

IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT: HYDERABAD

CORAM:

*** THE HON'BLE SRI JUSTICE K. LAKSHMAN**

+ CRIMINAL PETITION No.2615 OF 2019

% Delivered on: 01-06-2021

Between:

Gundapaneni Rakesh

.. Petitioners/
Accused No.4

Vs.

\$ Thatiparthi Jithender & another

.. Respondents

! For Petitioner

: Mr. K. Venu Madhav

^ For Respondent No.1

: Mr. A. Prabhakar Rao

For Respondent No.2

: Asst. Public Prosecutor

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> Head Note

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? Cases Referred

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1. (2010) 7 SCC 667
2. (2012) 10 SCC 741
3. (2018) 14 SCC 452
4. 1992 SCC (CrI) 426
5. (2018) 10 SCC 472,

HON'BLE SRI JUSTICE K. LAKSHMAN**CRIMINAL PETITION No.2615 OF 2019****ORDER:**

This Criminal Petition is filed under Section - 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to quash the proceedings in C.C. No.388 of 2018 on the file of XIV Metropolitan Magistrate, Cyberabad at L.B.Nagar, Ranga Reddy district. The petitioner herein is accused No.4 in the said Calendar Case. The offences alleged against him are under Section 498-A of IPC and Sections 4 and 6 of the Dowry Prohibition Act, 1961 (for short, 'the D.P.Act').

2. Heard Mr. K.Venumadhav, learned counsel for the petitioner and Mr. A. Prabhakar Rao, learned counsel for the 1st respondent and also learned Assistant Public Prosecutor for the 2nd respondent-State and perused the record.

3. The only allegation levelled against the petitioner herein/A.4 is that after returning to Hyderabad from United States of America, daughter of the 1st respondent/victim along with A.1, cousin of the petitioner herein/A.4 were stayed in Tarnaka for about 1½ years and during that period, the petitioner/A.4 also stayed with them. The petitioner/A.4 supported and instigated A.1 and also abused daughter of the 1st respondent/victim though he is no way concerned. Except the same, there is no other allegation much less specific allegations

with regard to harassment of the daughter of the 1st respondent/victim in the entire case.

4. In the charge sheet, it is mentioned that the Investigating Officer has recorded the statements of the 1st respondent-father of the victim as L.W.1, mother of the victim as L.W.2, younger paternal uncle of victim as L.W.3, maternal uncle of victim as L.W.4, a friend of L.W.1 as L.W.5, father-in-law of victim as L.W.6 and the victim as L.W.7.

5. It is relevant to note that the name of the petitioner herein/A.4 is not there in the complaint dated 25.09.2015 lodged by the 1st respondent. The allegations are against A.1. In the complaint itself, the 1st respondent has specifically mentioned about lodging of a complaint earlier with the Police, Suryapet Police Station, who in turn has conducted counseling between L.W.7/victim and A.1.

6. As stated above, there is no mention about the name of the petitioner/A.4 in the complaint dated 25.09.2015 and there is no allegation against the petitioner herein/A.4 in the said complaint. Though he has mentioned in the complaint dated 25.09.2015 that in 2011 both his daughter-L.W.7 and A.1 returned to India and stayed at Tarnaka but he has not mentioned about the name of the petitioner herein/A.4 in the said complaint. Whereas, in the charge sheet, it is mentioned that after returning to Hyderabad, L.W.7 along with A.1, stayed in a flat at Tarnaka which was given by her father, for about

1½ years and during the said period, the petitioner herein/A.4 also stayed with them and the petitioner herein/A.4 supported and instigated A.1 and also abused L.W.7/victim even though he is no way concerned. Thus, the above version clearly shows that it is an improved version in the charge sheet with that of complaint dated 25.09.2015. It is also relevant to note that there is no mention in the charge sheet with regard to basis on which the Investigating Officer has mentioned that the petitioner herein/A.4 has stayed with L.W.7/victim and the A.1 in Tarnaka. The charge sheet is very vague. As stated above, except the said two sentences, there is no other allegation against the petitioner herein/A.4 with regard to the harassment of L.W.7/victim by the petitioner herein/A.4. Admittedly, the petitioner herein is a distant relative of A.1.

