

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.7652 AND 9774 OF 2017

COMMON ORDER:

These two petitions are filed by accused Nos.4, 1, 2 3 and 5 respectively under Section 482 Cr.P.C. to quash the proceedings in P.R.C.No.9 of 2017 on the file of the Judicial Magistrate of First Class, at Kandukur, registered for the offences punishable under Sections 498-A, 307 IPC read with 34 IPC and Sections 3 and 4 of Dowry Prohibition Act.

The second respondent in both the petitions is the *de facto* complainant. She lodged report with the police at Kandukur Town Police Station alleging that her marriage was performed on 27.04.2016 at Ongole in PLR Kalyana Mandapam, at the time of marriage her parents gave rupees fifty lakhs in cash, 200 tulas of gold and rupees twenty lakhs worth property as dowry. The property was registered in the name of the *de facto* complainant. After marriage, she joined with her husband at Kandukur and during their wedlock, she became pregnant and after conceiving, her husband demanded Audi Car. Her father agreed to purchase the car as demanded by her husband A1. On 13.05.2016 her husband and mother-in-law, took her to Apollo Hospital in Nellore for medical examination i.e. confirmation of pregnancy but forced her to get aborted with a threat to see her end. Her husband, mother-in-law, father-in-law and one Metla Ashok Babu made her to believe that her husband is an IRS

officer, performed her marriage with him. After the marriage, they informed that he is working as PR Commissioner in Customs Department at Chennai. After marriage, she insisted her husband to set up family at Chennai, but he postponed the same and started harassing her. Her husband, mother-in-law Meena Kumari, sister-in-law Videesha and Metla Ashok Kumar subjected her to harassment both mentally and physically for her failure to meet their illegal demand of amount of rupees twenty lakhs as additional dowry and they also tried to kill the *de facto* complainant with a view to marry another girl by A1 to get more dowry. They also beat her mercilessly even without expressing any sympathy though she is pregnant during that time.

On 12.12.2016 when she was at her parents house at about 5.00 p.m., her husband, father-in-law, mother-in-law, sister-in-law and Ashok Kumar forcibly entered into their house and her husband A1 tried to stab her with knife, immediately she raised cries and on arrival of their father and mother, he ran away and left the house in a car. Thus, the petitioners subjected her to harassment for payment of dowry and made an attempt to kill her.

On the basis of the written telugu report lodged by the second respondent, the Station House Officer, Kandukur Town Police Station, registered a case in Crime No.178 of

2016 for the offences punishable under Sections 498(A), 307 read with 34 IPC and Sections 3 and 4 of Dowry Prohibition Act, and issued FIR.

On the strength of the FIR, the sub-inspector of police took up investigation, recorded the statements of 12 witnesses during investigation under Section 161(3) Cr.P.C., visited the scene of offence, examined and after completion of investigation, having concluded that there is *prima facie* material to proceed against these petitioners, filed charge sheet before the Judicial Magistrate of First class, Kandukur, for various offences stated supra against all the accused.

The fourth accused filed Criminal Petition No.7652 of 2017, A1, A2, A3 and A5 filed a separate Criminal Petition bearing No.9774 of 2017 raising two different sets of grounds to quash the proceedings by exercising power under Section 482 Cr.P.C.

The main grounds urged in the petition filed by A4 are that the evidence collected during investigation and the allegations made in the charge sheet do not constitute the offences punishable under Sections 498-A, 307 read with 34 IPC and 3 and 4 of Dowry Prohibition Act and more particularly against this petitioner-A4, no case is made out since the allegations are vague, unfounded and apart from that no specific overt acts are attributed to the petitioner except she entered into the house along with her parents and

brother. Therefore, on the basis of these vague allegations against this petitioner-A4, the proceedings cannot be continued.

It is also contended that before registering FIR, the police ought to have verified the allegations, character, conduct of the father of the second respondent and his capacity to give such huge amount of dowry when he indebted to many persons by obtaining loan. The house property said to have been given as dowry was mortgaged by the father of the second respondent to a Nationalised Bank and without discharging the loan amount, created a sham document by way of gift deed in the name of second respondent as Sthri Dhana to deprive the bank from realization of the amount. He has indebted to many persons and several money suits are pending against the father of the second respondent. Therefore, the allegation of demand for payment of additional dowry and agreement for purchase of **“Audi Car”** by the father of the second respondent, is improbable to the natural circumstances, who is heavily indebted. It is also contended that the allegation of forcing her to abort in the guise of ultra sound scanning test etc., is not based on any material. The second respondent lived for two days after the marriage with her husband and when the first accused went to Chennai to attend his employment, she was taken back to Ongole by her parents, since then she has not turned up either to join at Chennai or Nellore to lead

marital life and in such circumstances, no prudent man would accept such an allegation of harassment for her failure to meet the illegal demand of additional dowry. The second respondent with the help of her parents trying to spoil the career of this petitioner – A4 as she secured a seat in engineering in US university and her VISA was also approved. To spoil her bright future both in professional and personal career, she was roped into the false case filed under Sections 498-A, 307 read with 34 IPC and Sections 3 and 4 of Dowry Prohibition Act and it is nothing but abuse of process of Court.

