

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.10271 of 2018

ORDER:

The sole accused, in C.C.No.301 of 2017 on the file of Additional Junior Civil Judge, Chirala, Prakasam District, filed this petition, under Section 482 Cr.P.C, to quash the proceedings registered for the offences punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act.

The marriage of respondent No.2 – de facto complainant was performed on 29.04.2017 with the petitioner; at the time of marriage, her parents paid Rs.3.00 lakhs, presented 3 sovereigns gold and other house-hold articles as pasupukumkuma; after marriage, on the first night itself, the petitioner came in inebriated state and informed that he is unable to perform sexual act and demanded to lead marital life with the person with whom he directed and demanded to pay additional dowry of Rs.5.00 lakhs; when she refused, he harassed both physically and mentally by beating; thereafter, she informed the incident to her mother and senior maternal aunt who, inturn, informed to the village elders and agreed to settle the dispute; however, no purpose was served; therefore, she lodged a report dated 02.06.2017 with Chirala Rural Police Station; the said report was registered as Crime No.47 of 2017 for the offences punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act and issued First Information Report.

On the strength of FIR, the Sub-Inspector of Police took up investigation and recorded statements of LWs.1 to 7 under Section

161(3) Cr.P.C. On the basis of statements of witnesses recorded by the police, and other evidence collected during investigation, concluded that there is *prima facie* case to proceed against petitioner, who is working as CISF constable at Kerala State, and filed charge sheet for the offences punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act.

The present petition is filed, under Section 482 Cr.P.C, on the ground that, none of the allegations, made in the charge sheet, do not constitute offence, under Sections 3 and 4 of the Dowry Prohibition Act or under Section 498-A IPC, subjecting respondent No.2 to cruelty for her failure to meet the illegal demand does not arise as marriage was not yet consummated by the date of the alleged incident; therefore, based on the inconsistent allegations made in the FIR, the police registered case against the petitioner, investigated into the offence and filed charge sheet without any basis; apart from that, the amount, if any, paid was towards pasupukumkuma, and not as dowry, and requested to quash the proceedings.

During hearing, Sri S.A.Razak, learned counsel for the petitioner, would contend that none of the allegations constitute any of the offence and the allegations are absurd and suffering from inherent improbabilities as they never lived as wife and husband except performing marriage, and it was not consummated as on the date of the incident; therefore, in the absence of any material collected, pointing out the complicity of the petitioner, the proceedings against him cannot be continued since it amounts to

abuse of process of Court; and requested to quash the proceedings against the petitioner.

Learned Public Prosecutor appearing for the State of Andhra Pradesh supported the petition.

The marriage between the petitioner and respondent No.2 is not in dispute and non-consummation of marriage is also not in dispute. The very basis for registration of crime and issuing FIR is written in the report of respondent No.2 dated 01.06.2017 making serious allegations that the petitioner demanded for payment of additional dowry of Rs.5.00 lakhs to lead marital life while expressing his inability to perform sexual act and insisting her to lead marital life with whom he directed; when she refused for the proposal to meet the illegal demand, he abused her and harassed her both physically and mentally; and threatened to see her end in case it is disclosed to anyone. She also alleged, in the complaint, that at the time of marriage, an amount of Rs.3.00 lakhs was given as dowry besides presentation of 3 sovereigns of gold and other household articles. The same is reflected in the statements filed along with charge sheet. The contention of the counsel for the petitioner is that the amount paid, at the time of marriage, was towards pasupukumkuma and not towards dowry. Therefore, it would not constitute the offence punishable under Section 3 of the Dowry Prohibition Act.

Section 2 of the Dowry Prohibition Act defined the word 'dowry': "dowry" means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before 2[or any time after the marriage] 3[in connection with the marriage of the said parties, but does not include] dower or *mahr* in the case of persons to whom the Muslim Personal Law (*Shariat*) applies.

The explanation thereto explained what is Valuable Security. According to it, the valuable security as defined under Section 30 of the Indian Penal Code (45 of 1860). Therefore, the wider meaning of word 'dowry' includes every amount paid. The definition of 'dowry' given in Section 2 of the Act would show that the term is defined comprehensively to include properties of all sorts as it takes within its fold "**any property or valuable security**" given or agreed to be given in connection with marriage either directly or indirectly (**Bachni Devi v. State of Haryana**¹). Similarly in **Ashok Kumar v. State of Haryana**², the Supreme Court held that 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly by one party to another, by parents of either party to each other or any other person, at, before or at any time after the marriage and in connection with the marriage of the said parties but does not include dower or *mahr* under the Muslim Personal Law.

Thus, it is clear from the wider definition of dowry under Section 2. It includes everything. Therefore, payment of Rs.3.00 lakhs as *pasukumkumka* , as allegedly complained in the charge sheet, would fall within the definition of dowry within Section 2 of the Dowry Prohibition Act.

