HONOURABLE DR. JUSTICE D.NAGARJUN

CRIMINAL PETITION Nos.13959 and 13992 of 2018

COMMON ORDER:

Crl.P.No.13959 of 2018 is filed by A1 and Crl.P.No.13992 of 2018 is filed by A2 and A3 in C.C.No.121 of 2016 on the file of the XV Additional Chief Metropolitan Magistrate, Hyderabad, seeking quashment of charge sheet cognizance of which was taken for the offences punishable under Sections 498-A, 506 and 406 IPC and Sections 4 and 6 of the Dowry Prohibition Act.

2. The facts in brief as per the charge sheet are that the de-facto complainant/respondent No.2 is the wife of the petitioner/A1 in Crl.P.No.13959 of 2018 and the petitioners/A2 and A3 in Crl.P.No.13992 of 2018 are the parents of A1. The marriage of the de-facto complainant with A1 was taken up on 27.03.2010 at Bhramarambika Marriage Hall, Hyderabad. The family of A1 have demanded exorbitant dowry of Rs.10 lakhs. Since A1 was settled in U.S.A., the family of the de-facto complainant has conceded to the demands of A1 and performed the marriage.

3. Soon after the marriage, A1 to A3 have demanded to organize a reception in an expensive hotel at Singapur and

accordingly reception was held in a hotel at Singapur and immediately after the marriage, A1 to A3 have compelled the de-facto complainant to go to her in-laws house. In the house of A1 to A3, the de-facto complainant was subjected to mental and physical torture and A1 to A3 demanded additional dowry of Rs.6 lakhs in order to give to her sister in-law. The de-facto complainant's family also gave 30 tulas of gold and the total expenditure of the wedding is Rs.1 crore, including the reception at Singapur.

4. After marriage, A1 to A3 subjected the de-facto complainant to mental and physical torture, insulted her, humiliated her without any reason. Even whenever the de-facto complainant has politely requested her husband/A1 to have conjugal life in order to have children, A1 has refused stating that having sexual life in marital life is not a matter of right. On the demand made by A1 to A3, the de-facto complainant's father had to pay Rs.30 lakhs more than what is agreed upon. A1 to A3 and the sister of A1, who is A4, continued their harassment. A1 has sent divorce papers to the de-facto complainant and on the complaint filed by the de-facto complainant, a case in Crime No.236 of 2015 was registered and the police concerned have recorded the statement of the victim, her parents and after

completion of investigation, filed charge sheet against all the accused, including A4 and the petitioners/A1 to A3 herein.

5. Aggrieved by the same, the petitioners/A1 to A3 have filed these petitions to quash the charge sheet.

6. It is submitted by the learned counsel for the petitioners that the petitioners are falsely implicated in the case. The vague allegations levelled against them do not constitute offence under Section 498-A Cr.P.C. The allegations in respect of harassment are concerned, they are created by the de-facto complainant. It is submitted further that the de-facto complainant is a Singapur citizen and she has stayed in USA along with A1. In her entire matrimonial life, most of the allegations levelled by the de-facto complainant against A1 are when she stayed with A1 in USA, thereby the Courts in India cannot take cognizance of those facts. As per her passport, the de-facto complainant stayed only few days in India subsequent to marriage.

7. It is also submitted by the learned counsel for the petitioners that the marriage between A1 and the de-facto complainant was dissolved with mutual consent and understanding along with full and final settlement as per orders in case No.6-15-FL-015499 on the file of Superior Court of

California, County of Santa Clare County and thereby, the marriage between the de-facto complainant and A1 stands dissolved from 29.09.2016. A1 and the de-facto complainant have also settled their disputes and the de-facto complainant has received 258,703.16 USD, including spousal support etc., which amounts to Rs.3,27,28,134-59. It is submitted further that clause (b) of the General Provisions of the divorce settlement speaks that the parties intended to settle all the aspects of their marital relationship and rights, which reads as under:

> "The parties intend to settle all the aspects of their marital relationship and rights by this agreement. Except as otherwise provided in this agreement, the parties mutually release and forever discharge each other from any and all actions, liabilities, claims, demands and obligation of any kind or character, both in law and in equality, that either of them ever had, now as or may have against the other upon or by reason of any matter, cause or thing up to the effective date."

