

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION Nos.10647 and 10712 of 2017

COMMON ORDER:

The criminal petition No.10647 of 2017 is filed by the petitioners/accused Nos.1 and 3 and criminal petition No.10712 of 2017 is filed by the petitioner/accused No.2 under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in S.C.No.223 of 2016 on the file of the Principal Senior Civil Judge – cum – Assistant Sessions Judge, Kadapa, registered for the offences punishable under Sections 498-A, 307, 377, 406 read with 34 of Indian Penal Code (for short "I.P.C.") and under Sections 3 and 4 of Dowry Prohibition Act.

The allegations in both the petitions are identical; hence it is expedient to decide both the petitions by common order.

The respondent No.2 is the defacto complainant, who filed private complaint before the Magistrate alleging that she is the eldest daughter, whereas Abhinava Varma is the second son. She did B.Tech. at Bangalore and working Software Company. On 05.02.2015 her marriage was celebrated with accused No.2 at Sri Raja Rajeswari Kalyanamandapam, Madras Road, Kadapa as per Hindus rites and customs. All the accused demanded 100 tolas of gold and Rs.20,00,000/- cash as dowry to perform the marriage. Her parents expressed their inability to meet the heavy demand of dowry and fixed 75 tolas of gold, Rs.10,00,000/- cash, Rs.5,00,000/- worth gold as marriage customary ornaments to Accused No.2. and Rs.1,00,000/- worth gold to accused No.4 as her customary rights as dowry. L.Ws.9 and 10 acted as elders for the marriage. The accused also demanded to provide house site and accordingly L.W.2 gave

house site to the accused. After the marriage at Kadapa, all the accused unjustly stated that they want more money for their expenses by saying that the dowry given is not sufficient to them. L.Ws.7 and 8 intervened and stated to them that they cannot ask money from her family. Somehow, the matter was settled and an amount of Rs.2,00,000/- cash was given by L.Ws.2 and 3 to the accused in the presence of L.Ws.7 and 8. After marriage, respondent No.2 joined in matrimonial house at Hyderabad on 09.02.2015 accompanied by her mother and two others. Accused Nos.1, 3 and 4 who are the parents and sister of accused No.2 humiliated respondent No.2 and her relations who accompanied saying that the marriage alliance is not of their standard as accused No.2 is a NRI working at America drawing huge amount as salary and if accused No.2 was given in marriage to any other lady, they would have been given more dowry when compared to the dowry given by the parents of respondent No.2. L.Ws.9 and 10 who were present there stated that this is not fair on their part to find fault with the marriage alliance on the ground of economic disparity.

The accused demanded additional dowry, otherwise threatened that respondent No.2 will not be allowed to travel to America along with accused No.2. Accordingly, accused No.2 left for America without taking respondent No.2 with him. After accused No.2 left for America, accused Nos.1, 3 and 4 again demanded for additional dowry, for which her parents agreed to register the house property at Kadapa in the name of respondent No.2 and accused No.2. In spite of that accused Nos.1, 3 and 4 subjected respondent No.2 to cruelty by harassing her both mentally and physically for want of additional

dowry and repeatedly stating that gifts presented at the time of marriage were not of their standard.

On 17.02.2015 accused No.4 left for America stating that she would spoil matrimonial life of respondent No.2 and she would not allow her to join accused No.2 at America. On repeated requests made by her parents, accused No.2 gave supporting documents enabling respondent No.2 to get VISA to travel to America. She attended VISA interview on 24.2.2015. Her parents, on the demand made by the accused No.1, gave flight expenses incurred by accused No.2 and then only respondent No.2 was allowed to board the flight. Accused No.2 also did not look after respondent No.2 well at America and also troubled her in family matters. Further confined the respondent No.2 in the house and did not allow her to talk to her parents by demanding her to pay additional dowry. Further accused No.2 forcibly obtained her signatures on the suicide note. Accused No.2 used to harass her during the time of sex. He forced her to do oral sex, though she denied for the same, he did the same. Unable to bear the same, she used to vomit. Further accused No.2 used to demand her to do unnatural offence i.e., anal sex and forcibly participated in anal sex with her, against her will and wish which amounts to unnatural sexual act. He showed hell to her. She expressed her grief over phone to her mother and she used to console her. When she informed the same to accused No.3 about the unnatural acts of accused No.2, she used to support A2 and asked her to do what accused No.2 states or to go away to her maternal house.

