

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.503 of 2014

ORDER:

The Criminal Petition is filed under Section 482 Cr.P.C by the petitioners/A2 and A3 seeking to quash the proceedings in S.C.No.280 of 2013 on the file of the II Additional Metropolitan Sessions Judge, Nampally, Hyderabad.

2. The petitioners 1 and 2 herein are no other than mother and brother of A1 and de facto complainant is wife of A1 in the above Sessions Case taken cognizance for the offences punishable under Sections 498-A, 406 and 313 IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961, covered by the committal proceedings of the VI Additional Chief Metropolitan Magistrate in PRC No.22 of 2010, which is outcome of Crime No.24 of 2009 of C.I.D. Police Station, Hyderabad, on the report of the de facto complainant and from the investigation having registered the crime, filed the final report against three accused including the petitioners/A2 and A3 from citing 15 witnesses including two investigating officers, who registered FIR and conducted investigation and filed final report respectively.

3. LW13 is the medical practitioner, who referred the victim to Northland Family Planning Centre for termination of pregnancy of de facto complainant on her request as her husband and in-laws are forcing to get the pregnancy terminated. LWs.10 to 12 are the residents of Hyderabad, who attended the marriage of LW.1 with A1 speaks about harassment for additional dowry, LW.13 is the

resident of Michigan, USA, LW.1 is the de facto complainant, LWs 2 and 3 are parents of the de facto complainant, LW4, a minor boy of four years and son of LW.1 and A1, LW.5, brother of the de facto complainant, LW.6, sister-in-law of de facto complainant, LWs.7, 8 and 9 are the so called mediators for the marriage alliance of de facto complainant and A1 to the marriage engagement and payment of dowry and about additional dowry demand to speak.

4. Now coming to the quash petition averments referring to paras-4 to 10 of the quash petition to the claim of innocent and falsely implicated without any basis or truth and even on face value allegations, no case made out against them in any offence particularly against A2 and A3 supra and continuation of proceedings against them is nothing but abuse of process. The de facto complainant applied for divorce at Circuit Court of State of Michigan, USA in August, 2009 and it was ordered on 16.09.2009 to bring the second child, Atluri Neal, LW.4 who was staying at her father's house in India by 02.10.2009 to USA and thereafter, de facto complainant came to India on 27.09.2009 to take the second child to USA and before she arrived India, she cause filed O.P. before the Family Court through his brother claiming adoption of child, Atluri Neal, in order to see that the child remains in India and on the pretext of pendency of O.P. filed by her brother, she sought extension of time in divorce petition initiated by her in USA to produce the child and nearly one month after coming to USA on 27.09.2009, she lodged a complaint on 03.11.2009 because the

divorce case filed by her in USA is not going as per her and her parents wish and she had not returned to USA on the pretext that the custody OP filed by her brother is pending and she remained in India till 31.05.2012 and after lodging of complaint with the police supra on 03.11.2009 (present crime No.24 of 2009), she withdrew the divorce petition filed in USA court on 27.04.2010 after unsuccessful mediation. Either in the divorce petition filed by her in USA or in the police final report dated 03.11.2009 before Hyderabad police, there is no whisper that A1 at the instance of A2 and A3 forcibly cause terminated her pregnancy in USA on 28.10.2006 without her consent or will and only in order to bring the case as a Sessions Case, the allegation of forcible abortion was introduced during the course of investigation as an afterthought. In fact, A1 applied for divorce in US Circuit Court on 06.06.2012 and after mutual deliberations between A1 and de facto complainant, the Circuit Court for the Country of Oakland Family Court Vision, granted consent judgment of divorce dated 21.05.2013 and the marriage was dissolved, where A1 and the de facto complainant agreed to various settlements among themselves out of which mutual release is one such condition which is extracted hereunder viz. each of the parties releases the other from any cause of action that either may have against the other or that either may be involved in, from any incident which may have occurred prior to the entry of this judgment(dated 21.05.2013 of Oakland Family Court Vision), whether that claim be founded in contract, tort, or any other basis and the judgment is intended to

