

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION Nos. 15709 OF 2016 AND 4948 OF 2018

COMMON ORDER:

Criminal Petition No. 15709 of 2016 is filed by the petitioner-accused No. 4 and Criminal Petition No. 4948 of 2018 is filed by the petitioners-accused Nos. 2 and 3 to quash the proceedings against them in P.R.C.No. 14 of 2018 on the file of the Court of Judicial I Class Magistrate, Jammalamadugu (for short, 'the Court below'), registered for the offences punishable under Sections 498-A, 307, 417, 406 and 354-C read with Section 34 of IPC, Sections 3 and 4 of Dowry Prohibition Act and Section 67-A of I.T. Act.

2. *De facto* complainant-respondent No. 2 in both the petitions is the wife of accused No. 1 and daughter-in-law of accused Nos. 2 and 3. Respondent No. 2 lodged a written complaint with police on 14-07-2016 making serious allegations against the accused about subjecting her to cruelty for her failure to meet their illegal demand for payment of additional dowry and that all the accused made an attempt to kill her while she was staying with her parents. On the basis of the above complaint, the police registered a case in crime No. 163 of 2016, issued FIR and took up investigation. During the course of investigation, the police examined as many as 17 witnesses and recorded their statements under Section 161 (3) of Cr.P.C. On the basis of evidence collected during investigation, charge sheet is filed against the accused for the offences referred *supra* having concluded that there is *prima facie* material to proceed against them and in turn the Court below, having concluded that the offence punishable under Section 307 of IPC is exclusively triable by Court of Sessions, registered the same as P.R.C.No. 14 of 2018.

3. The contention of accused No. 4 is that she is no way related to the husband of respondent No. 2 and thereby question of her subjecting respondent No. 2 to cruelty for her failure to meet the illegal demand for payment of additional dowry does not arise and therefore continuation of proceedings against her is illegal and it amounts to subjecting her to harassment to undergo ordeal of trial and requested to quash the proceedings against her.

4. The contention of accused Nos. 2 and 3 is that the allegations made against them about subjecting respondent No. 2 to cruelty are her improved version and she falsely implicated them for the offence punishable under Section 307 of IPC and so also for the offences punishable under Sections 417, 406 and 354-C of IPC, Sections 3 and 4 of D.P. Act and Section 67-A of I.T. Act and requested to quash the proceedings against them.

5. At the hearing, Sri A.Gangaiah Naidu, learned senior counsel appearing for the petitioners-accused Nos. 2 to 4, has reiterated the contentions urged in the petitions while contending that the complaint is bereft of any allegation against the petitioners to attract the offence punishable under Section 498-A of IPC, more particularly Section 307 of IPC. Apart from that, based on vague allegations in the complaint and the statements recorded under Section 161 (3) of Cr.P.C. about demand of additional dowry and subjecting respondent No. 2 to cruelty for her failure to meet the illegal demand for payment of additional dowry, the proceedings against the petitioners for the offence punishable under Section 498-A of IPC cannot be continued and similarly, no specific role is attributed to the petitioners for the offence punishable under Section 307 of IPC and prayed to quash the proceedings against the petitioners.

6. None appeared for respondent No. 2 though notice is served.

7. As seen from the material on record, accused No. 4 is not the relative of husband of respondent No. 2 and there is no whisper either in the complaint or in the statements to constitute the offence punishable under Section 498-A of IPC. As she is not the relative of husband of respondent No. 2, question of prosecuting her for the offence punishable under Section 498-A of IPC does not arise and the allegation made in the charge sheet against accused No. 4 that she developed illicit contact with accused No. 1 would not confer any relationship between accused No. 4 and accused No. 1 and thereby proceeding against accused No. 4 for the offence punishable under Section 498-A of IPC is a grave illegality. Therefore, the proceedings against accused No. 4 for the offence punishable under Section 498-A of IPC are liable to be quashed.

8. The other offences allegedly committed by accused No. 4 are punishable under Sections 307, 417, 406 and 354-C read with Section 34 of IPC, Sections 3 and 4 of D.P. Act and Section 67-A of I.T. Act. As seen from the allegations made in the charge sheet and the compliant, accused No. 4 allegedly developed illicit contact with accused No. 1 and that accused No. 1 alone made an attempt to kill respondent No. 2. However, there is little improvement during investigation and respondent No. 2 made certain allegations against accused Nos. 2 and 3 that they also made an attempt to kill her but there is no reference about accused No. 4 to attract the offence punishable under Section 307 of IPC and apart from that, accused No. 4 did not receive any amount as dowry at the time of marriage of respondent No. 2 with accused No. 1 since she is no way concerned with the marriage and the family of accused No. 1. Therefore, question of misappropriation does not arise and thereby the allegations made in the complaint do not constitute any offence against accused No. 4 much less the

above offences. Consequently, the proceedings against accused No. 4 are liable to be quashed.