Accused No.2 had illicit intimacy with one Harini at America. Accused Nos.2 and 4 subjected respondent No.2 to cruelty by

harassing her both mentally and physically at America. Parents of the respondent No.2, who learnt about the same, brought the elders to the house of accused No.1 at Hyderabad and requested them to ask accused No.2 to look after respondent No.2 well.

On 18.09.2015 accused Nos.1 and 3 visited America. Since then accused Nos.1 and 4 harassed respondent No.2 both mentally and physically, compelled and coerced her to agree for divorce. Accused did not even allow respondent No.2 to communicate with her parents. With much difficulty, respondent No.2 was able to contact her brother Abhinav Varma who was also at America. He came to Atlanta and having seen respondent No.2's pathetic condition, made arrangement for her to go back to her house at India as it is safer to her. Accordingly on 24.11.2015 respondent No.2 came down to her maternal house at Kadapa and informed the same to them. Later on the request of parents of respondent No.2, L.Ws.4 to 8 i.e. Lella Ashok Raman, Gangasani Madhava Reddy, Balaraju Anjaneya Raju, Chenchereddigari Raja Sekhar Reddy, Mopuri Bhaskar Reddy, held mediation with accused Nos.1 and 3 in respondent No.2's house on 14.02.2016 where accused Nos.1 and 3 and parents of respondent No.2 were present in the hall whereas respondent No.2 was present in the bedroom. In the middle of the panchayath, suddenly accused Nos.1 and 3 got up, went towards the bedroom and abused respondent No.2 in filthy language and attempted to kill her by pressing her throat with an intention to kill her. Hearing the cries of respondent No.2, her parents, L.Ws.7 and 8 rushed there and rescued respondent No.2 from the clutches of the accused and saved her life as otherwise the accused might have definitely murdered her. On that L.Ws.4 to 8 L.Ws.4 to 8 i.e. Lella Ashok Raman, Gangasani

Madhava Reddy, Balaraju Anjaneya Raju, Chenchereddigari Raja Sekhar Reddy, Mopuri Bhaskar Reddy chastised the accused for their acts. Further, accused No.1 and 3 demanded additional dowry of Rs.30,00,000/- and also demanded to get the house transfer on the name of accused No.2 or else accused No.2 would file divorce petition at America. Further, in the presence of L.Ws.4 to 8 L.Ws.4 to 8 i.e. Lella Ashok Raman, Gangasani Madhava Reddy, Balaraju Anjaneya Raju, Chenchereddigari Raja Sekhar Reddy, Mopuri Bhaskar Reddy, admitted about their misappropriating respondent No.2's entire gold. Finally, respondent No.2 reported the matter in Women U/G Police Station against accused Nos.1 to 4 about the offence.

Basing on the complaint of respondent No.2, Sub-Inspector of Police registered a case in Crime No.18/2016 under Sections 498-A 307, 477, 406 of I.P.C. and under Sections 3 and 4 of Dowry Prohibition Act of Women U/G Police Station, Kadapa and took up investigation.

During investigation, Sub-Inspector of Police examined as many as 13 witnesses and recorded their statements under Section 161 (3) of Cr.P.C. On the basis of evidence collected including the statements recorded by the police under Section 161 (3) of Cr.P.C., the Sub-Inspector of Police concluded that there is sufficient material against the petitioners and filed charge sheet for various offences punishable under Sections 498-A, 307, 477 and 406 of I.P.C. and under Sections 3 and 4 of Dowry Prohibition Act.