be a settlement of any and all claims between the parties of every kind of nature. Further it is contended that except omnibus allegations against petitioners, no specific overt acts attributed and the only allegation is though instigated A1 to insist de facto complainant to bring additional dowry or A1 got aborted the pregnancy or A1 harassed her in USA at the instance of petitioners and except the said bald allegation which is invented for the purpose of lodging complaint, there are no worth allegations in the marital discard from marriage performed on 02.05.1996 and thereafter A1 and de facto complainant started living in USA and both are US citizens and at no point of time they lived along with petitioners/A2 and A3 together and whenever she visited India, used to stay at her parents house and not with A2, mother of A1 leave about A3, brother of A1 and even from the report and investigation covered by charge sheet, allegations are only against A1 and entire episode taken place only in USA and none of the ingredients in any of the offences that attract against petitioners and if at all responsible for termination of pregnancy of de facto complainant in USA, the petitioners cannot be roped and thereby sought for quashing of proceedings.

5. Heard and perused the material on record.

6. The learned Public Prosecutor opposed the quash petition in saying there is prima facie accusation of the crime and from investigation and from filing of final report, learned Magistrate taken cognizance under Section 190 Cr.P.C. and committed the case to the Court of Sessions after consideration of the material

and there from the Sessions Case number allotted and pending and the quash petition filed only to come out if possible without basis and there are no grounds to quash proceedings and there was no settlement as alleged and sought for dismissal of the quash petition saying it requires trial to reach to a logical end with any defence of them available to put forth during trial.

7. The report setting the law in motion dated 03.11.2009 running in 5 pages against the three accused in registration of crime No.24 of 2009 on that day by the Senior Executive officer, CID, A.P. Hyderabad, based on the instructions of the Additional Deputy General of Police, dated 03.11.2009, from what de facto complainant showing her address as Krothapalli Smitha, D/o Dr.Krothapalli Murali Mohan of Sriram Nagar, Hyderabad, addressed to the Additional Director General of Police, CID, Hyderabad in saying her marriage with A1-A.Sathish performed on 02.05.1996 at Kamma Sangham Community Hall, Ameerpet, Hyderabad, as per Hindu rites and customs, arranged by elders and by then her husband was at Detroit i.e. Michigan State of USA employed in Ford Company and before marriage, on 27.12.1995, her in-laws and A1 came and demanded Rs.60 lakhs of cash, car worth of Rs.8 lakhs and Rs.2 lakhs as adapaduchu katnam and the marriage was fixed as per their demand and meted out by her parents by paying to her in-laws A.Madhava Rao and A.Umadevi in the presence of D.Koteswara Rao and N.Venkataswamy and P.Lalitha, Rs.20 lakhs worth of shares of Crystal Agritech Ltd, Rs.20 lakhs cash towards marriage expenses, gold and diamond jewellery worth Rs.10 lakhs

worth and Rs.10 lakhs in cash. It is stated that after marriage, having not contented with dowry that were meted supra, there was continuous demand for additional dowry by the in-laws till the couple left for USA. It is stated her husband abused her parents for not buying car and demanded to buy AIR ticket to USA from which her parents bought the ticket and later they left for Michigan, USA on 18.05.1996.

8. From that Rs.20 lakhs worth shares of Crystal Agritech Ltd not even shown transferred in the name of any of the accused and what was the cash of Rs.20 lakhs paid was towards marriage expenses and gold and diamond jewellery worth Rs.10 lakhs not even given as dowry to her in-laws but to her if at all. Leave about Rs.10 lakhs cash paid to the in-laws at the time of marriage out of pre-marriage arrangement from the alleged demand. Even to make a cause for which, in the report, dated 03.11.2009 about 13 years later, same is hopelessly barred under Section 236 of the Dowry Prohibition Act, even any of the sections that apply. Leave it as it is.

9. What she further averred from paras 4 to 14 of the report dated 03.11.2009 is that she started working after six months of the couple arrived in USA and since the beginning of their family life in USA, her husband/A1 physically and verbally harassing by saying she was not beautiful, he is worth more dowry from what was paid and used to entertain the thought of divorcing her and prevented her to have children till 2001 and also stated he is

introvert and sadistic and demanding money from parents regularly.

10. The above said acts even come under any of the provisions of the Dowry Prohibition Act and Section 498-A IPC were against her husband that too in USA that too till 2001 also there from more than 8 years prior to the report, hopelessly, barred by limitation.