Whereas, accused Nos.1, 2, 3 and 5, who filed a separate petition, raised specific contentions almost identical to the grounds urged by the petitioner-A4, who filed another petition, while drawing the attention of this court to various allegations relating to offence punishable under Sections 498-A and its consequences. Therefore, this Court need not repeat the grounds urged in the petition except a ground that a crime was registered against these petitioners for the offence under Section 307 IPC purposefully with an intent to subject the petitioners to severe harassment, and to see that they do not get bail, by abuse of process of law and thereby such proceedings against the petitioners cannot be continued, prayed to quash the proceedings against these petitioners for the offences punishable under Sections 498-A, 307 read with 34 IPC and Sections 3 and 4 of the Dowry

Prohibition Act in P.R.C.No.9 of 2017 on the file of the Court of Additional Judicial First Class Magistrate at Kandukur, Prakasam District.

During hearing, learned counsel for the petitioners contended that based on vague allegations in the complaint, the police registered a serious crime against the petitioners, who are highly placed in the society and roping the petitioner in Criminal Petition No.7652, who is an aspirant of engineering (MS) admission in US university, after obtaining VISA is nothing but an abuse of process of Court, since, their intention is to prevent her from leaving the country and therefore the respondent No.2 by abusing the process of law, harassing these petitioners and such harassment cannot be permitted while directing the petitioners to face prolonged trial for the grave offences punishable under Sections 498-A and 307 IPC and 3 and 4 of Dowry Prohibition Act. But lodging of complaint is nothing but harassment and the Court cannot encourage the parties to use the process of Court as a tool of harassment against these petitioners. He further contended that none of the allegations made in the complaint do not constitute an offence punishable under Sections 498-A, 307 read with 34 IPC and 3 and 4 of Dowry Prohibition Act and requested to allow the petition, quashing the proceedings against these petitioners for the alleged offences. He placed reliance on five judgments of the Hon'ble Apex Court reported in **Rajesh Sharma and others Vs.State of U.P. and**

another¹, Swapnil and others Vs.State of Madhya Pradesh², Ram Saran Varshney and others Vs.State of Uttar Pradesh and another³, Arnesh Kumar Vs. State of Bihar and another⁴, Preeti Gupta and another Vs. State of Jharkhand and another⁵ and Varala Bharath Kumar and another Vs. State of Telangana and another⁶. On the strength of the law declared by the Apex Court in the above judgments, he requested this Court to quash the proceedings against these petitioners for various offences referred supra.

Whereas, learned counsel for the 2nd respondent contended that the material allegations made in the Telugu written complaint lodged with the police in Kandukuru Police Station and the statements of witnesses recorded under Section 161(3) Cr.P.C. pointing out the complicity of petitioners for various offences and when the allegations are directly establishing the involvement of these petitioners, *prima facie*, the Court cannot exercise the power under Section 482 Cr.P.C. to quash the proceedings and such disputed question can be decided only after full fledged trial and at this stage, this Court cannot quash the proceedings against the petitioners and requested to dismiss both the petitions.

¹ 2017(2) ALD (Crl.) 568 SC

² (2014) 13 Supreme Court Cases 567

³ (2016) 3 Supreme Court Cases 724

⁴ (2014) 8 Supreme Court Cases 273

⁵ (2010) 7 Supreme Court Cases 667

⁶ (2017) 9 Supreme Court Cases 413

Considering the above contentions and perusing the material on record, the point that arises for consideration is:

“Whether the allegations made in the charge sheet if accepted on its face value, would constitute the offences punishable under Sections 498-A, 307 read with 34 IPC and 3 and 4 of the Dowry Prohibition Act in P.R.C.No.9 of 2017 on the file of the Court of Additional Judicial First Class Magistrate, Kandukur, Prakasam District, if not whether the proceedings against these petitioners are liable to be quashed by exercising inherent jurisdiction under Section 482 Cr.P.C.?”