The Magistrate having concluded that the case is exclusively triable by Court of Sessions, registered the same as P.R.C. and after following necessary procedure committed the case to Sessions Division. District Judge registered the case as S.C.No.223 of 2016

and made over the same to Principal Senior Civil Judge – cum – Assistant Sessions Judge, Kadapa, who in turn took cognizance for various offences referred above.

At the stage of appearance, the petitioners approached this Court and filed the present petition under Section 482 of Cr.P.C. to quash the proceedings against accused Nos.1 to 3.

The main ground urged in the petitions is that the allegations made in the charge sheet do not constitute an offence punishable under Sections 498-A, 307, 377 and 406 read with 34 of I.P.C. and under Sections 3 and 4 of Dowry Prohibition Act even if the allegations are accepted on its face value.

It is also contended that the Station House Officer, Women Police Station is incompetent to investigate the case and that the witnesses are not properly examined and recorded their statements and filed charge sheet against the petitioners without verifying the material on record in proper perspective.

It is further contended that the as offences took place in United States of America, the Court in India cannot take cognizance in view of the bar under Section 188 of Cr.P.C. In the absence of any allegation regarding dowry harassment or any other harassment took place in India, filing of charge sheet against the petitioners before the Court at Kadapa without any prior sanction from the Central Government is a grave illegality. Therefore, the proceedings against the petitioners are liable to be quashed.

It is also contended that none of the allegations made against accused Nos.1 and 3 do not constitute any offence punishable under Section 377 of I.P.C. when the consistent statement of P.W.1 is to the effect that her husband/accused No.2 committed such unnatural offences, but for one reason or the other, in-laws of the defacto

complainant were charged for the offence punishable under Section 377 of I.P.C. Therefore, the alleged acts done by accused No.1 do not constitute offence punishable under Section 377 of I.P.C., on this ground also the proceedings against the petitioners are liable to be quashed for the offence punishable under Section 377 of I.P.C.

Finally, it is contended that the story narrated by the defacto complainant about the attempt made by the petitioners to kill her in her parents' house is highly improbable, therefore, on this ground the proceedings against the petitioners are liable to be quashed.

Respondent No.2 filed counter denying material allegations inter alia contending that the petition is not maintainable either on law or on facts and when various offences committed by the petitioners both in India and outside India, the Court in India is competent to take cognizance of the offences and the bar under Section 188 of Cr.P.C. will not come in the way of Court to take cognizance of the offences, therefore, the petition is liable to be dismissed and requested to dismiss the petition.

During hearing, Sri Challa Ajay Kumar, learned counsel for the petitioners limited his argument only to two grounds, they are

- (1) The offences punishable under Section 498-A of I.P.C. and under Sections 3 and 4 of Dowry Prohibition Act, more particularly the offence punishable under Section 377 of I.P.C. did not take place in India and more particularly within the territorial jurisdiction of Assistant Sessions Judge, Kadapa and no permission was obtained from the Central Government as required under Section 188 of Cr.P.C., in the absence of such permission taking cognizance for the offences punishable under Sections referred above is a grave illegality. In support of his

contentions, he placed reliance on the judgments of Apex Court rendered in “**Fatma Bibi Ahmed Patel v. State of Gujarat**¹” “**Thota Venkateswarlu v. State of Andhra Pradesh**²” and judgment of High Court of Madras in “**C.Hari Sankar v. Deepa Lakshmi**³”

(2) He further contended that the alleged acts attributed to accused No.1 do not constitute offence punishable under Section 377 of I.P.C. since the said allegation to attract the offence punishable under Section 377 of I.P.C. was made against accused No.2 but not against accused No.1, on this ground the proceedings against the petitioners herein are liable to be quashed for the offences punishable under Sections 498-A, 307, 377, 406 read with 34 of I.P.C. and under Sections 3 and 4 of Dowry Prohibition Act.

