DP Act as except the self-serving statements of the complainant and her parents, no independent witnesses were examined by the police to substantiate the complainant allegations. Further, there are many variations between the complaint and charge sheet allegations on one hand and the allegations in 161 Cr.P.C statements. In expatiation, learned counsel would submit that in the complaint and charge sheet it is alleged as if the complainant and A.1 shifted

their family to Hyderabad and A.1, who was working in Bellary District used to come to Hyderabad on weekends and also during holidays and so also the other accused, who are residents of Karnataka state used to visit Hyderabad frequently and all the accused used to harass her for additional dowry. However, surprisingly in the 161 Cr.P.C statements of the complainant and her parents (LWs.1 to 3), no whisper was made about complaint and A.1 shifting their family to Hyderabad and accused visiting Hyderabad and harassing her for additional dowry. Thus the allegations in the complaint and charge sheet about accused visiting Hyderabad all the way from Karnataka and harassing her for additional dowry is a myth and concoction. Learned counsel would further argue that ever since the marriage between the complainant and A.1, they lived separately and other accused never lived with them and the question of A.2 to A.7 harassing her on one or other pretext does not arise. Learned counsel further submitted that petitioners 2 and 3 are the parents, petitioners 4 and 5 are brothers and petitioners 6 and 7 are sisters of the 1st petitioner and all of them are permanent residents of State of Karnataka and they are employed in Government Service as Teachers and therefore, question of their coming down to Hyderabad exclusively for causing dowry harassment to complainant is an unbelievable and untenable allegation and the police filed charge sheet without properly appreciating the facts. He thus prayed to quash the proceedings.

5) Learned Addl. Public Prosecutor supported the charge sheet allegations and prayed to dismiss the petition.

6) A close scrutiny of the complaint and charge sheet allegations on one hand and 161 Cr.P.C statements of LWs.1 to 3 (complainant and her parents) would show that there are some variations between them. As per the complaint and charge sheet allegations, the complainant, her husband and in-laws lived for two years at Hospet of Karnataka and later they shifted to Hyderabad and setup their family at H.No.10-3-292/4/1, City Heights, V.N.Colony, Hyderabad and her husband used to visit Hyderabad every weekend and also during holidays and her parents-in-law used to visit Hyderabad frequently and her husband and in-laws used to tease her now and then on one pretext or other stating that she brought a meagre amount and less Jahez articles. They also harassed her to bring more dowry amount and Jahez articles. Subsequently her husband warned her that he would give divorce to her if she does not fulfil his demand. Unable to bear his harassment, her parents arranged Rs.1,00,000/- and gave to A.1 with great difficulty. These are the allegations we find in complaint and charge sheet. However, when we compare those allegations with the 161 Cr.P.C statements of complainant and her parents (LWs.1 to 3), we find some of the crucial allegations missing in their 161 Cr.P.C statements. For instance, in their 161 Cr.P.C statements, the complainant and her parents stated as if A.1 was working in the Government Primary School, Adagalli of Bellary District at the time of marriage and the complainant joined him after marriage and they both resided in a rented house in Adagalli for about 3 years and she lived happily with her husband for some period and later he started beating her black and blue on simple issues and whenever his parents and sisters used to visit them or when the complainant

and her husband used to visit their house, A.1 used to blame her in front of his parents and sisters and abused her. It is alleged that her husband used to beat her in front of his family members and his acts became worse from day-to-day and he did not look after her welfare even though they were living separately. The further allegations in their 161 Cr.P.C statements are to the effect that her husband did not look after her welfare and did not allow her to talk to her parents and whenever she wanted to talk to her parents by phone, he did not provide her money and when she wrote letters, all the accused used to go through the matter and then only allowed her to post the letters. It is also further alleged that whenever the complainant used to go to her parents, A.1 was providing her charges for one way and she used to beg her parents and secure money for returning to her husband. It is also stated that sometime after marriage, A.1 was transferred to Siruguppa of Bellary and they stayed there for one year and during the year 2004, she became pregnant and at that time also A.1 did not allow her to speak to her parents and threatened her that if she go to her parents house for delivery, he would not allow her to join him again and he would give divorce and tortured her and beat her mercilessly. Knowing about her travails, her parents visited Bellary and with much persuasion brought her to Hyderabad for delivery and she gave birth to female baby on 19.10.2004. Even though the said fact was informed to all the accused, A.1 alone came for cradle ceremony. During her stay at Hyderabad, whenever she called him over phone, he did not talk with her and he was threatening that he had given Thalaq to her and no relationship existed between them.

7) Therefore, there is any amount of contrast between the charge sheet and the allegations in 161 Cr.P.C statements. The glaring difference is that as per charge sheet the complainant and her husband shifted their family to Hyderabad and all the accused visited Hyderabad frequently and harassed her for additional dowry. This fact is conspicuously absent in the 161 Cr.P.C statements. So also the allegation of her parents giving Rs.1,00,000/- to A.1 as mentioned in the charge sheet is absent in the 161 Cr.P.C statements.

8) So on a conspectus of the entire material, the admitted facts are that since after marriage A.1 and complainant lived separately from other accused at Hospet. It is also an admitted fact that the brothers and sisters of A.1 are married persons and they are having their independent families. Further, all the brothers and sisters of A.1 are teachers and residing in different places in Bellary and Raichur Districts. So in this backdrop even if it is presumed that complainant and A.1 setup their family at Hyderabad, it is highly unbelievable that A.2 to A.7 frequently visited Hyderabad all the way from Karnataka to harass the complainant. So in my considered view, the allegations against A.2 to A.7 are quite unbelievable and not supported by any acceptable material. Even the self-serving statements of complainant and her parents do not shed any reliable material to sustain the charges under Sections 498A IPC and 4 & 6 of DP Act against petitioners/A.2 to A.7. Therefore, continuation of criminal proceedings against them would amount to abuse of process of the Court. However, so far as A.1 is concerned, there is a *prima facie* material against him as he allegedly inflicted cruelty and caused harassment to the complainant for additional dowry.

9) In the result, this Criminal Petition is partly allowed and the proceedings in C.C.No.328 of 2010 on the file of XIII Additional Chief Metropolitan Magistrate (Mahila Court) at Hyderabad are quashed insofar as petitioners/A.2 to A.7. However, the proceedings against petitioner/A.1 shall continue.

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

U. DURGA PRASAD RAO, J

Dated: 04.10.2018
Murthy/Scs