POINT:

Section 482 of Cr.P.C states the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It is an obvious proposition that when a Court has authority to make an order, it must have also power to carry that order into effect. If an order can lawfully be made, it must be carried out; otherwise it would be useless to make it. The authority of the Court exists for the advancement of justice, and if any attempt is made to abuse that authority so as to produce injustice, the Court must have power to prevent that abuse. In the absence of such power, the administration of law would fail to serve the purpose for which alone the Court exists, namely to promote justice and to prevent injustice. Section 482 of Cr.P.C confers no new powers but

merely safeguards existing powers possessed by the High Court. Such power has to be exercised sparingly in exceptional cases and this power is external in nature to meet the ends of justice.

To give effect to any order under Code means, the first class of order, which the section embraces are orders that may be necessary to give effect to any order under this Court. When a Court has authority to make an order, it must also have the power to carry out the order into effect. The power to enforce obedience to the mandates of the Court necessarily springs from the very existence of the authority to issue the mandates and, if that power is not expressly given by the statute, it must be deemed to be inherent in the Court, vide **Emperor v. Sukhdeo**⁷.

To prevent abuse of the process of any Court, the authority of the Court exists for the advancement of justice, and if any attempt is made to abuse that authority, so as to produce injustice, the Court must have power to prevent that abuse. In the absence of such power the administration of law would fail to serve the purpose for which alone the Court exists, namely, to promote justice and to prevent injustice. It would be an abuse in the process of the Court to allow a suitor to litigate over again the same question which has been already decided against him. The High Court would, in the exercise of its inherent jurisdiction, reject an application for

⁷ 1930 Lah 465 31 Cr LJ 482

the transfer of a criminal case, where such an application based upon the same facts had already been refused. The words “process” is a general word meaning, in effect, anything done by the Court. In exercise of the powers under this section the High Court would be justified to quash the proceedings if it finds that the institution or continuance of criminal proceedings amounts to abuse of the process of the Court or if quashing of those proceedings would otherwise secure the ends of justice. Where there is no material before the Magistrate on the basis of which he can issue process against the accused to stand trial, it will be gross abuse of the process of the Court if the accused is put to trial, hence the proceedings should be quashed at the threshold. Similarly, where it is not shown that there is any abuse of process of the Court, the proceeding will not be quashed. The jurisdiction of the High Court in quashing the complaint or the first information report is very limited. The High Court is justified in quashing the complaint when no offence is made out on the allegations made in the complaint or the documents accompanying it per se.

The basis for registration of FIR is the telugu written report lodged by the second respondent with Kandukur Town Police Station dated 13.02.2016. The specific allegations made in the telugu written complaint disclose that A1 the first petitioner, Korimerla Meena Kumari/mother-in-law(A2) made an attempt to abort the pregnancy of the *de facto*

complainant and when she was necked out from the house and stayed with her parents at Ongole, on 12.12.2016 at about 5.00 p.m., her husband, mother-in-law, father-in-law, sister-in-law Videesha – A4(petitioner in Criminal Petition No.7652 of 2017) and the maternal uncle of A1, by name, Metla Ashok Kumar – 4th petitioner in Criminal Petition No.9774 of 2017, highhandedly trespassed into their house and her husband made an attempt to stab her. Immediately, she raised cries and on hearing cries, her parents, who are staying in the adjacent room came there and on their arrival, the petitioners left the house of her parents. The complaint also discloses that they demanded for payment of additional dowry of rupees twenty lakhs besides demand of Audi Car and causing physical and mental harassment, more particularly, causing injuries with ropes by the petitioners *prima facie* pointing out the complicity of these petitioners for the offences punishable under Sections 498-A, 307 read with 34 IPC and 3 and 4 of Dowry Prohibition Act. Even if the allegations in the complaint though incomplete, it cannot be the sole basis for proceeding against these petitioners but it is only the information to the police about commission of the cognizable offence, to set the criminal law into motion to conduct investigation. Therefore, the allegations made in the FIR alone cannot form the basis for proceeding further in the PRC at present.