Sri P.V.Ramana, learned counsel for the respondent No.2 supported the prosecution version while contending that when the offences took place both in India and outside India, the Court can take cognizance and try the offences committed both in India and outside India and the bar under Section 188 of Cr.P.C. is not applicable to the facts of the present case, thereby taking cognizance against the petitioners for the offences punishable under Sections 498-A, 307, 377, 406 read with 34 of I.P.C. and under Sections 3 and 4 of Dowry Prohibition Act is not illegal and prayed to dismiss the petition and in support of his contentions, he placed reliance on the judgment of the Apex Court rendered in “**Lee Kun Hee, President, Samsung Corporation, South Korea v. State of Uttar Pradesh**⁴”

¹ AIR 2008 Supreme Court 2392

² (2011) 9 SCC 527

³ 2012 LawSuit (Mad) 2582

⁴ (2012) 3 SCC 132

Considering rival contentions and perusing the material on record, the points that arise for consideration are:

- (1) ***Whether accused Nos.1 to 3 are liable to be prosecuted for the offences punishable under Sections 498-A, 307, 377 and 406 read with 34 of I.P.C. and under Sections 3 and 4 of Dowry Prohibition Act?***
- (2) ***Whether taking cognizance for the offences punishable under Section 498-A and 406 read with 34 of I.P.C. and under Section 3 and 4 of Dowry Prohibition Act against the petitioners for the incident occurred outside India is illegal, if not, whether the proceedings in S.C.No.223 of 2016 on the file of Principal Senior Civil Judge – cum – Assistant Sessions Judge, Kadapa are liable to be quashed?***

P O I N T No.1:

The first and foremost contention raised by the counsel for the petitioners is that the accused Nos.1 and 3 did commit no such unnatural offences and the allegation made against them is not supported by any material. The private complaint filed by respondent No.2 did not disclose commission of an offence punishable under Section 377 of I.P.C. i.e. unnatural offences by accused Nos.1 and 3.

In the statement recorded by the police during investigation, respondent No.2 made specific allegation against accused No.2 that he used to demand her to do unnatural offence i.e. anal

sex and forcibly participated in anal sex with her against her will and wish. Therefore, the allegations made against the petitioners/accused Nos.1 and 3 do not constitute offence punishable under Section 377 of I.P.C. even if the allegations made in the complaint are accepted.

The other offence committed by the petitioners is punishable under Section 307 of I.P.C. The specific allegation made in the charge sheet including the statement of respondent No.2 and statements of elders L.Ws.4 and 8, who held panchayat, recorded by the police under Section 161 (3) of Cr.P.C. is that the petitioners/accused Nos.1 and 3 made an attempt to kill her by pressing her throat. Whether they had any intention to kill her is a question to be decided and the overt acts attributed to the petitioners constitute an offence punishable under Section 307 of I.P.C. *prima facie* and the said fact is supported by the evidence collected during investigation. Therefore, the offence punishable under Section 307 of I.P.C. cannot be quashed as the material collected during investigation *prima facie* disclosed that the petitioners/accused Nos.1 and 3 committed offence punishable under Section 307 of I.P.C.

Time and again, the scope of powers of this Court under Section 482 of Cr.P.C. were highlighted by the Apex Court in long line of perspective pronouncements, which are as follows:

In “**R.P. Kapur v. State of Punjab**⁵”, the Apex Court laid down the following principles:

⁵ AIR 1960 SC 866

- (i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;
- (ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g. want of sanction;
- (iii) where the allegations in the First Information Report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and
- (iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent power to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. In that event there would be no justification for interference by the High Court as held by the Apex Court in ***“Mrs.Dhanalakshmi v. R.Prasanna Kumar⁶”***

⁶ AIR 1990 SC 494

In “***State of Haryana v. Bhajan Lal***”⁷ the Apex Court considered in detail the powers of High Court under Section 482 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.

(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

⁷ 1992 Supp.(1) SCC 335

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.

In view of the law declared by the Apex Court in the above judgments, I find no material to quash the proceedings against the petitioners/Accused Nos.1 and 3 for the offence punishable under Section 307 of I.P.C.

