

HON'BLE SRI JUSTICE K. SREENIVASA REDDY

Criminal Petition Nos.3785 and 3787 of 2022

Common Order:

Since the issue involved in both the Criminal Petitions is common and arise out of same crime, they are being disposed of by this common order.

2. These Criminal Petitions, under Section 482 Cr.P.C., have been filed on behalf of petitioner/A6 and petitioners/A4 and A5 respectively, to quash the proceedings in CC No.1737 of 2022 on the file of learned II Additional Chief Metropolitan Magistrate, Vijayawada.

3. A charge sheet has been filed against the petitioners herein and others for the offences punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act.

4. Case of the prosecution, in brief, is that, marriage between the de facto complainant and accused No.1 was performed on 02.07.2021. At the time of marriage, mother of the de facto complainant presented Rs.5,00,000/- towards Pasupukunkuma and Rs.50,000/- towards Adapaduchu katnam. Petitioner/A6 acted as elder to the said marriage. On 29.08.2021, the complainant was sent to her matrimonial house. At that time, saare articles worth of Rs.1,50,000/- were given to the complainant. Thereafter, it is alleged that all the accused started harassing the de facto complainant on the ground that

she did not get sufficient dowry. The accused also blamed the de facto complainant that she fell in love with somebody, due to which A1 suspected the fidelity of the de facto complainant, abused her and harassed her both mentally and physically. It is alleged that A5 picked up a quarrel with her husband and staying in the house of A1. On 16.09.2021, A5 went along with her husband and residing at Kaikaluru. It is alleged that A1 to A4 and A6 blamed the de facto complainant that she is responsible for leaving A5 from their house. Thereafter, they harassed the de facto complainant for additional dowry on the pretext that the dowry brought by her is not sufficient to them. On 17.10.2021, when LW.2 the mother and younger brother of the complainant came to their house, she narrated the above facts. When they questioned the accused, it is alleged that A1 to A4 picked up a quarrel with LW.2, due to which LW.2 brought the complainant back to Vijayawada. Since then, the accused did not take the complainant back for marital life. On 25.10.2021, LWs.2 and 3 and both side elders met before the house of A1, but there is no settlement between the complainant and the accused and there is no change in the attitude of A1 to A6. It is alleged that all the accused demanded an amount of Rs.5,00,000/- as additional dowry by saying that A1 is earning Rs.4,00,000/- per year. At the time of giving dowry to the accused, the younger brother of the complainant took a photo through his cell

phone. LWS.5 and 6 who are neighbours witnessed the acts of the accused. In respect of that a case in Crime No.3336 of 2021 of Disha Police Station, Vijayawada, for the offences punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act has been registered against the accused and the police, after conducting investigation, filed the charge sheet.

5. Learned counsel appearing on behalf of the petitioners/A4, A5 and A6 contended that there is absolutely no accusation against the petitioners herein that they harassed the de facto complainant and demanded additional dowry.

6. On the other hand, learned Assistant Public Prosecutor submitted that specific accusations are made against the petitioners herein and truth or otherwise of the said accusations has to be decided during the course of trial only.

7. Heard. Perused the record.

8. There cannot be any dispute that inherent powers of this Court under Section 482 Cr.P.C. can be exercised to prevent abuse of process of Court or to give effect to any order under the code or to secure the ends of justice. This Court is also conscious of the fact that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases and that the Court would not be justified in embarking upon

an enquiry as to the reliability or genuineness or otherwise of the allegations made in the report. On this aspect, it is pertinent to refer to the judgment of the Hon'ble Apex Court in *State of Haryana Vs. Ch.Bhajanlal and ors.*¹, wherein the Apex Court held,

"In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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

¹ **AIR 1992 SC 604**

or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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 uncontroverted 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 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.”

9. Learned counsel for petitioners relied on a decision in *Preeti Gupta and another v. State of Jharkhand & another*², wherein it was held thus: (paragraphs 30 to 34).

“30. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this Court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

31. The courts are receiving a large number of cases emanating from Section 498-A of the Penal Code which reads as under:

“498-A. *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.

² (2010) 7 SCC 667

Explanation.—For the purposes of this section, ‘cruelty’ means—

(a) any wilful 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

(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.”

32. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualised by the complainant that such complaint can lead to

insurmountable harassment, agony and pain to the complainant, accused and his close relations.”

10. He also relied on a decision of the Hon’ble Apex Court in *Mirza Iqbal @ Golu and another v. State of Uttar Pradesh and another*,³ wherein it was held thus: (paragraphs 11 and 12).

“11. The appellants are brother-in-law and mother-in-law respectively of the deceased. A perusal of the complaint filed by the 2nd respondent, pursuant to which a crime was registered, does not indicate any specific allegations by disclosing the involvement of the appellants. It is the specific case of the 1st appellant that he was working as a cashier in ICICI Bank at Khalilabad branch, which is at about 40 kms from Gorakhpur. The alleged incident was on 24.07.2018 at about 8 p.m. When the investigation was pending, the 1st appellant has filed affidavit before Senior Superintendent of Police on 08.08.2018, giving his employment details and stated that he was falsely implicated. It was his specific case that during the relevant time, he was working at ICICI Bank, Khalilabad branch, Gorakhpur and his mother was also staying with him. The Branch Manager has endorsed his presence in the branch, showing in-time at 09 : 49 a.m. and out-time at 06 : 25 p.m. Even in the statement of 2nd respondent recorded by the police and also in the final report filed under Section 173(2) of Cr.P.C., except omnibus and vague allegations, there is no specific allegation against the appellants to show their involvement for the offences alleged. This Court, time and again, has noticed making the family members of husband as accused by making casual reference to them in matrimonial disputes. Learned senior counsel for the appellants, in support of her case, placed reliance on the judgment of this Court in the case of *Geeta Mehrotra v. State of Uttar Pradesh*¹. In the aforesaid case, this Court in identical circumstances, has quashed the proceedings by observing that family members of husband were shown as accused by making casual reference to

³2021 SCC OnLine SC 1251

them. In the very same judgment, it is held that a large number of family members are shown in the FIR by casually mentioning their names and the contents do not disclose their active involvement, as such, taking cognizance of the matter against them was not justified. It is further held that taking cognizance in such type of cases results in abuse of judicial process. Paras 18 and 25 of the said judgment, which are relevant for the purpose of this case, read as under:

"18. Their Lordships of the Supreme Court in *Ramesh case* [(2005) 3 SCC 507 : 2005 SCC (Cri) 735] had been pleased to hold that the bald allegations made against the sister-in-law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband's relatives as possible. It was held that neither the FIR nor the charge-sheet furnished the legal basis for the Magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of the charge-sheet, none of the alleged offences under Sections 498-A, 406 IPC and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's husband who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister-in-law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed.

25. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegations of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasise by highlighting is that, if the FIR as it stands does not disclose specific allegation against the

accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant wife. It is the well-settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing, especially in cases of matrimonial disputes whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of overimplication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding."

12. From a perusal of the complaint filed by the 2nd respondent and the final report filed by the police under Section 173(2) of Cr.P.C., We are of the view that the aforesaid judgment fully supports the case of the appellants. Even in the counter affidavits filed on behalf of respondent nos. 1 and 2, it is not disputed that the 1st appellant was working in ICICI Bank at Khalilabad branch, but merely stated that there was a possibility to reach Gorakhpur by 8 p.m. Though there is an allegation of causing injuries, there are no other external injuries noticed in the postmortem certificate, except the single ante-mortem injury i.e. ligature mark around the neck, and the cause of death is shown as asphyxia. Having regard to the case of the appellants and the material placed on record, we are of the considered view that except vague and bald allegations against the

appellants, there are no specific allegations disclosing the involvement of the appellants to prosecute them for the offences alleged. In view of the judgment of this Court in the case of *Geeta Mehrotra*¹, which squarely applies to the case of the appellants, we are of the view that it is a fit case to quash the proceedings.”

11. He also placed reliance on a decision in *Kahkashan Kausar @ Sonam Vs State Of Bihar*⁴, wherein it was held as follows :

18. “The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of [section 498A](#) IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

22. Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the accused appellants, it would be unjust if the Appellants are forced to go through the tribulations of a trial, i.e., general and omnibus allegations cannot manifest in a situation where the relatives of the complainant’s husband are forced to undergo trial. It has been highlighted by this court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must therefore be discouraged.”

