

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.12187 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) to quash the proceedings in Crime No.1023 of 2017 on the file of Jagathgirigutta Police Station, Cyberabad, Ranga Reddy District, registered for the offences punishable under Sections 498-A, 324 and 506 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961 ("the Act" for brevity).

Petitioner is A-5 and friend of the husband of the *de facto* complainant-second respondent herein. The second respondent lodged a report with the police on 28.11.2017 alleging that her marriage with N.Satish Kumar-accused No.1 was performed on 24.09.2017 in the presence of elders of both the families and at the time of marriage, her parents presented 50 sovereigns of gold and Acs.5.00 of land apart from household articles. Their marriage was performed as per Hindu customs. Her husband looked after her well only for ten days and thereafter, he suspected her fidelity and recorded her phone calls. He harassed her both physically and mentally for her failure to meet the illegal demand of providing T.V., Dining Table and Sofa as additional dowry. He was given counselling in the presence of elders, but there was no change. He demanded her to bring Rs.5.50 lakhs for purchasing a car. It is also contended that her father-in-law by name Sambasiva Prasad and her husband's friend-the present petitioner/A5 are supporting her husband in this regard.

On 26.11.2017 at about 15.30 hrs her husband raised a dispute and sent her away demanding additional dowry and the amount for purchase of a car by beating her with hands and kicking with legs. Hence, she requested the police to take necessary action against the present petitioner and four others.

Section 498-A IPC deals with punishment for subjecting a woman by her husband or relative of husband, to cruelty. Whoever, being the husband or the relative of the husband of a woman, subjects such woman, to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Therefore, in view of the language used in Section 498-A IPC only husband or a relative of the husband is liable to be prosecuted for the offence and not any other person. The petitioner herein is arrayed as A-5. The allegation made against him is that he along with brothers and father of A1-husband of the second respondent supported A-1 for demanding TV, Dining Table, Sofa, Car etc. Petitioner is only a friend of A-1 and he cannot be prosecuted for the offence punishable under Section 498-A IPC. Therefore, the petitioner would not fall within the ambit of husband's relative.

The other offences alleged are under Sections 324 and 506 IPC. Absolutely, there are no allegations to constitute the offences punishable under Sections 324 and 506 IPC against the petitioner herein. Further, Section 3 of the Act deals with penalty for giving or taking dowry. If any person gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than 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. Section 4 of the Act deals with penalty for demanding dowry. If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees.

The offences allegedly committed by the petitioner, according to the allegations in the FIR, are Sections 3 and 4 of the Act but the allegations in the report lodged by the second respondent are that the petitioner is supporting the husband of the second respondent. At best this act would amount to abetment within the definition of Section 107 IPC. To constitute an offence punishable under Section 107 IPC, a person abets the doing of a thing, who instigates any person to do that thing; or engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or intentionally aids, by any act or illegal omission, the doing of that thing. Therefore, if any person instigates any person to do a thing would constitute an offence of instigation. Here in this case, supporting the husband of the second respondent to demand Rs.5.50 lakhs for purchasing TV, Dining Table, Sofa, Car etc. as additional dowry would not amount to abetment as defined under Section 107 IPC since the petitioner allegedly supported the husband of the second respondent. The allegations made in the report lodged by the

second respondent against the present petitioner, who is the friend of her husband, would not constitute an offence under Sections 3 and 4 of the Act.

Taking into consideration the facts on their face value, I find no *prima facie* material against this petitioner to proceed with the investigation for the abovementioned offences. The scope under Section 482 Cr.P.C. is limited and this Court can exercise inherent power to give effect to the orders passed to prevent abuse of process of Court or to secure ends of justice. In **State of Haryana v. Bhajan Lal**¹ this Court considered in detail the scope of provisions of 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.

¹ 1992 Supp. (1) SCC 335

(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 allegations in the FIR/complaint on their face value, if accepted, would not constitute the offences punishable under Sections 498-A, 324 and 506 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. If the allegations are absurd, this Court may exercise its inherent jurisdiction to quash the proceedings. In the present case, since the allegation is that the petitioner supported the husband of the second respondent in demanding payment of Rs.5.50 lakhs for purchasing TV, Dining Table, Sofa, Car etc, as additional dowry, supporting the husband of the second respondent do not constitute instigation which is the main ingredient to constitute abetment as defined under Section 107 IPC. Therefore, I find that it is a fit case to quash the proceedings against this petitioner.

In the result, the Criminal Petition is allowed quashing the proceedings against the petitioner-A5 in Crime No.1023 of 2017 on the file of Jagathgirigutta Police Station, Cyberabad, Ranga Reddy District, registered for the offences for the offences punishable under Sections 498-A, 324 and 506 IPC and Sections

3 and 4 of the Dowry Prohibition Act. Miscellaneous petitions, if any, pending shall stand closed.

(M.SATYANARAYANA MURTHY, J)

2nd January 2018
RRB