The statement of respondent No.2 further disclosed that the petitioners demanded for payment of additional dowry and demanded to transfer the house property in favour of the accused in lieu of payment of additional dowry both in India and U.S.A. and such acts would attract the offences punishable under Sections 498-A and 406 of I.P.C. and under Sections 3 and 4 of Dowry Prohibition Act. Therefore, I find that the proceedings against the petitioners/accused Nos.1 and 3 for the offence punishable under Section 377 of I.P.C. are liable to be quashed while permitting the Assistant Sessions Judge to proceed against the petitioners/accused Nos.1 and 3 for the offences punishable under Sections 498-A, 307 and 406 read with 34 of I.P.C. and under Sections 3 and 4 of Dowry Prohibition Act.

The major contention urged before this Court is that the Court at Kadapa is incompetent to take cognizance since no cause of action arose within the territorial jurisdiction of Kadapa.

Admittedly, the marriage was performed in India on 05.02.2015 and the respondent No.2 left for America within few days i.e. after

attending Visa interview on 24.02.2015. Therefore, respondent No.2 was with the petitioner Nos.1 and 3 only for few days. It is also admitted fact that she came to India on 24.11.2015 due to unbearable harassment by the accused No.1 at America. Therefore, first incident of receiving dowry took place on the date of marriage or at least prior to 24.02.2015 when she attended Visa interview. The private complaint was filed in the year 2016.

As per Rule 5 (c) of Andhra Pradesh Dowry Prohibition Rules, the complaint shall be made on the demand of dowry or accepting dowry within a period of one year and the according to Rule 10, the same shall be finalized within two (2) years from the date of filing of such complaint.

Thus, the allegations made against the petitioners prior to 24.02.2015 cannot be taken into consideration as the complaint was not filed within one year from the date of such demand or receipt of dowry in view of Sections 3 and 4 of Dowry Prohibition Act. Thus, the petitioners are not liable to be prosecuted for the offences punishable under Section 498-A of I.P.C. and under Section 3 and 4 of Dowry Prohibition Act for the incident that occurred prior to 24.02.2015 in view of Rule 5 (c) of Andhra Pradesh Dowry Prohibition Rules.

The other incident of demanding dowry took place only when the mediation was held by L.Ws.4 and 8 i.e. Lella Ashok Raman and Mopuri Bhaskar Reddy at the house of the petitioners in the presence of parents of defacto complainant. But the incident that occurred at Kadapa after returning of respondent No.2 to India is within limitation, thereby such act would constitute offence punishable under Section 498-A of I.P.C. and Sections 3 and 4 of Dowry Prohibition Act. Though two incidents took place i.e. one prior to

respondent No.2 left for America and other after return to India, so far as the first incident is concerned the same is barred by limitation in view of Rule 5 (c) and Rule 10 of Andhra Pradesh Dowry Prohibition Rules and the other incident that occurred after returning to India is concerned, the same is within the time prescribed under Rule 5 (c) and Rule 10 of Andhra Pradesh Dowry Prohibition Rules. Therefore, the prosecution against the petitioners for the offence punishable under Section 4 of Dowry Prohibition Act cannot be quashed.

Section 3 of Dowry Prohibition Act deals with receipt of dowry and the same is punishable under the Act. But receipt of dowry took place at the time of marriage, therefore, it is hopelessly barred by limitation in view of Rule 5 (c) and Rule 10 of Andhra Pradesh Dowry Prohibition Rules. But, I find no ground to quash the proceedings against the petitioners for the offence punishable under Section 4 of Dowry Prohibition Act while quashing the proceedings against the petitioners under Sections 377 of I.P.C. and under Section 3 of Dowry Prohibition Act. Accordingly, the point is answered.

P O I N T No.2:

The other contention urged before this Court is that part of incident took place outside India, thereby the petitioners cannot be prosecuted for the offences without obtaining prior permission from the Central Government as required under proviso to Section 188 of Cr.P.C.