8. It is submitted that on account of settlement arrived at in USA, the criminal cases pending against the petitioners are required to be quashed. Learned counsel for the petitioners has cited an authority reported in **Ruchi Agarwal vs. Amit Kumar Agarwal and others**[1], wherein the Hon'ble Supreme Court has held at paras 8 and 9 as under:

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[1] (2005) 3 SCC 299

> “8. Learned counsel appearing for the appellant, however, contended that though the appellant had signed the compromise deed with the abovementioned terms in it, the same was obtained by the respondent husband and his family under threat and coercion and in fact she did not receive lump sum maintenance and her stridhan properties. We find it extremely difficult to accept this argument in the background of the fact that pursuant to the compromise deed the respondent husband has given her a consent divorce which she wanted, thus had performed his part of the obligation under the compromise deed. Even the appellant partially performed her part of the obligations by withdrawing her criminal complaint filed under Section 125. It is true that she had made a complaint in writing to the Family Court where Section 125 CrPC proceedings were pending that the compromise deed was filed under coercion but she withdrew the same and gave a statement before the said court affirming the terms of the compromise which statement was recorded by the Family Court and the proceedings were dropped and a divorce was obtained. Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.”
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> 9. In view of the abovesaid subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal proceedings from which this appeal arises is allowed to continue. Therefore, we are of the considered opinion to do complete justice, we should while dismissing this appeal also quash the proceedings arising from criminal case Cr. No. 224 of 2003 registered in Police Station Bilaspur (District Rampur) filed under Sections 498-A, 323 and 506 IPC and under Sections 3 and 4 of the Dowry Prohibition Act against the respondents herein. It is ordered accordingly. The appeal is disposed of.”

9. On the other hand, learned Additional Public Prosecutor has opposed both the petitions stating that all the issues raised

are subject matter of trial Court and not in the petitions to quash the charge sheet.

10. Heard both sides and perused the record.

11. Now, the point for determination is whether the charge sheet against the petitioners/A1 to A3 in C.C.No.121 of 2016 can be quashed?

12. The scope of petition under Section 482 Cr.P.C., has been settled in a number of decisions by the Apex Court. This Court while considering an application for quashment of charge sheet under Section 482 Cr.P.C., is expected to confine only to the contents of the charge sheet along with the statements of witnesses and documents, if any, filed along with the charge sheet. This is not a trial Court or appellate Court to go through the various documents filed by the petitioner/A4 and A1 to A3 along with criminal petition in order to disprove the evidence collected by the prosecution against A1 to A3 and the petitioner/A4. It is for the trial Court to consider the evidence of the accused while appreciating the evidence placed before the Court by the prosecution.

13. Section 498-A IPC, which runs as under:

> "**498A. Husband or relative of husband of a woman subjecting her 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.
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> Explanation.—For the purpose of this section, "cruelty" means—
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> (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
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> (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

14. In order to hold a person guilty of the offence under Section 498-A IPC, it is expected that the prosecution must have make out a case that either the husband or the relatives have subjected the wife to cruelty as defined in explanation (a) and (b) of Section 498-A IPC. Explanation (a) of Section 498-A IPC constitutes that in order to constitute cruelty the conduct of the petitioner/A4 is of such nature, which will likely to drive the de-facto complainant to commit suicide or cause injury.

15. The submissions of the learned counsel for the petitioners to quash the cases against the petitioners/A1 to A3 are on the basis of the evidence collected by the police as per the charge sheet and also on the basis of settlement arrived at USA on

29.09.2016, wherein the marriage between A1 and the de-facto complainant was dissolved by mutual consent and that according to the petitioners during the course of the said settlement both the parties intend to settle all their aspects and discharge each other all aspects, liabilities, claims etc. Learned counsel for the petitioners submitted that since both the parties have agreed to release each other and settle all claims, the petitioners, who were charged for the offense punishable under Section 498-A IPC on the complaint filed by the de-facto complainant, are also required to be quashed.

16. Learned counsel for the petitioners submitted further that the Indian Courts cannot invoke the jurisdiction in respect of the allegations of the de-facto complainant which allegedly took place in USA. The petitioners, who have taken the specific plea that Indian Courts cannot found fault with the alleged harassment made in USA, failed to convince this Court as to how the alleged settlement of the de-facto complainant and A1 on 29.09.2016 can be applied in Indian Courts. If really the de-facto complainant has agreed to dissolve all the disputes including C.C.No.121 of 2016 against the petitioners, the same thing could have been specifically mentioned in the settlement before the USA Courts or the petitioners could have filed a

compromise petition along with the de-facto complainant in this case stating that the petitioners and the de-facto complainant have resolved all the disputes among themselves. The terms of settlement in USA is a usual format of USA Courts and it is not specifically intended to settle the issues between the de-facto complainant and A1 in Indian Courts. Therefore, the alleged settlement between the parties on 29.09.2016 in US Court cannot be invoked to settle the dispute on hand.

17. In order to quash the charge sheet against the petitioners, the petitioners are expected to make out a case that even if the allegations levelled against them in the charge sheet are accepted to be correct and true, still there is no case against them.