⁴ 2022 LiveLaw (SC) 141

12. Going by the charge sheet, insofar as the petitioner/A6 is concerned, the only accusation that has been made against him is that he acted as elder for marriage between the de facto complainant and A1 and it is alleged that he along with other accused demanded additional dowry of Rs.5,00,000/- on the ground that A1 is earning Rs.4,00,000/- per year. Except the said accusation, no specific accusation has been made as against the petitioner/A6. Even accepting the said accusation to be true, this Court is of the opinion that still no offence under Section 498-A IPC would be made out against the petitioner/A6, for the reason that the beneficiaries of the alleged demand would be A1 to A5 only. Petitioner/A6 is only a relative to the accused and he acted as elder for marriage between the de facto complainant and A1. By any stretch of imagination, the petitioner/A6 is not a beneficiary of the amount that has been allegedly paid by the mother of the complainant to the accused. Though the petitioner/A6 is shown as relative to the accused, no specific incident has been mentioned in the charge sheet as to how and when he harassed the de facto complainant. Except making a vague and bald allegation that the petitioner/A6 along with other accused demanded additional dowry, there is no other material either in the 161 Cr.P.C.

statements or in the charge sheet to connect the petitioner/A6 to the alleged crime.

13. Time and again, the Hon'ble Apex Court and this court categorically held that a tendency has been developed for roping in all the relatives of the husband in dowry harassment made in order to browbeat and pressurize the immediate family of the husband and the accusations against the relatives of the husband, if omnibus in nature, have to be curtailed at the threshold. Going by the charge sheet, absolutely no specific accusations are attributed against A6. When there is no material on record against the petitioner/A6, continuation of proceedings against him is without jurisdiction and allowing him to undergo rigmarole of criminal trial is nothing but abuse of process of Court. Hence, this Court is of the considered view that proceedings against A6 are liable to be quashed.

14. Insofar as petitioners/A4 and A5 are concerned, who happens to be sisters of A1, the allegation against the petitioner/A5 is that she had a dispute with her husband and started staying with accused and de facto complainant. It is alleged that A4 and A5 along with other accused harassed the de facto complainant demanding additional dowry. It is alleged that on 16.09.2021, A5 went along with her husband and residing at Kaikaluru. Thereafter, it is alleged that A1 to

A5 harassed the de facto complainant by blaming that she is responsible for leaving A5 from their house. There are accusations in the charge sheet that accused Nos.1 to 5 harassed the de facto complainant demanding additional dowry. Even though no specific overt act has been attributed as against them, it is specifically averred that there is a demand of Rs.5,00,000/- by the accused and the entire amount was passed on to A1 to A5. Truth or otherwise of the said accusations has to be decided during the course of trial and this Court, in a petition filed under Section 482 Cr.P.C., would not be in a position to conduct a roving enquiry into the disputed questions of fact and quash the proceedings at this stage. In view of the same, this Court is not inclined to quash the proceedings against the petitioners/A4 and A5.

15. Accordingly, Crl.P.No.3785 of 2022 is allowed and the proceedings in CC No.1737 of 2022 on the file of learned II Additional Chief Metropolitan Magistrate, Vijayawada, are hereby quashed against the petitioner/A6 only.

16. However, in the circumstances, Crl.P.No.3787 of 2022 filed by the petitioners/A4 and A5 is dismissed. Since the petitioners/A4 and A5 are residing elsewhere, ends of justice would be met if the presence of the petitioners/A4 and A5 is dispensed with. Accordingly, the

presence of the petitioners/A4 and A5 before the trial Court is dispensed with, except on those dates when the learned Magistrate feels that their presence is necessary.

17. As a sequel thereto, the miscellaneous petitions, if any, pending in these Criminal Petitions, shall stand closed.

Date:20.07.2023
Nsr

K. SREENIVASA REDDY, J.

HON'BLE SRI JUSTICE K. SREENIVASA REDDY

Criminal Petition Nos.3785 and 3787 of 2022

Date:20.07.2023

Nsr