Learned counsel for the respondent No.2 contended that the offences punishable under Section 498-A of I.P.C. and under Sections 3 and 4 of Dowry Prohibition Act are continuing offences and that when the acts committed both in India and outside India, the Court

is competent to take cognizance against the petitioners and bar under proviso to Section 188 of Cr.P.C. will not come in the way of taking cognizance.

As seen from the facts narrated in the charge sheet and statements recorded by the police under Section 161 (3) of Cr.P.C., the petitioners demanded dowry and subjected her to cruelty only in India, which constitutes offence punishable under Section 498-A of I.P.C. and Section 4 of Dowry Prohibition Act, both prior to respondent No.2 left for America and after her return to India.

Overt acts attributed against the petitioners/accused No.1 both prior to respondent No.2 left for America and after arrival in India constitute *prima facie* offence punishable under Section 498-A of I.P.C. and under Section 4 of Dowry Prohibition Act. Thus, incident of subjecting respondent No.2 to cruelty by the petitioners/accused Nos.1 and 3 took place only in India, whereas the harassment in the hands of accused No.2 is to be discussed at later stage. Moreover, the act done by the petitioners/accused Nos.1 and 3 i.e. attempt to commit murder is exclusively in India. Thus, none of the overt acts attributed against the petitioners/accused Nos.1 and 3 took place outside India and they took place mostly India within the territorial jurisdiction of Assistant Sessions Judge. Therefore, on this ground the proceedings against the petitioners cannot be quashed.

Undisputedly, the Sessions case is pending against four accused and the accused No.2 is the husband of defacto complainant, who allegedly committed overt acts, which attract the offences punishable under Section 498-A of I.P.C. and under Section 377 of I.P.C. but accused No.2 did not challenge the proceedings on the bar contained under proviso to Section 188 of Cr.P.C. However,

the law is consistent on this aspect. When an offence took place both in India and outside India, such offences can be taken cognizance without prior sanction of Central Government as envisaged in proviso to Section 188 of Cr.P.C. However, trial Court cannot proceed with the trial without previous sanction of the Central Government in view of the law laid down by the Apex Court in “**Thota Venkateswarlu v. State of Andhra Pradesh**” (referred supra).

In the above judgment, the Apex Court referred to a judgment rendered in “**Ajay Aggarwal v. Union of India**”⁸, wherein the Apex Court held that sanction under Section 188 of Cr.P.C. is not a condition precedent for taking cognizance of an offence and, if need be, it could be obtained before the trial begins.

In another judgment “**Fatma Bibi Ahmed Patel v. State of Gujarat**” (referred supra) the Division Bench of Apex Court held that order taking cognizance against the accused, who is not citizen of India, offence committed outside India (Kuwait), the order taking cognizance is illegal in view of Section 4 of I.P.C and Section 188 of Cr.P.C.

If the above principle is applied to the present facts of the case, very taking cognizance is illegal, but the Full Bench of Apex Court in “**Thota Venkateswarlu v. State of Andhra Pradesh**” (referred supra) took a slightly different view that the order taking cognizance cannot be faulted, the bar under Section 188 of Cr.P.C. is only against the trial of the case.

The language used in proviso to Section 188 of Cr.P.C. is clear that “no such offence shall be inquired into or tried in India except

⁸ (1993) 3 SCC 609

with the previous sanction of the Central Government.” Hence, the bar is only against trial but not against taking cognizance.

When similar question came up for consideration before the Apex Court in “**Om Hemrajani v. State of U.P.**”⁹, the Apex Court held that “if accused person is found anywhere in India, offence can be inquired into and tried by any Court that may be approached by the victim.”

This Court in “**Valluri Ramachandra Rao v. State of Andhra Pradesh**”¹⁰ took a view by legal fiction under Section 188 of Cr.P.C. offence committed outside India makes the place at which the offender may be found to be a place of commission of the offence.

This Court in “**Vijaya Saradhi Vajja v. Devi Sriroopa Madapati**”¹¹ held that offence committed by an Indian Citizen outside the country is deemed to have been committed in India and proviso to Section 188 of Cr.P.C. provides for a safeguard for the NRI against unwarranted harassment.