11. Coming to para-5 of the allegations, her husband instigated by his mother/A2 and brother/A3, who were residents of Hyderabad from all the three conspired together to extract more money from her parents in a calculated foul play in his demanding again and again to get more money and an independent house at Sriramnagar, Hyderabad, purchased in her name and for the purpose of its transfer, her father sacrificed his financial interest and sustained loss in profit and her husband, his mother and brother demanded in the year 2009 to sell the property and handover the sale proceeds to them, for which she opposed and there from her husband, his mother and brother bore grudge and intensified their harassment and even she paid her personal earnings to the in-laws on many occasions through her father. After death of her father-in-law in March, 2006, her mother-in-law used to come to USA very frequently and instigated her husband against her and thereby he used ugliest language against her and physically assaulted her many a time and role of her mother-in-law is inexplicable in nature and she wanted to separate her from her husband deliberately.

12. Even from that in saying after death of her father-in-law in March, 2006 to date of report on 03.11.2009, more than three years lapsed, there are no allegations, thereafter specifically against her brother-in-law/A3, but for against her mother-in-law/A3.

13. Coming to paras-6 to 8 of the report, it is stated that in their wedlock, they blessed with two sons, Roshan and Neal of 7 and 4 years respectively. Because of the dowry demands of accused not fulfilled, her husband refused her second pregnancy and harassed to get aborted and her elder son was brought up with her parents at Hyderabad until he turned four years and later lived with them in USA, younger son was living with her brother and parents at Hyderabad since 3rd month of birth. In her first visit in February, 2001 to India, her in-laws demanded dowry and house belongs to her father at Sriram Nagar, Hyderabad and she bought several jewellery articles to satisfy her mother-in-law and her father transferred his house in her name in June, 2004. In March, 2007, her husband came to India and later she joined him and they both resided in her parents house at Sriram Nagar, Hyderabad, where her husband committed physical assaults and abuses on her and unable to bear the same, she requested her parents to intervene and to save her life, having witnessed his physical acts towards her on 02.03.2007. On 03.03.2007, her parents called her mother-in-law and brother-in-law to discuss the assaults, there was a meeting of elders by names Dasari Koteswara Rao and P.Lalitha among LWs.7 to 9 and her husband confessed all his mistakes including

assault on 02.03.2007 and assured not to repeat the same and her parents sent her back to America and even later, he did not change his conduct and he is sadistic.

14. From the above, leave apart what is discussed supra including from paras-5 to 8 allegations, there are no specific allegations against A2 and A3 but for against A1 and A2 and A3 participated in mediation in the period from 2001 to 2007 supra.

15. Coming to paras-9 to 14 of her report, she was unable to bear with physical and mental torture, called her parents in March, 2008, who came in April, 2008, where her husband abused and assaulted her holding her neck and pushed against the wall for her inviting her parents to USA and her parents were upset and requested him to behave well as promised in March, 2007 before elders in India and her parents left USA. Her husband, according to her, forced her to file divorce case which she filed. It is further stated that on 23.11.2008, her husband assaulted her and she informed the same to USA police on 23.11.2008 and a case was recorded and as registering a criminal case is serious, she requested the police not to register as they are NRIs. Her husband is addicted to alcohol and thereafter his acts are unbearable and he addressed her in filthy language including as 'lanja and munda' and abused her parents and was assaulting her eldest son, Roshan to make her nervous and the assaults were reported to the concerned authorities apart from covered by photographs. On 27.09.2009, she was forced to come to India, as unable to bear physical and mental torture and to fulfill his demand to bring the

second child to USA and on 21.10.2009, at 10 p.m. A2 and A3 came to her house at Sriram Nagar, Hyderabad with D.Koteswara Rao, N.Venkataswamy and P.Lalitha, who are the witnesses for the dowry offered by her parents at the time of marriage and demanded Rs.75 lakhs cash and jewellery in the presence of above elders in return for divorce filed in USA to go through smoothly and otherwise threatened to kill her and her parents.

16. No doubt, the above allegations are serious, allegedly, happened on 21.10.2009 at about 10 p.m at Hyderabad specifically against A2 and A3. However, there is no meaning in keeping quiet for more than 12 days thereafter till report dated 03.11.2009 with no explanation even covered by para-12 of her report as to why she waited without reporting the said serious occurrence. That itself is doubtful on the truth of the averments.

