

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.15854 of 2016

ORDER

This petition is filed under Section 482 Cr.P.C., to quash the proceedings against the petitioner/A2 in C.C.No.20 of 2016 pending on the file of III Additional Judicial Magistrate of First Class, Chittoor, for the offences punishable under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, 1961, on various grounds.

2. The 1st respondent – T.V.Vyshnavi lodged a report with the police on 31.12.2015 alleging that her marriage was performed with A1 on 27.08.2015, but he is an impotent and she was not happy with him as she was not having happy marital life since the date of her marriage and further to cover up and suppress his impotency, he used to find fault with the 1st respondent and in the habit of picking up quarrel for each and every petty reason and harassed her physically and mentally. Like wise, she made certain allegations against A1, husband of the 1st respondent and she also alleged that her parents paid dowry at the time of marriage along with gold and silver articles etc. and that her husband demanding for additional dowry and that when she failed to meet the illegal demand of additional dowry, she was subjected to cruelty.

3. On the strength of the report, the police registered a case in Crime No.23 of 2015 against A1, for the offence punishable under Section 498-A IPC and Section 4 of the

Dowry Prohibition Act. Later took up investigation and examined six witnesses and recorded their statements under Section 161 Cr.P.C. and after completion of investigation filed charge sheet before the Magistrate, who took the cognizance against the accused as stated above.

4. The main contention before this Court is that there was absolutely no allegation against this petitioner, who is brother of the husband of the *de facto* complainant, the 1st respondent herein. The petitioner is working as software engineer at Bangalore and nothing to do with the affairs of A1. Therefore, the petitioner/A2 cannot be roped with the said offences and even otherwise, there was absolutely no allegation in the entire complaint that he subjected her to cruelty for her failure to meet the illegal demand of payment of dowry to attract the above offence.

5. Learned counsel for the petitioner submitted that the petitioner is residing at a distant place i.e. at Bangalore as software engineer and discharging his duties. In the absence of any specific allegation in the charge sheet based on omnibus allegations, the Court cannot take cognizance and requested to quash the proceedings.

6. Though the 1st respondent made appearance, did not represent the matter.

7. Learned Additional Public Prosecutor for the State of Andhra Pradesh would draw the attention of this Court to the specific allegation made in the charge sheet at para 4 against the petitioner along with A1. So also the statement of the 1st

respondent recorded under Section 161 Cr.P.C. during investigation on 31.12.2015 to contend that when there is sufficient material to proceed against the petitioner, the proceedings against the petitioner cannot be quashed and prayed for dismissal of the criminal petition.

8. The scope of jurisdiction under Section 482 Cr.P.C. is limited. Section 482 Cr.P.C. saves the inherent powers of 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 any order, it must have also power to carry that order into effect. In 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.

9. The essential object of the criminal law is to protect society against criminals and law breakers. For this purpose, the law holds out threats of punishments to prospective law breakers as well as attempts to make the actual offenders suffer with prescribed punishment for the offences they committed and at the same time, the procedure is intended to

protect the innocent people from unlawful prosecutions at the threshold itself, to avoid peril of facing trial. Thus, Sections 482 Cr.P.C. vests unbridled power on the Courts to exercise its jurisdiction to give effect to an order under the Code or to prevent abuse of the process of Court or to otherwise secure the ends of justice. The Code also controls and regulates the working of the machinery set up for the investigation and trial of offences. On the one hand, it has to give adequately wide powers to make the investigation and adjudicatory processes strong, effective and efficient, and on the other hand, it has to take precautions against errors of judgment and human failures and to provide safeguards against probable abuse of powers by the police or judicial officers. This often involves a “nice balancing of conflicting considerations, a delicate weighing of opposing claims clamouring for recognition and the extremely difficult task of deciding which of them should predominate.” Thus, the Code obviously conferred power under Section 482 Cr.P.C. to quash the proceedings in crime by conferring inherent power on the High Courts of all the States being higher Court of the State.