7. Learned counsel for the petitioner herein/A.4 would submit that the petitioner herein/A.4 has nothing to do with the matrimonial life of the L.W.7/victim and A.1. He would further submit that the petitioner herein/A.4 is residing in USA and he has been unnecessarily implicated in the present case by the 1st respondent, to settle the matrimonial disputes between his daughter and A.1. Even the complaint was lodged after 6 months of the petitioner herein/A.4 leaving to USA and he was not even present in India during that relevant period. According to him, the contents of the charge sheet lack ingredients of the offences alleged against the petitioner herein/A.4.

8. Sri A.Prabhakar Rao, learned counsel appearing for the 1st respondent would submit that there are specific allegations against the petitioner herein/A.4, cousin of A.1 and he stayed with the A.1 and L.W.7/victim at Tarnaka. The complaint is not an encyclopedia to show that whether the petitioner herein/A.4 stayed with A.1 and L.W.7/victim which is a triable issue and therefore, at this stage, the proceedings in C.C.No.388 of 2018 against the petitioner herein/A.4 cannot be quashed.

9. Learned Assistant Public Prosecutor would submit that though the name of the petitioner herein/A.4 was not there in the complaint dated 25.09.2015, in the statement recorded under Section 161 CrPC, the 1st respondent has specifically mentioned about the presence of the petitioner herein/A.4 and the harassment of L.W.7/victim with the support and instigation of A.1 who is his distant relative.

10. In view of the above stated rival contentions, it is relevant to extract Section 498-A IPC and Sections 4 and 6 of the D.P.Act, which are as under:-

Section 498-A IPC: 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.

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

- 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

- 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.

Sections 4 and 6 of the DP Act are as follows:-

Section 4: 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:

[Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months]

Section 6: Dowry to be for the benefit of the wife or her heirs .(1) Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the woman

(a) if the dowry was received before marriage, within [three months] after the date of marriage; or

(b) If the dowry was received at the time of or after the marriage, within [three months] after the date of its receipt; or

(c) if the dowry was received when the woman was a minor, within [three months] after she has attained the age of eighteen years, and pending such transfer, shall hold it in trust for the benefit of the woman.

[(2) If any person fails to transfer any property as required by sub-section (1) within the time limit specified therefor, [or as required by sub-section (3)], he shall be punishable with imprisonment for a term[which shall not be less than six months, but which may extend to two years or with fine which shall not be less than five thousand rupees, but which may extend to ten thousand rupees] or with both.]

(3) Where the woman entitled to any property under sub-section (1) dies before receiving it, the heirs of the woman shall be entitled to claim it from the person holding it for the time being:

[Provided that where such woman dies within seven years of her marriage, otherwise than due to natural causes, such property shall,

(a) if she has no children, be transferred to her parents, or

(b) if she has children, be transferred to such children and pending such transfer, be held in trust for such children.]

[(3-A) Where a person convicted under sub-section (2) for failure to transfer any property as required by sub-section (1) or [sub- section (3)] has not, before his conviction under that sub-section, transferred such property to the woman entitled thereto or, as the case may be, [her heirs, parents or children], the Court shall, in addition to awarding punishment under that sub-section, direct, by order in writing, that such person shall transfer the property to such woman or, as the case may be, [her heirs, parents or children] within such period as may be specified in the order, and if such person fails to comply with the direction within the period so specified, an amount equal to the value of the property may be recovered from him as if it were a fine imposed by such Court and paid to such woman or, as the case may be, [her heirs, parents or children].]

(4) Nothing contained in this section shall affect the provisions of section 3 or section 4.