On the basis of FIR, the Sub-Inspector of Police took up investigation, examined as many as 12 witnesses. L.W.1 the second respondent herein is the prime witness in the incident. She being a victim stated to the police about the harassment meted out by her in the hands of the petitioner for her failure to meet the illegal demand of additional dowry and Audi Car besides the dowry given at the time of marriage including presentation of gold etc., and so also the attempt made by the petitioners to kill her on 12.12.2016 at about 5.00 p.m. This statement is supported by the statement of her mother and father Davuluri Ramesh and Latha. But they are not eye witnesses to the incident of subjecting her to harassment both physically and mentally or to the alleged attempt to kill her by these petitioners while she was staying at her in-laws house in Nellore and they received information from L.W.1 the second respondent herein, about the harassment she suffered in the hands of these petitioners for her failure to meet the illegal demand for payment of dowry. The incident that occurred at Kandukur was also not witnessed by them, however, they heard cries of their daughter the second respondent L.W.1 when her husband allegedly made an attempt to kill her by causing stab injury and at the same time, all the petitioners high-handedly entered into the house, her husband alone made an attempt to kill her, then she raised cries, therefore, they are not direct witnesses to the incident either at Nellore or at Kandukur,

but they received information about the harassment, the second respondent suffered in the hands of these petitioners and witnessed the fleeing of these petitioners after the second respondent raised cries when her husband made an attempt to kill her. Similarly, L.Ws.4 and 5 the neighbours of L.Ws.2 and 3 supported the evidence of L.W.1 with regard to the attempt made by A1 husband of the second respondent, the first petitioner in Criminal Petition No.9774 of 2017, and they fled away from the house of L.Ws.2 and 3, therefore, they are not the direct witnesses to the incident. They received information about the harassment suffered by L.W.1 the second respondent for her failure to meet the illegal demand of payment of dowry by her parents as demanded by the petitioners and at the same time, as per the law declared by Apex Court in the Judgments referred supra, the duty of the Court while deciding the petitions under Section 482 Cr.P.C. is to verify the allegations made in the charge sheet and find out whether those allegations are sufficient to constitute any offence and this Court cannot take into consideration of the defence set up by the petitioners in a petition filed under Section 482 Cr.P.C., in view of the law declared by the Hon'ble Apex Court in **Mrs. Dhanalakshmi vs. R. Prasanna Kumar & Ors.**⁸; **Ganesh Narayan Hegde vs. S. Bangarappa**

⁸ AIR 1990 SC 494

**& Ors.⁹; and M/s Zandu Pharmaceutical Works Ltd. & Ors.
vs. Md. Sharaful Haque & Ors.¹⁰**

In “***State of Haryana v. Bhajan Lal***¹¹” the Apex Court considered in detail the powers of High Court under Section 482 Cr.P.C. 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 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.

⁹ (1995) 4 SCC 41

¹⁰ AIR 2005 SC 9

¹¹ 1992 Supp (1) SCC 335

(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.

If these principles are applied to the present facts of the case, the duty of the Court to verify the allegations made in the charge sheet, which includes the statements recorded by the police during investigation and other material evidence collected during investigation. Since the statements recorded under Section 161(3) Cr.P.C. forms part of the charge sheet in view of the judgment of Apex Court in **State of Himachala Pradesh Vs. Priti Chand** wherein, held as follows: “the power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinize the FIR/charge-Sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter and decide whether the allegations constitute the

offence. It must be remembered the FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is conducted and the charge-sheet is laid the prosecution produces the statements of the witnesses recorded under Section 161 Cr.P.C in support of the charge-sheet. At that stage it is not the function of the Court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The Court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence, on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out no further act could be done except to quash the charge sheet. But only in exceptional cases, i.e. in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance process of criminal is availed of in laying a complaint or FIR itself does not disclose at all any cognizable offence - the court may embark upon the consideration thereof and exercise the power.”

Thus, in view of the law declared by the Apex Court in **“State of H.P. v. Pirthi Chand”** (referred supra) unless the Court come to a conclusion that the averments in the charge sheet and the statements of witnesses on the record in

support thereof whether Court could take cognizance of the offence on that evidence and proceed further with the trial, if, it reaches a conclusion that no cognizable offence is made out, no further act could be done except to quash the proceedings.

As discussed above, the prime duty of the Court is to verify the allegations made in the charge sheet and the statements of witnesses recorded by the investigating agency during investigation, the statements produced before the Court, more particularly statements recorded under Section 161(3) Cr.P.C. which forms part of the charge-sheet. Though, such statement recorded under Section 161(3) Cr.P.C is not a substantive piece of evidence, it can be used only for limited purpose of contradicting the witness under Indian Evidence Act. However, this Court is competent to deduce its conclusion on the statements recorded under Section 161(3) Cr.P.C during investigation, though not a substantive piece of evidence.