10. Keeping in mind the scope of inherent jurisdiction of this Court under Section 482 Cr.P.C., the Apex Court laid down seven guidelines to exercise inherent jurisdiction under Section 482 Cr.P.C. in a leading case ***State of Haryana v. Bhajan Lal***¹. At the stage of deciding a petition under Section

¹ 1992 Supp. (1) SCC 335

482 Cr.P.C., the Court is required to evaluate the evidence on record, but cannot appreciate evidence.

11. In view of law declared by the Court, I would like to advert to the allegations made in the complaint. The complaint is totally bereft of any specific allegation against the petitioner/A2 by the 1st respondent. During investigation, the statements of victim and other witnesses were recorded under Section 161 Cr.P.C. The 1st respondent in her statement specifically stated about the role of the petitioner subjecting her to cruelty. Therefore, conveniently, learned counsel for the petitioner, for one reason or the other, did not produce the statement of the 1st respondent recorded by the police during investigation under Section 161 Cr.P.C., which is part and parcel of the charge sheet and thereby deprived this Court to verify the statements recorded by the police i.e. L.Ws. 2 to 6, who are (1) V.Dhanalakshmi, (2) V.Karuna, (3) R.D.Venkateshan, (4) K.S.Prabhakar and (5) K.Rajkumar, who spoke about the incriminating circumstances against the petitioner. Therefore, in the absence of entire charge sheet before the Court, it is difficult to quash the proceedings in exercise of power under Section 482 Cr.P.C.

12. Apart from that, the allegations made in the charge sheet in last para of page No.1 are clear that the parents of the 1st respondent presented 55 sovereigns of gold ornaments and paid cash of Rs.25,000/- for bridegroom clothes, Rs.1,25,000/- worth silver ornaments to A1 on the specific demand of A1 and A2 and that the marriage was performed in

a very grand manner and several gifts and household articles were also presented at the time of marriage. After the marriage, as per custom, the 1st respondent went to the house of A1 and lead marital life for about three days. From the date of joining with A1 at Bangalore, A1 is an impotent and the 1st respondent not having happy married life and that to cover up and suppress impotency, A1 used to suspect her fidelity and also harassed her physically and mentally for getting additional dowry. A1 and A2 are in the habit of picking up quarrel for each and every petty reason, even for cooking food. The 1st respondent was made to receive orders from A1 and A2 and without their consent, she was not allowed to feel free in any of the household matters. The petitioner and A1 collectively harassed the 1st respondent mentally and physically and subjected her to cruelty by insulting and suspecting her fidelity.

13. The above specific allegations would disclosed that the petitioner and A1 subjected the 1st respondent both mentally and physically, *prima facie*, whether any specific allegation is made in the statements recorded by the police during investigation under Section 161 Cr.P.C. is not known since they were not placed on record along with the petition for perusal of this Court, though it is a part of charge sheet.

14. Though the contention of learned counsel for the petitioner is that there was no reference about the petitioner in the report lodged with the police, the same cannot be accepted for the simple reason that FIR is only an intimation

to the police about commission of cognizable offence and it need not contain minute details and its evidentiary value is limited. Therefore, due to absence of any specific allegation against the petitioner in the report lodged, this Court cannot exercise inherent jurisdiction under Section 482 Cr.P.C to quash the proceedings. At best, this Court is required to evaluate the allegations made in the charge sheet and the documents filed along with the charge sheet in compliance of Section 173 Cr.P.C. and decide whether any *prima facie* case is made out against the petitioner. But the petitioner did not produce any material along with the charge sheet enabling this Court to verify and evaluate the evidence available on record obviously for different reasons. In such a case, it is difficult for this Court to conclude that no case is made out against the petitioner and the alleged stay of the petitioner at Bangalore in connection with his employment as software engineer is not supported by any material *prima facie*.

15. Accordingly, the criminal petition is dismissed leaving it open to the petitioner to raise all such contentions during trial.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

M. SATYANARAYANA MURTHY, J

03.01.2018
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