11. The Hon'ble Apex Court in **Preeti Gupta v. State of Jharkhand**¹ had an occasion to deal with Section 498-A of IPC as to social responsibility and obligations to maintain social fiber of family life and held as under :-

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 IPC.

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

¹ (2010) 7 SCC 667

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 are also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber 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 fiber, peace and tranquility 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 visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

12. The Hon'ble Apex Court in **Geeta Mehrotra v. State of U.P.**² held that mere casual reference of names of family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking

² (2012) 10 SCC 741

the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specifically if it happens soon after the wedding. It is further held that even if there are allegations of overt act indicating the complicity of the members of the family named in the First Information Report in a given case, cognizance would be unjustified but if the First Information Report does not disclose specific allegation against the accused more so, against the co-accused specifically 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 First Information Report to undergo the trial unless of course the First Information Report 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 also well settled principle laid down in cases too numerous to mention, that if the First Information Report did not disclose the commission of an offence, the Court would be justified in quashing the proceedings preventing 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 First Information Report in fact discloses commission of an offence by relatives of the principal accused or the First Information Report prima facie discloses a case of over implication 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.

13. In **K.Subba Rao v. State of Telangana**³ the Hon'ble Apex Court categorically held that Criminal proceedings are not normally interdicted by it at the interlocutory stage unless there is an abuse of process of a Court. At the same time, it does not hesitate to interfere to secure the ends of justice. The Hon'ble Apex Court by relying on the guidelines issued by it in **State of Haryana v. Bhajan Lal**⁴ further held that Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.

14. In **Rajesh Sharma v. State of Utter Pradesh**⁵, the Hon'ble Apex Court, considering the misuse of Section 498-A IPC and remedial measures etc., gave certain directions.

15. In view of the above stated law laid down by the hon'ble Apex Court, as discussed supra, in the present case, the name of the petitioner herein/A.4 is not there in the complaint dated 25.09.2015. In the charge sheet, there is no mention about the basis on which the name of the petitioner was shown as A.4. The only allegation against

³ (2018) 14 SCC 452

⁴ 1992 SCC (CrI) 426

⁵ (2018) 10 SCC 472,

the petitioner herein/A.4 is that he has stayed with A.1 and L.W.7/victim in a flat in Tarnaka and has supported and instigated A.1 and also abused L.W.7/victim, even though he is no way concerned. Thus, there is no mention about the alleged harassment of L.W.7/victim by the petitioner herein/A.4. Admittedly, the petitioner herein is cousin and distant relative of A.1. It is relevant to mention that in the statement recorded under Section 161 Cr.P.C., L.W.7/victim stated that the petitioner herein is cousin of the A.1 and on 05.06.2014 when A.1 demanded her an amount of Rs.50,00,000/- towards additional dowry and assaulted her, the petitioner herein/A.4 was present. The petitioner herein/A.4 stayed at Tarnaka for about 1 ½ year and during that period he used to support and instigate A.1 to abuse the L.W.7/victim. Thus, even in the statement of L.W.7/victim, there is no mention about the alleged harassment of the L.W.7/victim by the petitioner herein/A.4.

16. In view of the above said discussion, the ingredients of Section 498-A IPC and Sections 4 and 6 of the DP Act are lacking in the contents of the charge sheet. In view of the same, this Court is of the considered opinion that proceedings in C.C.No.338 of 2018 pending on the file of the XIV Metropolitan Magistrate, Cyberabad at L.B.Nagar, against the petitioner herein/A.4 cannot be continued any longer and are liable to be quashed.

17. In the result, the Criminal Petition is allowed quashing the proceedings in C.C.No.388 of 2018 on the file of XIV Metropolitan

Magistrate, Cyberabad at L.B.Nagar, Ranga Reddy district, against the petitioner herein/A.4 only.

As a sequel, miscellaneous petitions, if any, pending in the Criminal Petition shall stand closed.

K. LAKSHMAN, J

Date: 01.06.2021.

Vvr

Note: L.R. copy to be marked