Keeping in mind the principles laid down in the above judgment, it is the duty of the Court to verify the contents of the charge sheet, whether those allegations are sufficient to constitute *prima facie* offence punishable under Section 498-A IPC and this Court cannot appreciate the evidence at the stage but it can evaluate the material on record and this Court cannot take into consideration of any additional

documents filed along with the petition except the documents filed along with the charge sheet filed by the investigating agency. The Apex Court in **State of Himachal Pradesh Vs. Priti Chand**, ordinarily the High Court will not allow the documents produced by the petitioner under Section 482 Cr.P.C. the Court cannot permit them, which cannot be termed as evidence for being decided and proved. While exercising jurisdiction under Section 482 Cr.P.C., it is impermissible to look into the material produced and the acceptance of which is essentially a matter for consideration for trial. But public documents are materials which are beyond the suspicion and relied on by the accused can be taken into consideration by the High Court while exercising the power under Section 482 Cr.P.C. vide **Umesh Kumar Vs. State of A.P.**¹²

Thus, in view of the law declared by the Apex Court and other High Courts, the Court cannot look into the documents filed along with the petition except the public documents which are beyond suspicion can be taken into consideration.

Keeping in mind the principles laid down in the above judgments, I would like to examine the allegations made in the complaint while ignoring the material produced before this Court by the counsel for the petitioners, i.e. charge sheet in C.C.No.887 of 2017, FIR in Crime No.461 of 2016 of Nellore

¹² Air 2014 SC 1106

Police Station, FIR and complaint in Crime No.120 of 2008 and other material filed along with USR No.58559 of 2018 dated 10.08.2018.

In the facts of the case as discussed above, the allegations both made in the telugu written complaint lodged with the police and the statements of the witnesses recorded by the police during investigation under Section 161(3) Cr.P.C. directly pointing out the complicity of these petitioners for the offences punishable under Sections 498-A, 307 read with 34 IPC and 3 and 4 of Dowry Prohibition Act but too vague.

Coming to the case of prosecution for the offences under Sections 3 and 4 of Dowry prohibition Act, the alleged payment of dowry of Rs.50.00 lakhs cash and presentation of gold of 200 tulas and registration of property in the name of the second respondent took place at the time of marriage, i.e. on 27.04.2016 and the later act of demanding for Audi Car etc. would constitute an offence under Sections 3 and 4 of Dowry Prohibition Act. The complaint was lodged before the Magistrate on 13.12.2016, whereas the first incident of payment of dowry would attract the offence punishable under Section 3 of Dowry Prohibition Act, took place on 27.04.2016. Section 3 of Dowry Prohibition Act deals with punishment for payment of dowry and for receiving of dowry. Such complaint shall be lodged with the police within one year, according to

Rule 5 (c) of the rules framed by the High Court under the Act known as A.P. Dowry Prohibition Rules, 1998, every complaint under the rules shall be made by aggrieved party itself or any person on behalf of aggrieved party, the place of trial or enquiry shall be from the place where the complainant is residing. Any complaint shall be made either on the demand of dowry or accepting dowry within a period of one year. The acceptance of dowry of Rs.50.00 lakhs, gold of 200 tulas etc., was allegedly on 27.04.2016. As per the allegations made in the complaint and the charge sheet including the statements of witnesses recorded under Section 161(3) Cr.P.C. and when the complainant wants to complain against the petitioner about the commission of offence punishable under Section 3 of Dowry Prohibition Act, such complaint must be lodged within one year in view of Rule 5(c) read with Rule 10, which prescribed the limitation for filing complaint and its finalization. According to Rule 10, any offence under Section 3 and 4 or any dispute under Section 6 of the Act, shall be filed before expiry of one year and the same shall be finalized within two years from the date of filing. Here, the offence punishable under Section 3 of Dowry Prohibition Act allegedly occurred on 27.04.2016 when the petitioners received dowry as defined under Section 2 of the Act but the complaint was lodged after expiry of more than one year eight months, therefore, the proceedings for the offence punishable under Section 3 of the Act are liable to be

quashed, on the ground of violation of Rule 5(c) and Rule 10 of rules framed by the High Court under the Dowry Prohibition Act.

Coming to the offence punishable under Section 4 of the Dowry Prohibition Act, the petitioner conceived in the month of May 2016 and she was allegedly taken to Apollo Hospital and forced her to abort. After she conceived, her husband A1 demanded for Audi Car without specifying the date of alleged demand. Even assuming for a moment, immediately after she conceived such demand was made, the complaint is barred in view of Rule 5(c) read with Rule 10 of A.P.Dowry Prohibition Rules, since the complaint was lodged almost after one year seven months. The other allegation made against all the petitioners is that she was subjected to cruelty for her failure to meet illegal demand of additional dowry of Rs.20.00 lakhs, both physical and mental with a view to kill her. But no specific details are mentioned as to the exact date, time and place of occurrence except making a vague allegation against these petitioners for the offence under Section 4 of Dowry Prohibition Act. But in the statements recorded by the police under Section 161(3) Cr.P.C., L.W.1 the victim woman stated that all these petitioners while she was carrying pregnancy, subjected her to cruelty by beating her indiscriminately. Such act may attract an offence punishable under Section 4 of Dowry Prohibition Act, but the allegations are absolutely vague without disclosing the date, time and place of