18. According to the contents of the criminal petition, the petitioners have contended that the allegations in respect of harassment by A1 are created and concocted story for the purpose of coercion by the de-facto complainant for wrongful prosecution. It is also mentioned in the grounds that the petitioners are falsely implicated with false allegations of dowry harassment and breach of contract. That means, the petitioners in a way admitting that there are allegations against

them in the charge sheet. However, according to the petitioners, the said allegations are created for the purpose of prosecution.

19. As already observed, while considering the application under Section 482 Cr.P.C., it is to be examined whether there are any incriminating material against the petitioners constituting the offence alleged against them. On going through the entire material before the Court, there are number of allegations against A1 to A3 specifically made by the de-facto complainant and her parents in respect of demanding dowry, harassing the de-facto complainant mentally and physically. Therefore, at the outset, the contention of the petitioners that there is no material against them to proceed cannot be accepted.

20. It is further submitted by the learned counsel for the petitioners that all the allegations made against the petitioners are false, baseless, created for the purpose of this case in order to take revenge. While considering the application under Section 482 Cr.P.C., this Court is not expected to consider the material filed by the petitioners/A1 to A3 in order to create a doubt in respect of the material placed by the prosecution

against the petitioners. Only after trial is conducted, the truth or otherwise of the allegations made by the de-facto complainant and her parents against the petitioners will come to light. Therefore, basing on the documents enclosed by the petitioners along with this criminal petition, including the copy of passport of the de-facto complainant and A1, bank statements, report given to the Police Commissioner and the details of the settlement between the USA Courts cannot be a ground to quash the case against the petitioners.

21. It is the case of the de-facto complainant that soon after the marriage, A1 to A3 have demanded the de-facto complainant and her family members to perform a lavish reception at a star hotel in Singapur by inviting close relatives of the de-facto complainant and entertaining them for about one week in Singapur. It is also alleged that A1 to A3 have demanded exorbitant amount of Rs.10 lakhs as dowry which the de-facto complainant parents have agreed, as A1 is settled in USA. It is also alleged that A1 to A3 have demanded Rs.6 lakhs for purchasing of necklace towards aadapaduchu katnam given to A4. It is also alleged that after reception is over in Singapur, the petitioners/A1 to A3 have also demanded Rs.30 lakhs more than what was agreed. It is also alleged that the petitioners

made the de-facto complainant and her parents to spend more than Rs.1 crore for wedding. The other allegations levelled against the petitioners is that the parents of the de-facto complainant have given a flat to A1 to A3 at the time of wedding and on account of torture of A1 to A3, the de-facto complainant parents have sold the said flat in India and purchased a house in USA.

22. The other allegation levelled by the de-facto complainant specifically against A1 is that A1 is always in the habit of performing unnatural sex. In spite of repeatedly informing A1 to A3, A1 did not stop his behaviour. The de-facto complainant has also stated to have advised A1 to approach doctor for his unnatural sex. It is also alleged by the de-facto complainant that whenever she softly asked for performing conjugal rights in order to have children, A1 has replied that to have a conjugal life in in-laws house is not a matter of right and A1 stated that unless the demands meted out, he will not have conjugal life with her. It is also stated that A1 to A3 used to harass the de-facto complainant mentally and physically many a times. A2 and A3 though they were used to reside in India used to telephonically instigate A1 to harass the de-facto complainant mentally and physically on which A1 used to follow the same.

A2 and A3 used to visit USA and during their stay at USA also they used to harass the de-facto complainant.

23. On perusal of the allegations levelled by the de-facto complainant and her parents in their respective statements, most of the allegations levelled by the de-facto complainant were happened in USA for which admittedly the Indian Courts cannot take them into cognizance. However, soon after the marriage and before both of them left for USA also there are clear overt acts mentioned by the de-facto complainant and her parents in respect of demanding of dowry, Rs.6 lakhs and harassing the de-facto complainant mentally and physically. It is also a matter of record that after the de-facto complainant returned back to Hyderabad from USA in the year 2015, a panchayat was held in the presence of Vishwa Brahmana Sangam and also in the house of the de-facto complainant, wherein A1 to A3 though agreed to take care of the de-facto complainant properly still after leaving to USA, same thing is continued.

24. It is also alleged that when A1 visited India for settlement still he has harassed even that time also. Therefore, on going through the entire material, there is a prima facie material before the Court that immediately after the marriage and during

the time when A1 was in India, A1 to A3 harassed the de-facto complainant mentally and physically for want of additional dowry. When there is such strong prima facie material, the case against the petitioners cannot be quashed. This is a case where the trial is required to be conducted so that the defence, if any, by the petitioners can be placed before the trial Court.

25. In view of the discussion made above, there are no merits in the case of the petitioners and therefore, the criminal petition is liable to be dismissed.

26. In the result, the criminal petition is dismissed.

Miscellaneous applications, if any, shall stand closed.

DR. D.NAGARJUN, J

Date: 25.01.2023
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