17. In paras-13 and 14 of her report, she stated that currently she is in USA, as divorce petition pending in Court and the Child Protective Services confirmed that children should not stay with father as he is abusive and she could not bring her son, Roshan, along with her to India, when she came on 28.07.2009, as A1 refused to give his passport, which he secreted and she left her son at her friend's residence having no other choice. Hence, to take action.

18. There is no averment of any abortion of her much less at the instance of A1 much less at the instigation of A2 and A3 to attract any offence under Section 313 IPC thereby the crime registered

was only for Section 498-A IPC and Sections 3, 4 and 6 of the Dowry Prohibition Act. As discussed supra, if at all there is any sustainable accusation even from the acts alleged in India, it is only against A2 and nothing against A3, more particularly, for the alleged incident against A3 and A2 on 21.10.2009 of their threatening to kill her and her parents in the presence of the so called elders. There was no basis why she kept quiet without even reporting to police for waiting more than 12 days. Leave it apart, she filed a divorce case, for which she mentioned in the report as at the instance of her husband, that too, educated independently, working hardly believable. It is, during investigation, there appears a whisper regarding alleged instigation for abortion to add Section 313 IPC and in this regard, what the charge sheet no way even specifically mentioned from which witness and on what date and at which place the alleged instigation for operation and cause abortion taken place, what all her statement in this regard speaks running in two pages recorded on 04.11.2009, on the next day of her report is that on seeing cruel and sadistical attitude of her husband, her parents took her elder son to Hyderabad and brought up by them till he turns 4 years old and her second son was brought to Hyderabad during September, 2005 to save from evil clutches of her husband. Her father-in-law died in 2006. While she was carrying in the month of October, 2006, her husband with the instigation of her mother-in-law and brother-in-law, forcibly took her to hospital at Westland, Michigan State, USA, and got aborted third pregnancy on 29.10.2006, without her consent and will of her

in fear of kill. Even there from, it is her husband if at all and that too, in USA and not in India that too, in October, 2006, for which she did not make any whisper in the FIR and in the charge sheet, there is no any record verified or submitted with enclosures as document, if at all there was any abortion taken place, there was one witness referred i.e. Kaza Audilaxmi (LW.13) of Michigan State, USA, as medical practitioner, who referred the victim to Northland Family Planning Centre in Michigan, for termination of her pregnancy on her request. It is, if at all what the de facto complainant stated to the said doctor of her parents and husband were forcing, the call of her parents forcing from India to USA other than by phone talk or any little message does not arise that was not even collected with specific instances to rope the petitioners for the offence punishable under Section 313 IPC.

19. In this regard what that LW.13 as a witness stated was from her so called examination at hospital on 10.11.2009 of she is an Obstetrician and Gynecologist in USA since 2005 and came to Hyderabad on that day to visit her parents and de facto complainant was her patient and in June, 2005, second delivery was done by her successfully and on 13.10.2006, she came to her hospital and told about her early pregnancy and she requested for its termination and when she asked the cause, she revealed that her husband is totally against pregnancy and also revealed that her second pregnancy against his wish and now she cannot continue the third one against wish of her husband and told that her husband pressurizing to get pregnancy terminated and she advised

de facto complainant to wait for another four weeks if he would change his mind and she called her and told that even her husband still insisting for abortion and she has no other option and then Doctor recommended her to go to abortion clinic at Northland Family Planning Centre in Michigan and it was done on 29.10.2006. Even from that statement, there is no whisper of de facto complainant stated of there is any instigation by A2 and A3 for abortion but for what she stated to the witness of her husband A1 unwilling and advised to go for abortion and she alone approached and not even with her husband much less her husband asked to abort.

20. From the above, there is no sustainable accusation so far as the offence under Section 313 IPC against the petitioners/ A2 and A3. Leave it as it is. From the record, it shows what the divorce petition filed by her was withdrawn subsequently and her husband filed a divorce petition and the State of Michigan, in the Circuit Court for the County of Oakland, Family Court Division, passed the order of divorce on 21st May, 2013 on the application of her husband, where she was defendant and contested through advocate and from her answer through advocate and in saying the parties reached an agreement of all contested issues through mediation, without the necessity of Court intervention and ordered the marriage between the couple forthwith dissolved and a divorce from the bonds of matrimony between the parties ordered, there shall be no spousal support payable to either party and spousal support shall be forever barred and regarding custody of children

