

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.15141 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioners/A2 to A6 seek to quash the proceedings against them in C.C.No.66 of 2013 on the file of IV Additional Judicial First Class Magistrate, Kakinada. This petition was filed also on behalf of A1 but later the same was dismissed as withdrawn against him by order dated 19.12.2013.

2) The *defacto* complainant is the wife of A1; A2 and A3 are parents and A4 and A6 are the sister and brother of A1 and A5 is the husband of A4.

a) The complaint allegations are that the marriage between *defacto* complainant and A1 was performed on 14.08.2010 at Kakinada as per Hindu customs and rites; during the marriage, her parents gave Rs.4 lakhs towards dowry as against the demand of Rs.10 lakhs; apart from that her father agreed to give two storied building situated at Gold Market Centre at Kakinada and to that extent he executed a Will also; after marriage, she joined the matrimonial home at Samalkota; from the first day onwards all the accused demanded for the additional dowry of Rs.6 lakhs and harassed her both mentally and physically and on one occasion they tried to kill her by pouring petrol; while so, A1 shifted the family to Hyderabad where he demanded to sell the house which was gifted by her father and bring the money to purchase a house in

Hyderabad; twelve months before the complaint, A1 left the complainant in her parents' house and gave a warning that unless and until they pay the additional dowry of Rs.6 lakhs, complainant will not be permitted to enter the house.

b) Basing on the said complaint, the police of III Town (Law and Order) PS, Kakinada registered a case in Cr.No.109 of 2012 and after investigation filed charge sheet which was taken cognizance by learned IV Additional Judicial First Class Magistrate, Kakinada and registered as C.C.No.66 of 2013 for the offence under Section 498A IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961.

Hence, the instant quash petition.

3) Heard arguments of Sri Ashok Talla, learned counsel for petitioners/A2 to A6, Sri A.Hari Prasad Reddy, learned counsel for respondent No.2/complainant and learned Additional Public Prosecutor (AP) for respondent No.1.

4a) Severely fulminating the charge sheet allegations, learned counsel for petitioners/A2 to A6 would argue that all the allegations in the complaint and charge sheet are false to the core only to rope the petitioners without their fault. He would submit petitioners have never demanded complainant for additional dowry or harassed her and such allegations are only myth and concoction. Learned counsel would submit, for few days after marriage the complainant and A1 resided with other accused at Samalkota and later they left to Hyderabad where A1

was doing job. At Hyderabad, the complainant behaved in a mad and eccentric manner without cooperating with A1 in the conjugal life and other household activities and due to her mental abrasion and abnormal behaviour, A1 suffered a lot and then A1 and other accused came to know that the parents of complainant performed her marriage concealing her mental illness. He would submit that other accused never telephoned nor goaded A1 to harass her for additional dowry of Rs.6 lakhs and other paraphernalia. On the other hand, the parents of complainant used to pester A1 to leave his job at Hyderabad as Development Officer in LIC and come back to Kakinada as illatum son-in-law which was refused by A1 on that, the father of complainant bore grudge against him and took back his daughter to Kakinada. The efforts made by A1 and other accused to bring back the complainant to the matrimonial home did not fructify and ultimately unable to bear the mental cruelty meted out by the complainant, A1 filed divorce application DOP No.217 of 2015 on the file of III Additional Senior Civil Judge, Kakinada and after a hot contest, the said Court having held that complainant herein treated her husband with cruelty and deserted him for more than 3 years, allowed divorce petition and granted decree of divorce on 18.01.2018. Learned counsel thus submitted that the above order is a clear manifestation of how the complainant lodged police report with all false and untenable allegations besides causing unbearable cruelty to her husband.