occurrence of commission of such offence. Therefore, based on such vague allegations, the Court would normally exercise power to quash the proceedings. In **Ramsaran Varshey and others Vs. State of U.P. and others**¹³ in **Swapnil and others** referred supra, the apex Court quashed the proceedings on the ground that the allegations are vague and bereft of details as to the place and time of incident. The principles are directly applicable to the present facts of case as the charge sheet is bereft of details.

In **Preeti Gupta and another Vs. State of Jharkhand and another** (referred supra) the Apex Court on an occasion deal with similar circumstances and high lighted the powers of the Court under Section 482 Cr.P.C. The facts of the case are that A1 is a permanent resident of Navasari, Surat, Gujarat and has been living with her husband for more than seven years. Similarly, A2 is a permanent resident of Goregaon, Maharashtra. They have never visited the place where the alleged incident had taken place and they never lived with the second respondent and her husband and thereby, their implication in the complaint is meant to harass and humiliate the husband's relatives. This seems to be the only basis to file the complaint against the appellants. Permitting the complainant to pursue the complaint would be an abuse of process of Court and the Court further observed that when the complaint was filed with an oblique motive and

¹³ (2016) 3 SCC 724

at the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern. When the accused were living at a different place, their implication and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

The Apex Court also highlighted the ultimate object of justice and is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The Courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinized with great care and circumspection while exercising the power under Section 482 Cr.P.C. The experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a

matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of an amicable settlement altogether. The process of suffering is extremely long and painful. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. While making such observations, the Court quashed the proceedings against the petitioners but this position is of no sustenance to the present facts of the case, for the reason, the accused 1 and 2 therein are residing at different places with the husband after their marriage and there is no possibility of frequent visit of the scene of offence. The vague allegations made in the complaint are not sufficient to proceed with the trial against these petitioners for the serious offences punishable under

Sections 498-A IPC and 3 and 4 of Dowry Prohibition Act. Since the very object of Section 498-A IPC is laudable to punish the husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the State of Objects and Reasons of the Act 46 of 1983. But the 'cruelty' under Section 498-A covers conduct which may drive the women to commit suicide or to cause grave injury or danger to life, limb or health(whether mental or physical) of the woman etc., and in view of pendency of increasing such offences, the Apex Court in *Rajesh Sharma and others Vs. State of U.P.* and another(stated 1 supra) laid down certain guidelines. Of course, these guidelines to certain extent were reversed by the Apex Court in recent decision in **Social Action Forum For Manav Adhikar and others Vs. Union of India**¹⁴ and this judgment is also not applicable to the present facts of the case relied on by the learned counsel for the petitioners. Whereas, in *Varala Bharath Kumar and another Vs. State of Telangana and another* (stated 6 supra), the Apex Court had an occasion to deal with an identical issue, where allegations were made in the FIR/the complaint or the outcome of investigation as found in the charge sheet, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out the case against the accused; where the allegations do not

¹⁴ 2018(30 L.S.31(SC)

disclose the ingredients of the offence alleged; where the uncontroverted allegations made in the first information report or complaint and the material collected in support of the same do not disclose the commission of offence alleged and make out a case against the accused; the court can exercise power under Article 226 of the Constitution of India or under Section 482 of the Code of Criminal Procedure may be exercised. The records at hand could not disclose any willful conduct which is of such a nature as is likely to drive the complainant to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the complainant. So also, there is nothing on record to show that there was a demand of dowry by the appellants or any of their relatives, either prior to the marriage, during the marriage or after the marriage. The record also does not disclose anywhere that the husband of the complainant acted, with a view to coerce her or any person related to her to meet any unlawful demand of any property or valuable security. In the absence of specific allegations, the Court cannot encourage the parties to harass the husband or the relative of the husband of a woman by lodging criminal complaints implicating them into grave criminal offences.