Thus, the law laid down by the Full Bench of Apex Court in “**Thota Venkateswarlu v. State of Andhra Pradesh**” (referred supra) is totally in consonance with the purport of proviso to Section 188 of Cr.P.C. The judgment of Division Bench of Apex Court in “**Fatma Bibi Ahmed Patel v. State of Gujarat**” (referred supra) is not inconsonance with the purport of proviso to Section 188 of Cr.P.C.

The High Court of Madras in “**C.Hari Sankar v. Deepa Lakshmi**” (referred supra) dealt with Sections 2 and 4 of I.P.C.

⁹ (2005) 1 SCC 617

¹⁰ 2007 (1) ALT (CrL.) 293 (A.P.)

¹¹ 2007 (1) ALT (CrL.) 283 (A.P.)

concluded that the Court cannot take cognizance of offences that are committed outside India.

In any view of the matter, the law is consistent when offence took place in India and outside India. If the accused are residing in India, the Court can take cognizance and the proviso to Section 188 of Cr.P.C. will not come in the way.

Here, accused Nos.1 and 3 are residing in India and accused No.2 is residing in America. Therefore, taking cognizance against the petitioners/accused Nos.1 and 3 for the offences that are allegedly committed within India cannot be quashed on the ground that no prior permission was obtained from the Central Government as required under Section 188 of Cr.P.C. Even if for any reason, no permission was obtained by the Investigating Agency, the prosecution can obtain such permission even after taking cognizance, from the Central Government to proceed with the trial in this Case. But for the said defect, the proceedings cannot be defeated. If such contention is allowed, it would denude any victim, who suffered harassment outside the Country to redress her grievance and it was not the intention of the legislature. However, it is for the investigating agency to obtain such leave.

Learned counsel for the respondent No.2 while placed reliance on the judgment of Apex Court rendered in “**Lee Kun Hee, President, Samsung Corporation, South Korea v. State of Uttar Pradesh**” (referred supra).

In the said judgment, the Apex Court after referring to various judgments, adverted to Section 177 and 178 of Cr.P.C. held that Section 179 of Cr.P.C. vests jurisdiction for inquiry and trial in a Court, within whose jurisdiction anything has been done with

reference to an alleged crime, and also, where the consequence of the criminal action ensues. Section 181 (4) of Cr.P.C. leaves no room for any doubt, that culpability is relatable even to the place at which consideration is required to be returned or accounted for. At the end, it adverted to Section 188 of Cr.P.C. and concluded that offences can be tried by the Court where the incident took place or the consequence of the criminal action ensues. But the principle laid down by the Division Bench of the Apex Court has no direct application to the present facts of the case. Moreover, in the present facts of the case, no such permission is required to be obtained to prosecute the petitioners/accused Nos.1 and 3 as the overt acts attributed against them pertains to the incident that occurred within India but not outside India and on the ground of bar under proviso to Section 188 of Cr.P.C. the proceedings against the petitioners cannot be quashed for the offences punishable under Sections 498-A, 307 and 406 read with 34 of I.P.C. and under Section 4 of Dowry Prohibition Act.

On an overall consideration of entire material available on record including the law laid down by the Apex Court, I find no ground to quash the proceedings against the petitioners/accused Nos.1 and 3 for the offences punishable under Sections 498-A, 307 and 406 read with 34 of I.P.C. and under Section 4 of Dowry Prohibition Act as the bar under proviso to Section 188 of Cr.P.C. will not come in the way of proceeding against accused Nos.1 and 3 for the said offences and the proceedings against the accused Nos.1 and 3 for the offences punishable under Section 377 of I.P.C. and under Section 3 of Dowry prohibition Act are hereby quashed.

The petitioner in Criminal Petition No.10712 of 2017 is accused No.2. The acts allegedly committed by him i.e. subjecting the respondent No.2 to cruelty and commission of unnatural offences took place outside India. However, in view of bar under proviso to Section 188 of Cr.P.C. and the law declared by the Apex Court in **“Thota Venkateswarlu v. State of Andhra Pradesh”** (referred supra) taking cognizance by the Court for the offences cannot be faulted. But the trial Court shall not proceed to try the accused No.2 for such offences.