b) Sofaras petitioners/A2 to A6 are concerned, learned counsel would argue the allegations against them are two fold. Firstly, that while the complainant stayed at Samalkota for a short stint, they harassed her for dowry of Rs.6 lakhs and secondly that on the grouse she did not meet their demand, once they attempted to kill her by pouring petrol and setting fire. However, neither the complainant nor her parents gave any report to the police against the alleged atrocious act. Surprisingly, in the lawyer's notice dated 04.11.2011 got issued by the complainant to A1, she did not make even whisper of alleged attempt to kill her by the petitioners. In the chief affidavit of complainant filed in O.P.No.217 of 2015 also she did not make any averment with regard to alleged attempt made by petitioners on her life. All this would show that she intentionally tried to rope all the petitioners including the married sister and her husband in the criminal case to bring them down to her dictates. Learned counsel thus argued that the allegation that the petitioners tried to kill by pouring petrol on the ground that she did not meet the demand for additional dowry of Rs.6 lakhs is an utter falsehood and on the other hand, the facts would show that she lived in her matrimonial home at Samalkota for few days and later the complainant went along with A1 to Hyderabad to lead conjugal life where none of the petitioners/A2 to A6 went and resided with them and they had absolutely no concern with complainant and A1. From Hyderabad the complainant was taken away by her father to Kakinada where at present she is residing. Hence, he argued, the facts would unmistakably show the petitioners/A2 to A6

have never had any occasion to meet her with cruelty. Though they lived apart from her during the relevant period, she purposefully roped them in criminal case. Learned counsel placed reliance on the judgment of the Apex Court in *Preeti Gupta and others vs. State of Jharkhand and others*¹.

5) In oppugnation, learned counsel for 2nd respondent/complainant would argue that at the time of marriage, all the accused demanded dowry of Rs.10 lakhs apart from gold and other paraphernalia, but the father of the complainant could give only Rs.4 lakhs as dowry and therefore, since after marriage when the complainant stepped into her in-laws house at Samalkota, they started harassing her intensely for the balance dowry amount of Rs.6 lakhs and when she failed to bring the said amount from her parents, they even tried to kill her by pouring petrol. She informed this fact to her parents but no action was taken considering her future marital life. Learned counsel further argued that even though the complainant went to Hyderabad with A1 to lead conjugal life, petitioners/A2 to A6 used to prompt A1 to demand her for the balance amount of Rs.6 lakhs and harassed her on that count and made her life a hell and finally unable to bear his torture, her father took her back to Kakinada. The cruelty meted out by all the accused is writ large in the statements of witnesses in this case. He thus prayed to dismiss the petition.

¹ AIR 2010 SC 3363 = (2010) 7 SCC 667

6) The point for determination is:

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

7) **POINT**: It should be noted that in this petition we are concerned with the allegations and evidence relating to petitioners/A2 to A6 alone as the petition in respect of A1 was already withdrawn. Admittedly, the marriage between A1 and complainant was held on 14.08.2010. The complainant and her parents are residents of Kakinada, whereas the parents of A1 are residents of Samalkota. Even some time prior to marriage A1 has been residing at Hyderabad on account of his job where he is working as Development Officer in LIC. The complaint and charge sheet allegations so far as petitioners/A2 to A6 are concerned, when after marriage, the complainant resided in her in-laws house at Samalkota for short duration, petitioners/A2 to A6 demanded her to bring the remaining dowry amount of Rs.6 lakhs and in that regard they caused her mental and physical cruelty. Further, once they tried to kill her by pouring petrol on her and she bore the torture to preserve her marital relationship with A1. The other accusation against petitioners/A2 to A6 is that some time thereafter when she went to Hyderabad along with A1 for leading conjugal life, petitioners/A2 to A6 used to telephone and abuse her and they used to goad A1 to demand the balance dowry amount and beat her. Listening their words A1 used to beat her and did not provide food and raiment. These are the main allegations against petitioners/A2 to A6 as we find in complaint and charge sheet.

