

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.9941 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in Crime No.41 of 2018 of Pochampalli Police Station, registered for the offences punishable under Section 498-A read with 34 IPC and Section 4 of the Dowry Prohibition Act.

The petitioners are A1 to A6, who are husband, and relatives of the 2nd respondent/*de facto* complainant.

The 2nd respondent/*de facto* complainant lodged written report on 11.04.2018 specifically alleging that on 17.02.2017 her marriage was performed with the 1st petitioner as per Hindu Rites and Customs in the presence of elders and on the date of marriage her parents paid Rs.10 lakhs as dowry besides presentation of 15 tolas of gold jewellery and that they lived happily for two months and thereafter, her husband started demanding additional dowry of Rs.5 lakhs and used to beat her on the pretext that he intends to do business and her in-laws, Lalitha and Lalaiah, sister-in-law – Alivelu @ Sandhya, sister-in-law's husband Sudeer Kumar and Goverdhan, brother of the 1st petitioner jointly for her failure to meet the illegal demand of additional dowry, both physically and mentally. While so on 26.02.2018, the mother-in-law of the 2nd respondent picked up quarrel and dropped her at her parents house since then she is staying at her parents' house and the 2nd respondent stated that she is 8th month pregnant. The 2nd respondent also alleged that in the month of December, 2017 when she was subjected to cruelty for her failure to meet the illegal demand for additional dowry, she lodged report with the police and thereafter, panchayat was also held and in the said panchayat, the petitioners agreed to look after her properly, but they committed breach of

promise and subjected the 2nd respondent to cruelty. On the basis of the written report lodged by the 2nd respondent, the police registered the above crime and issued FIR.

The present petition is filed on the ground that the 4th and 5th petitioners are living separately and that the 4th petitioner, who is sister-in-law of the 2nd respondent was married and living in the same village in different house, the question of subjecting the 2nd respondent to cruelty does not arise by the 4th and 5th respondents. It is also contended that there are no specific allegations against each of the petitioner and in the absence of allegations based on the omnibus allegations, the investigation cannot be preceded since the police will not get jurisdiction based on omnibus allegations. It is also contended that the 1st petitioner got issued notice to the 2nd respondent to restore the matrimonial tie, but after receiving notice, the present complaint was lodged as an after thought to wreck vengeance against the petitioners and bring them to her terms and requested to quash the proceedings.

During hearing, at the stage of admission, learned counsel for the petitioners reiterated the grounds urged in the petition mainly stressing that in the absence of any specific details as to the dates of demand of additional dowry and subjected to cruelty, based on the omnibus allegations or parrot type of allegations, the Court cannot permit the police to investigate into such offences and requested to quash the proceedings.

It is undisputed fact that the 2nd respondent lodged written report on 11.04.2018 making omnibus allegations against the petitioners, but the specific allegation made against her husband and mother-in-law is that they picked up quarrel and her husband directed his mother to drop the 2nd respondent at her parents' house on 26.02.2018 as she failed to meet the illegal demand of payment of dowry. In the earlier complaint lodged by the

2nd respondent the same allegations were made that she was subjected to cruelty by the petitioners to bring additional dowry. FIR is only information about commission of cognizable offence to the police to set the criminal law into motion and it need not contain minute details since it is not an encyclopedia of facts. Therefore, failure to make specific allegation against each of the petitioners in the written report lodged with the police, the Court cannot quash the proceedings when the investigation is not yet commenced.

To get the jurisdiction to the Station House Officer, to investigate into the allegations, the complaint must disclose the commission of cognizable offence. If the Station House Officer concludes that the commission of cognizable offence was committed by the petitioners registered FIR, the investigating agency can start investigation based on FIR registered on the basis of the report lodged by the 2nd respondent. The offences allegedly committed by the petitioners are cognizable offences and therefore, on the ground that the complaint is bereft of specific allegations, the proceedings at this stage cannot be quashed.

The power of this Court under Section 482 Cr.P.C. can be exercised in exceptional circumstances and this Court can exercise such power to implement the orders passed under the Code to prevent the abuse of process of the Court or to secure the ends of justice. Keeping in view the scope of the power of this Court under Section 482 Cr.P.C., 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*

¹ 1992 Supp(1) SCC 335

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."

As per Guideline No.4, if the complaint/report lodged with the police discloses commission of cognizable offence, the Court cannot quash the proceedings. Here, the allegations made in the complaint discloses the commission of cognizable offence and therefore, based on the contention that the allegations in the complaint are not specific, the proceedings against the petitioners cannot be quashed.

The Apex Court in **State of Orissa v. Saroj Kumar Sahoo**² held that the inherent powers under Section 482 Cr.P.C. should not be exercised by the High Court to stifle a legitimate prosecution, when the facts are incomplete and hazy before the Court and no evidence is collected as on date more particularly when the investigation is at foetus stage.

² (2005) 13 SCC 540

Similarly in ***Kurukshetra University v. State Of Haryana***³, the Apex Court took a serious view about quashing the proceedings by the High Court while exercising power under Section 482 Cr.P.C and observed as follows:

“It surprises, us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Cr.P.C, it could quash a First Information Report. The police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the F.I.R. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.”

In view of the law declared by the Apex Court, when the investigation is not yet commenced except registration of crime against the petitioners based on the contentions that the allegations are not specific in the complaint, the Court cannot exercise power under Section 482 Cr.P.C. to quash the proceedings since the FIR is only an information to the police in the commission of cognizable offence. Applying the principles laid down in the above judgments of the Apex Court to the present facts of the case, the proceedings against the petitioners cannot be quashed.

In the result, the criminal petition is dismissed.

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

M.SATYANARAYANA MURTHY,J

19.09.2018
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³ AIR 1977 SC 2229