Similarly, in Swapnil and others Vs. State of Madhya Pradesh (referred supra) the Apex Court had an occasion to discuss about the procedure to be followed under Section 482 Cr.P.C. to quash the proceedings in the complaint registered

for the offences under Sections 498-A and 506 IPC. When the allegations are vague and bereft of the details as to the place and the time of the incident, the proceedings are liable to be quashed. The principle laid down in Swapnil and others' case (referred supra) is squarely applies to the present facts of the case since the allegations made in the complaint, the statements of the witnesses recorded under Section 161(3) Cr.P.C. and the report lodged with the police did not disclose the date, time and place of occurrence i.e. demand of payment of dowry and subjecting her cruelty for her failure to meet the demand for payment of additional dowry. In the absence of such details, the Court can exercise the power under Section 482 Cr.P.C. and quash the proceedings.

Turning to the object and purpose of incorporating section 498-A, in **Bhaskar Lal Sharma and another v. Monica and others**¹⁵ the Apex Court considered what amounts to cruelty and ingredients of Section 498-A in para 29 and proof of an offence punishable under Section 498-A I.P.C. In para 37 of the judgment, the Supreme Court held as follows:

“Ex facie no case has been made out under Section 498A of the IPC so far as the appellants are concerned. The allegations relating to the place where the marriage took place has nothing to do with an offence under Section 498A of the IPC. Allegations that appellant No.2 kicked the respondent with her leg and told her that her mother to be a liar may make out some other offence but not the one punishable under Section 498A. Similarly her allegations

¹⁵ (2014) 3 Supreme Court Cases 383

that the appellant No.2 poisoned the ears of her son against the respondent; she gave two used lady suits of her daughter to the complainant and has been given perpetual sermons to the complainant could not be said to be offences punishable under Section 498A. Even threatening that her son may be divorced for the second time could not bring out the offence under Section 498A of the IPC.”

But the facts of the present case though different and in the absence of specific allegations, the cruelty in connection with demand of dowry, the offences punishable under Section 498-A cannot be accepted. More over, the Apex Court in **Sushil Kumar Sharma vs. Union of India & Ors**¹⁶ reiterated the object of Section 498-A holding that the object of which Section 498-A was introduced is ample, reflected in statements and objects and reasons while enacting the criminal law second amendment and in paragraphs 10 & 19 of the said judgment, the Supreme Court held as follows:

"10. The object for which Section 498-A IPC was introduced is amply reflected in the Statement of Objects and Reasons while enacting the Criminal Law (Second Amendment) Act 46 of 1983. As clearly stated therein the increase in the number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the work of the Dowry Prohibition Act, 1961. In some cases, cruelty of the husband and the relatives of the husband which culminate in suicide by or murder of the helpless woman concerned, constitute only a small fraction involving such cruelty. Therefore, it was proposed to amend IPC, the Code of Criminal Procedure, 1973 (in short "CrPC") and the Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married women by the husband, in-laws and relatives. The avowed object is to combat the menace of dowry death and cruelty.

19. The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused

¹⁶ (2005) 6 SCC 281

does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreak personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the courts have to take care of the situation within the existing framework. As noted above the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed.

In paragraph 40 in **Bhaskarlal Sharma's** case, the Supreme Court discussed about quashability of the case by relying on **Bhajanlal's** case held as follows:

"The jurisdiction of the High Court to quash an order of summoning and/or a criminal proceeding as also this Court are well known. The parties have relied upon the decisions of this Court in State of Haryana vs. Bhajan Lal [1992 (Supp.) 1 SCC 335]. We may notice the categories 1, 3, 5 and 7 mentioned in Para 102 of the said decision, which are as under:

"(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.

(3) Where the uncontroverted 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.

(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.

(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."

In **Pashaura Singh v. State of Punjab and another**¹⁷, the Supreme Court held that subjecting woman to cruelty by husband and his relatives and in the absence of proof of demand of dowry or harassment by accused, High Court found that only allegation made in FIR was the appellant-

¹⁷ (2010) 11 Supreme Court Cases 749

accused and his family members started harassing appellant's wife for not bringing more dowry. But there was no demand for dowry, nor was there any specific entrustment of dowry articles to accused as alleged in FIR and held that offence under Section 498-A is not made out.

There are two parallel lines of judgment in the law declared by the Apex Court. One view is that the Court must construe the act of Cruelty liberally so as to achieve the object of the incorporation of Section 498-A IPC. The other view of decision is that the Court must strictly construe the word 'cruelty' and in the absence of specific allegations and when the complaint or charge sheet are bereft of details like date, time and place of harassment, the Court can exercise its power and quash the proceedings.

In the present facts of the case, all the petitioners allegedly subjected the second respondent to cruelty without specific details regarding date, time and place of offence but based on vague allegations both in the complaint and in the statements recorded under Section 161 (3) Cr.P.C. proceedings against them is nothing but subjecting the petitioners to harassment using the criminal law as a tool of harassment. Therefore, the allegations made in the complaint and the evidence collected are too vague and on the basis of such vague allegations, the Court cannot proceed against these petitioners and the proceedings cannot be continued by

applying the principle laid down in Swapnil and others case(referred supra).