8) However, when we peruse 161 Cr.P.C. statements of witnesses and also the other material, we will find a different picture. LWs.1 to 3 are the complainant and her parents. They no doubt, stated in their 161 Cr.P.C. statements in tune with complaint. However, the version of independent witnesses as depicted in their statements is quite different. For instance, LW7—Elisetty Narasimha Murthy stated that after marriage complainant and A1 stayed at Samalkota for few days and went away and thereafter some disputes arose between them at Hyderabad. He further stated that while staying at Samalkota both complainant and A1 were living amicably. LW8—A.Veera Babu who is the neighbour of accused at Samalkota, also gave a statement in similar lines stating that while residing at Samalkota, A1 and complainant lived happily without any disputes. LW9—A.Laxminarayana, LW10—B.Harikrishna and LW11—N.Suryanarana gave statements in same manner. Their statements would *prima facie* show that while staying at Samalkota A1 and complainant lived happily. Therefore, the allegation that while complainant stayed at Samalkota, petitioners/A2 to A6 harassed her for dowry and tried to kill her appears to be highly doubtful. This doubt further intensifies due to subsequent events. The complainant got issued legal notice dated 04.11.2011 through her counsel at Kakinada to A1 demanding him to take her back from her parents and live with her by setting up family. In the said notice, she narrated about the harassment allegedly meted out by the accused. However, surprisingly she did not make a whisper about the attempt

allegedly made by petitioners/A2 to A6 on her life at Samalkota. Surely she would not miss this ghastly incident if it were true. Not only that, in her chief affidavit in O.P.No.217 of 2015 also she did not make any mention about such attempt made by accused to kill her. In the cross-examination in O.P.No.217 of 2015 she stated as if she informed about the said incident to her parents immediately and they lodged a report in II Town PS (Mahila Police Station), Kakinada. She went to the extent of saying that she filed the report into the Court. However, she did not file the said report as can be seen from the judgment in O.P.No.217 of 2015 a copy of which is filed along with material papers.

9) All these facts and circumstances create a genuine doubt about the veracity of allegations levelled by the complainant against petitioners/A2 to A6 in the complaint and charge sheet. It is not out of place to mention here that in the judgment in O.P.No.217 of 2015, the III Senior Civil Judge, Kakinada made an observation that the complainant herein has mentioned false allegations in C.C.No.66 of 2013 which were not mentioned in her notice (Ex.A4). The learned Judge found her guilty of desertion and cruelty towards A1 and granted decree of divorce. So, the allegations of cruelty said to be meted out at Samalkota have no intrinsic truth. So far as the harassment at Hyderabad is concerned, it is nobody's case that petitioners/A2 to A6 physically went to Hyderabad to harass her. As already stated supra, we are not concerned with A1 in this petition. The allegation that petitioners/A2 to

A6 made phone calls and incited A1 to harass her also do not stand to scrutiny as no material is placed along with charge sheet to that effect.

10) So, on a conspectus of entire material on record, one can only come to a logical conclusion that the complaint tried to rope the petitioners/A2 to A6 without any tangible cause.

11) In **Preeti Gupta**'s case (1 supra), the Apex Court observed that:

*“To find out truth in matrimonial cases it becomes a herculean task and the tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth and 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 Court further observed that 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 said allegations of the complaint are required to be scrutinized with great care and circumspection. Present case appears to be one of such instance. Though in a quash petition the High Court is not expected to make a roaming enquiry about the facts and evidence sought to be adduced during trial, still the Court cannot shut its eyes against those facts where criminal proceedings were manifestly attended with mala fide and with an ulterior motive as observed by Apex Court in **State of Haryana and others vs. Bhajan Lal and others**².*

The case on hand appears to be similar.

² 1992 Supp. (1) SCC 335

12) In the light of above discussion, this Criminal Petition is allowed and proceedings in C.C.No.66 of 2013 on the file of IV Additional Judicial First Class Magistrate, Kakinada are quashed against the petitioners/A2 to A6.

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

U. DURGA PRASAD RAO, J

Date: 12.11.2018
Murthy