Even at this stage, the investigating agency can obtain such permission under Section 188 of Cr.P.C. and till permission is obtained to try the petitioner/accused No.2 for the acts committed outside India, the petitioner/accused No.2 cannot be tried for such offences.

The specific allegation made in the charge sheet including the statement of respondent No.2 and statements of elders L.Ws.4 and 8, who held panchayat, recorded by the police under Section 161 (3) of Cr.P.C. is that the petitioners/accused Nos.1 and 3 made an attempt to kill her by pressing her throat, which is punishable under Section 307 of I.P.C. As the petitioner/accused No.2 is residing in United States of America and the said incident of attempt to kill respondent No.2 occurred in India, the proceedings against the petitioner/accused No.2 for the offence punishable under Section 307 of I.P.C. are liable to be quashed.

As already stated in the aforesaid discussion, Section 3 of Dowry Prohibition Act deals with receipt of dowry and the same is punishable under the Act. But receipt of dowry took place at the time of marriage, therefore, it is hopelessly barred by limitation in view of Rule 5 (c) and Rule 10 of Andhra Pradesh Dowry Prohibition Rules.

Therefore, the proceedings against the petitioner/accused No.2 for the offence punishable under Section 3 of Dowry Prohibition Act are liable to be quashed.

The other specific allegation made in the complaint against the petitioner/accused No.2 is that he used to demand respondent No.2 to do unnatural offence i.e. anal sex and forcibly participated in anal sex with her against her will and wish, which is unnatural offence under Section 377 of I.P.C. Similarly, demanding dowry and subjecting the respondent No.2 to cruelty also took place outside India by the petitioner No.2. Therefore, to try the petitioner/accused No.2 for the offence punishable under Sections 498-A, 377 and 406 read with 34 of I.P.C. and under Section 4 of Dowry Prohibition Act, permission under proviso to Section 188 of Cr.P.C. is required. Therefore, the investigating agency is directed to obtain necessary permission from the Central Government as required under proviso to Section 188 of Cr.P.C. within a period of three (3) months, till then the trial Court shall not proceed against the petitioners/accused Nos.1 and 3, and in the event of failure to obtain sanction for prosecution within three (3) months, separate the case against the accused Nos.1 and 3 and proceed in accordance with law while keeping the case against accused No.2 awaiting permission from the Central Government.

On an overall consideration of entire material available on record including the law laid down by the Apex Court, I find no ground to quash the proceedings against the petitioner/accused No.2 for the offences punishable under Sections 498-A, 377 and 406 read with 34 of I.P.C. and under Section 4 of Dowry Prohibition Act and the proceedings against the accused No.2 for the offences punishable

under Section 307 of I.P.C. and under Section 3 of Dowry prohibition Act are hereby quashed.

In the result, the criminal petition No.10647 of 2017 is partly allowed. The proceedings against the petitioners/accused Nos.1 and 3 for the offences punishable under Section 377 of I.P.C. and under Section 3 of Dowry prohibition Act are hereby quashed while permitting the Assistant Sessions Judge, Kadapa to proceed against the petitioners/accused Nos.1 and 3 for the offences punishable under Sections 498-A, 307 and 406 read with 34 of I.P.C. and under Section 4 of Dowry Prohibition Act. The criminal petition No.10712 of 2017 is partly allowed. The proceedings against the petitioner/accused No.2 for the offences punishable under Section 307 of I.P.C. and under Section 3 of Dowry prohibition Act are hereby quashed while permitting the Assistant Sessions Judge, Kadapa to proceed against the petitioner/accused No.2 for the offences punishable under Sections 498-A, 377 and 406 read with 34 of I.P.C. and under Section 4 of Dowry Prohibition Act following the above directions. No costs.

The miscellaneous petitions pending in the petitions, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

30.10.2018
Ksp