¹ AIR 2011 SC 1098

² 2010 (7) Scale 30

Section 3 prescribes Penalty for giving or taking dowry. If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable 6[with imprisonment for a term which shall not be less than 7[five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more]:

Similarly, Section 4 prescribes penalty for demanding dowry. Here, the allegations made in the complaint and charge sheet are specific that, at the time of marriage, her parents paid Rs.3.00 lakhs, presented 3 sovereigns gold and house-hold articles as pasupukumkuma and, on the first night itself, the petitioner allegedly demanded Rs.5.00 lakhs to lead marital life in a drunken state. The payment of Rs.3.00 lakhs as pasupukumkuma, presented by the parents of the *de facto* complainant, would embarrass the definition of dowry and, such receipt of dowry would fall within the ambit of Section 3, and demanding payment of Rs.5.00 lakhs on the first night after the marriage even without consummation of marriage would, *prima facie*, constitute an offence under Section 4 of the Dowry Prohibition Act.

As per Rule 5(c) and Rule 10 of the A.P. Rules framed under the Dowry Prohibition Act such complaint, for the offences punishable under Sections 3 and 4 of the Dowry Prohibition Act, shall be filed within a year from the date of marriage or occurrence and such cases have to be disposed of within two years. In the present case, marriage took place on 29.04.2017 and the complaint was lodged on 01.06.2017 i.e. within two months from the date of

marriage as prescribed under Rules 5(c) and 10 of the A.P. Rules under the Dowry Prohibition Act. Therefore, it is within time.

The other offence allegedly committed is that subjected respondent No.2 to cruelty, both physically and mentally, for her failure to meet illegal demand of dowry would constitute an offence punishable under Section 498-A IPC.

The very basis for filing charge sheet before the Magistrate is the evidence collected during investigation, including statements of witnesses recorded during investigation under Section 161 (3) Cr.P.C. But, for the reasons best known to the petitioner, he did not file the material collected during investigation including statements of witnesses, under Section 161 (3) Cr.P.C., to verify and find out whether any prima facie material is available on record to constitute the offence punishable under Section 498-A IPC. The statements are the basis for filing the charge sheet. The statements of witnesses under Section 161 (3) Cr.P.C. form part of charge sheet. This Court can exercise its power in rarest of rare cases, it cannot be used to stifle the legitimate prosecution, the only requirement is verification of the allegations made in the charge sheet to find out whether the allegations on their face value constitute offence punishable under the penal provisions of any Act. The test to be applied by the Court is whether uncontroverted allegations made in the complaint would establish any offence.

In **State of Himachal Pradesh v. Pirthi Chand**, the Apex Court held that the power of the High Court is an exceptional one. Great care should be taken by the High Court before the embarking

to scrutinise 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 whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognisable offence. After the investigation is conducted and the charge-sheet is laid the prosecution produces the statements of the witnesses recorded under [Section 161](#) of the Code 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 witness 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 cognisable 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.

It is evident from the law declared by the Supreme Court in **State of Himachal Pradesh v. Pirthi Chand** that statements of witnesses under Section 161(3) Cr.P.C. would form part of the charge

sheet and it is the very basis for filing charge sheet for arriving at such conclusion that the petitioner committed cognisable offence, for one reason or the other. Those statements of witnesses recorded under Section 161 (3) Cr.P.C. are not placed on record and thereby disabled this Court to verify the allegations made in the statements recorded under Section 161 Cr.P.C. to find out whether those allegations are sufficient to proceed against the petitioner and those allegations prima facie constitute the offence punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act.

The power of this Court under Section 498-A IPC is limited and this Court can exercise inherent power to implement the orders passed under the Code to prevent abuse of process or to secure ends of justice. Keeping in view the scope of Section 482 Cr.P.C., the Apex Court in **State of Haryana v. Bhajanlal**³ laid down the following 7 guidelines to exercise power under Section 482 Cr.P.C.

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 F.I.R. 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 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.
4. Where, the allegations in the F.I.R. 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.

³ AIR 1992 SC 604

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.

But the present case did not fall within any of the guidelines to exercise power under Section 482 Cr.P.C. Since no woman would venture to lodge the report within two months against her husband except in extraordinary circumstances when the petitioner expressed his inability to perform sexual act and demanded to lead marital life with whom he directed is atrocity against a newly married woman and it is nothing but a sadistic pleasure, if it is true. Therefore, it is difficult to apply guideline No.3 of Bhajanlal's case (3 supra) to the present facts of the case. Hence, this Court is not inclined to exercise power under Section 482 Cr.P.C., and, consequently, the petition is liable to be dismissed at the admission stage.

In the result, the Criminal Petition is dismissed.

Miscellaneous petitions, if any, pending, shall stand closed.

M.SATYANARAYANA MURTHY,J

Dt:27.09.2018
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