In view of the law declared by the Apex Court, it is clear that in the absence of any details, based on vague allegations both in the complaint and the charge sheet, the proceedings against these petitioners for the offences punishable under Sections 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act shall not be continued and this Court can exercise power under Section 482 Cr.P.C. to avoid unjust harassment of these petitioners by applying the guidelines laid down by the Apex Court in Bhajanlal's case (referred supra). Accordingly, proceedings against the petitioners in Crl.P.No.9774 of 2017 for the offences punishable under Sections 498-A IPC and 3 and 4 of Dowry Prohibition Act are quashed, as the allegations made in the charge sheet even if accepting on its face value do not constitute offences punishable under Section 498-A IPC and 3 and 4 of Dowry Prohibition Act, and that apart the complaint was filed beyond one year as required under Rule 5(c) read with Rule 10 of A.P. Dowry Prohibition Rules framed under the Act.

Coming to the other offence alleged against the petitioner, i.e., punishable under Section 307 IPC. The allegations in the complaint and as well as in the statements of the witnesses recorded by the police during investigation are clear that on 12.12.2016 the first accused, husband of

the *de facto* complainant-second respondent herein, at about 5.00 p.m., along with other accused came to the house of the parents of the second respondent and A1 the first petitioner in CrI.P.No.9774 of 2017 made an attempt to stab her with a view to kill her. If this allegation is accepted as true on its face value, it would constitute an offence punishable under Section 307 IPC since making of an attempt to stab with an intention to kill a person constitute an offence *prima facie* punishable under Section 307 IPC. Whereas the complaint or charge sheet is bereft of any allegations to constitute an offence under Section 307 IPC against accused 2 to 5, the petitioners 2, 3 and 5 in Criminal Petition No.9774 and A4 the petitioner in Criminal Petition No.7652 of 2017.

It is not the case of the second respondent that the petitioners are jointly and severally liable and they conspired together to commit the murder of the second respondent. When A1 alone made such an attempt in the absence of common intention to invoke Section 34 IPC, and joint and several liability under Section 149 IPC, the proceedings against the other petitioners - A2, A3, A4 and A5 cannot be continued for the offence punishable under Section 307 IPC. Therefore, taking into consideration the facts and circumstances of the case, accepting the allegations made in the complaint and charge sheet including the statements recorded under Section 161(3) Cr.P.C., it is difficult to conclude that there is *prima facie* material to proceed against

A2 to A5 for the offence punishable under Section 307 IPC. But the charge sheet disclosed prima facie case against the first petitioner in Criminal Petition No.9774 of 2017.

Hence, I find that it is a fit case to quash the proceedings against A2, 3 and 5, the petitioners 2, 3 and 5 in Criminal Petition No.9774 of 2017 and sole petitioner A4 in Criminal Petition No.7652 of 2017 by exercising power under Section 482 Cr.P.C. and in view of the principles laid down in the judgments referred supra.

In view of my foregoing discussion, the proceedings against the petitioners in both the petitions – A2, A3, A4, A5 (2nd, 3rd and 4th petitioners in Criminal Petition No.9774 of 2017) and the sole petitioner in Criminal Petition No.7652 of 2017 for the offence punishable under Sections 498(A), 307 IPC and Sections 3 and 4 of Dowry Prohibition Act are hereby quashed in P.R.C.No.9 of 2017 pending on the file of the Court of Additional Judicial Magistrate of First Class, Kandukur, Prakasam District, while permitting the magistrate to proceed against A1 the first petitioner in Criminal Petition No.9774 of 2017 for the offence punishable under Section 307 IPC only.

Accordingly, the Criminal Petition No.7652 of 2017 is allowed and Criminal Petition No.9774 of 2017 is partly allowed quashing the proceedings in P.R.C.No.9 of 2017 on the file of the Court of Additional Judicial Magistrate of First

Class, Kandukur, Prakasam District, against all the petitioners for the offences punishable under Sections 498-A IPC and 3 and 4 of Dowry Prohibition Act, the proceedings against A2 to 5 for the offence punishable under Section 307 of IPC. The proceedings against the first petitioner (A1) in Criminal Petition No.9774 of 2017 are concerned, the Magistrate is hereby directed to proceed further for the offence punishable under Section 307 IPC only.

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

M. SATYANARAYANA MURTHY, J

Date: 12.10.2018
Rns