9. Learned senior counsel has contended that the allegations that accused Nos. 2 and 3 made a demand for additional dowry of Rs.5,00,000/- and received Rs.15,00,000/- as dowry besides gold, at the time of marriage and that they made an attempt to kill respondent No. 2 are baseless since the marriage itself is a love marriage and accused Nos. 2 and 3 again performed betrothal function on 06-12-2014 and marriage on 26-01-2015 at Hyderabad though the marriage was registered at Bangalore. It is also contended that the allegations that accused Nos. 2 and 3 used to harass respondent No. 2 both physically and mentally stating that they lost the opportunity of getting more dowry and valuable gifts on account of their son accused No. 1 marrying her are also false and baseless since the complaint and the statements recorded by the police during investigation did not disclose the details as to when respondent No. 2 was subjected to cruelty for her failure to meet the illegal demand for payment of additional dowry. Even assuming that the allegations made in the complaint or charge sheet are true and correct, the incident of subjecting respondent No. 2 to cruelty took place immediately after the marriage. According to Rules 5 (c) and 10 of the Rules framed under Dowry Prohibition Act, complaint has to be filed within one year from the date of such harassment. If the alleged harassment took place immediately after the marriage in the year 2015, the complaint lodged with the police on 14-07-2016 is hopelessly barred by limitation prescribed under Rules 5 (c) and 10 of the Rules framed by the State of Andhra Pradesh under Dowry Prohibition Act. Therefore, on the ground of limitation, the proceedings against accused Nos. 2 and 3 for the offence punishable under Sections 3 and 4 of Dowry Prohibition Act are liable to be quashed.

10. So far as the offence punishable under Section 498-A of IPC allegedly committed by accused Nos. 2 and 3, the complaint and the charge sheet including the statements recorded under Section 161 (3) of Cr.P.C. are bereft of details as to when and where respondent No. 2 was subjected to cruelty by accused Nos. 2 and 3 for her failure to meet their illegal demand for payment of additional dowry. In the absence of any details, based on vague and omnibus allegations, the Court cannot proceed to try accused Nos. 2 and 3 for the above offence. Therefore, the proceedings against accused Nos. 2 and 3 for the offence punishable under Section 498-A of IPC are liable to be quashed.

11. The other offences allegedly committed by accused Nos. 2 and 3 are punishable under Sections 417 and 406 of IPC. The allegations made in the complaint and the statements recorded did not disclose any details as to entrustment of amount. In the absence of any allegation that the amount was entrusted to accused Nos. 2 and 3 at the time of marriage allegedly paid as dowry and appropriation of the same by accused Nos. 2 and 3 for themselves, the proceedings against them for the above offences cannot be continued. Therefore, the proceedings against accused Nos. 2 and 3 for the offences punishable under Sections 417 and 406 of IPC are liable to be quashed.

12. Accused Nos. 2 and 3 also allegedly committed the offence punishable under Section 354-C of IPC but none of the allegations made in the complaint constitute the above offence. Therefore, the proceedings against accused Nos. 2 and 3 for the offence punishable under Section 354-C of IPC are liable to be quashed.

13. Finally, the other offences allegedly committed by accused Nos. 2 and 3 are punishable under Sections 307 of IPC and 67-A of I.T. Act. At this stage, it is relevant to advert to the complaint lodged with the police and according to it,

accused Nos. 1 to 3 came to the house of parents of respondent No. 2 in the month of May and after discussions, accused Nos. 2 and 3 left the house and accused No. 1 alone stayed with respondent No. 2; that while respondent No. 2 was sleeping in bed room, accused No. 1 started searching for pen drive and memory card and that on noticing the same, respondent No. 2 woke up and immediately accused No. 1 strangled her with a wire and on the impression that she died, he left the house. Even if these allegations are accepted, accused No. 1 alone made an attempt to kill respondent No. 2 and searched for memory card and pen drive after his parents left the house. However, respondent No. 2 improved her version during investigation and implicated accused Nos. 2 and 3 alleging that they also attempted to kill her along with accused No. 1. When the presence of accused Nos. 2 and 3 is excluded in the initial complaint lodged with the police, implication of accused Nos. 2 and 3 during investigation is nothing but an attempt made to wreak vengeance against them using criminal law as a tool to harass them. Keeping in mind the power of this Court under Section 482 Cr.P.C., the Apex Court in **State of Haryana Vs. Bhajanlal**¹ laid down seven guidelines which are as follows:

- "(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.

¹ 1992 Supp. (1) SCC 335

- (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."*

The 7th guideline is squarely applicable to the present facts of the case which clearly says that when complaint is lodged with a view to wreak vengeance to settle personal scores, this Court can exercise power under Section 482 of Cr.P.C. Applying guideline No. 7 to the present facts of the case, the proceedings against accused Nos. 2 and 3 for the offences punishable under Sections 307 of IPC and 67-A of I.T. Act are liable to be quashed.

14. In view of my foregoing discussion, I find no *prima facie* material against the petitioners-accused Nos. 2 to 4 to proceed against them for the offences punishable under Sections 498-A, 307, 417, 406 and 354-C read with Section 34 of IPC, Sections 3 and 4 of Dowry Prohibition Act and Section 67-A of I.T. Act and the proceedings are liable to be quashed.

15. The Criminal Petitions are accordingly allowed quashing the proceedings against the petitioners-accused Nos. 2 to 4 in P.R.C.No. 14 of 2018 on the file of the Court of Judicial I Class Magistrate, Jammalamadugu. Pending miscellaneous petitions, if any, shall stand closed in consequence.

Date: 26-09-2018.

M.SATYANARAYANA MURTHY, J.

JSK