both shall have joint legal and joint physical custody of two minor children, namely, Roshan Atluri and Neal Atluri until each child reaches the age of 18 years or graduate from high school, whichever is later, but not beyond the age of 19 years 6 months, or until the further orders of the Court by explaining the meaning of joint legal custody with conditions (a) to (l) and it is further mentioned regarding parenting time, child support, domicile residence of minor children, medical, dental and hospital expenses and property settlement and regarding arbitration by appointing arbitrator, Sheldon Larky, in the event of division of household goods, furniture, furnishings and personal property etc. and there is a specific clause with regard of rights of each relinquishing all their rights and waives. Further, a specific clause of mutual release, where it is mentioned that upon entry of this judgment, each of the parties hereby relieves the other from any cause of action that either may have against the other or that either may be involved in, from any incident which may have occurred prior to the entry of this judgment, whether that claim be founded in contract, tort, or any other basis. This judgment is intended to be a settlement of any and all claims between the parties of every kind of nature. It is crystallized there from of settlement between the parties of all claims of any nature not only confined to contract or other or other basis from the specific mention of every kind of nature. No doubt, this settlement arrived in the County court supra was on 21.05.2013 and the charge sheet filed in the case was covered by PRC No.22 of 2010 to say subsequent to the police

investigation and filing of charge sheet and taking of cognizance and for that matter may be prior or subsequent to the committal of the case and allotment of S.C.No.280 of 2018 by the Metropolitan Sessions Division, Nampally, Hyderabad, for the case made over and pending for II Additional Metropolitan Sessions Judge, Nampally, Hyderabad.

21. The case herein is, once there is a settlement, the continuation of the proceedings whether abuse of process, no doubt, so called offence under Section 313 IPC is a non-compounded one but for the others. Once there is a settlement, the continuation is nothing but abuse of process is the expression of the Apex Court in **Ruchi Agarwal Vs. Amit Kumar**¹

22. Apart from it, in a subsequent expression of the Apex Court in **Shlok Bhardwaj v. Runika Bhardwaj**², it is also a case under Sections 498-A and 506 IPC and Sections 3 and 4 of the Dowry Prohibition Act of the crime registered in 2002 and later pending divorce proceeding the matter went upto Supreme Court, where the parties by mutual consent settled their disputes and claims from which divorce granted. Pursuant to the direction of the Supreme Court by the Family Court by decree of divorce, dated 04.04.2005, and wife did not press her counter claim for maintenance and did not reserve any liberty for any action against husband and meantime wife filed revision against withdrawal letter

¹ (2005) 1 ALT(CrI) 101 SC

² (2015) 2 SCC 721

of the crime dated 03.07.2002 but High Court set aside withdrawal order and remitted matter back to the trial Court. The Apex Court observed that the husband was not justified in setting aside withdrawal order of the husband by sitting in revision leave about bound to the registration of crime that too before the High court in 2006 when he filed affidavit placing on record, order of the Supreme Court and order of the Family Court on mutual decree of divorce and mentioning of after dissolution of marriage, wife re-married from which the revision petition ought to have been dismissed rather than allowing. The contention of the wife that even after mutual divorce by consent taken she was not prevented to pursue the criminal proceedings against the husband is not tenable, as once the matter was settled between the parties and settlement was given affect, with divorce by mutual consent and of no further dispute to survive between the parties, though not expressed by order of the Supreme Court for no liberty reserved by wife to continue the criminal proceedings against husband and after settling the matter putting end to the marital tie, the wife is estopped to continue the criminal proceeding.

23. Even there from as all claims between the parties pending also referred as settlement by virtue of the mutual consent divorce before the other Court to refer and nothing reserved even the offence under Section 313 IPC is a non-compoundable one, but for, the others compoundable from the settlement and so far as that offence concerned, there is no basis to say the abortion is at the instance of A2 and A3 that too in USA that too she voluntarily went

and chosen by saying her husband is not willing to continue the pregnancy and nothing to show it was at his force along with A2 and A3 and for unwillingness even she was constrained much less with any role of A2 and A3, thereby, continuation of proceedings against the petitioners is nothing but abuse of process.

24. Accordingly, the Criminal Petition is allowed quashing the proceedings against the petitioners/A2 and A3 in S.C.No.280 of 2013 on the file of the II Additional Metropolitan Sessions Judge, Nampally, Hyderabad.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 31.12.2018
Pab/vvr