

HONOURABLE SRI JUSTICE K. LAKSHMAN

CRIMINAL PETITION No.2687 OF 2020

ORDER:

This application is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), seeking to quash the proceedings in Crime No.400 of 2020 pending on the file of the Station House Officer, Pet Basheerbad Police Station, Cyberabad. The petitioners herein are accused Nos.1, 2 and 3 in the said Crime No.400 of 2020. The offences alleged against the petitioners are under Sections 498-A, 406 and 420 read with Section 34 of the Indian Penal Code, 1860 (for short 'IPC') and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

2. Heard Sri J. Venudhar Reddy, learned counsel for the petitioners - accused Nos.1, 2 and 3, learned Public Prosecutor for the State - respondent No.1 and Sri T. Niranjan Reddy, learned senior counsel appearing for Sri A. Vijayabhaskar Reddy, learned counsel for respondent No.2 - *de facto* complainant. Perused the record.

3. The learned counsel for the petitioners - accused Nos.1, 2 and 3 would submit that there is no cause of action within the territorial jurisdiction of Pet Basheerbad Police Station, Cyberabad, Telangana State. The entire cause of action arose either in Tirupati or in Canada. He would further submit that the 1st petitioner - accused No.1 and the daughter of the 2nd respondent - *de facto* complainant married in United States of America and they have registered their

marriage with the Registrar of Marriages. In proof of the same, the learned counsel has filed marriage certificate wherein, the date of marriage is mentioned as 08.07.2017. According to the learned counsel for the petitioners, it is a love marriage and against the wishes of the parents of the spouses.

4. The learned counsel for the petitioners would submit that both the 1st petitioner and the daughter of the *de facto* complainant left to America and also to Canada thereafter. Presently, both of them are staying at Canada itself. There is no allegation of demand of dowry, much less, additional dowry. The contents of the complaint lacks the ingredients of the offences alleged against the petitioners herein. The learned counsel for the petitioners would further submit that the 2nd petitioner - accused No.2 is the father of accused No.1. He is aged about 64 years. He is a retired Government servant. He is suffering from so many old-age ailments. The 3rd petitioner - accused No.3 is the mother of accused No.1. She is aged about 57 years and suffering from old-age ailments. In the complaint, there is no specific allegation against accused Nos.2 and 3, petitioner Nos.2 and 3 herein. The learned counsel would further submit that the 2nd respondent, who lodged the present complaint, is not having any *locus* to lodge the same unless he is having personal knowledge of any of the events between his daughter and accused No.1. The *de facto* complainant implicated the petitioners herein in this false case due to matrimonial disputes between his daughter and accused No.1. The learned counsel would further submit that the punishment

prescribed for the offences alleged against the petitioners is seven years and below seven years and the police, Pet Basheerbad Police Station, Cyberabad, without following the procedure laid down under Section 41-A of Cr.P.C., trying to apprehend the petitioners herein. In the said course of action, the police are calling petitioner Nos.2 and 3, who are aged parents of accused No.1 and suffering from various old-age ailments.

5. With the above contentions, learned counsel for the petitioners seeks to quash the present crime.

6. Sri T. Niranjan Reddy, learned senior counsel appearing for the 2nd respondent - *de facto* complainant, would submit that the *de facto* complainant, who is father of the wife of accused No.1, is having locus to lodge the complaint. In support of his contention, he relied on Section 198-A of Cr.P.C.

7. According to Section 198-A of Cr.P.C., no Court shall take cognizance of an offence punishable under Section 498A of the Indian Penal Code except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.

8. In view of the above said provision, the contention of the learned counsel for the petitioners that the *de facto* complainant, who

is father of the wife of accused No.1, cannot lodge the present complaint is unsustainable.

9. The learned senior counsel would further submit that in the complaint dated 09.06.2020, at every place, it is specifically mentioned about the harassment meted out to the wife of accused No.1 by petitioner Nos.2 and 3, parents of accused No.1. In proof of the same, he has referred to paragraph Nos.4 and 5 of the complaint. In the said paragraphs, it is specifically mentioned about the alleged demand of additional dowry and also gold/diamond ornaments and silver articles etc. In paragraph No.5, it is mentioned that on consistent persuasions by the *de facto* and his wife to open up about the situation, their daughter confided them and informed them about the demand of Rs.15,00,000/- as dowry for the expenses of accused No.1 and his parents in lieu of the marriage. By referring the same, the learned senior counsel would further submit that there are specific allegations against accused Nos.1, 2 and 3.

10. The learned senior counsel would refer to Section 498-A of IPC, more particularly, explanation (b) of Section 498-A of IPC which shows that harassment of a 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. By referring the said explanation, learned senior counsel would submit

that contents of the complaint dated 09.06.2020 would attract ingredients of the offence punishable under Section 498-A IPC.

11. The learned senior counsel would further submit that the harassment is specifically mentioned in the complaint and the allegations are specific. He would further submit that there are specific overt-acts against all the petitioners - accused.

12. The learned counsel for the petitioners has also contended that there is delay in lodging the complaint. He would submit that even as per the complaint dated 09.06.2020, marriage of accused No.1 was performed with the daughter of the *de facto* complainant on 10.03.2018 at Hyndawa Nimantran Marriage Hall, Kompally, Hyderabad. On coming to know about the plight of his daughter, his co-brother and others visited accused No.1's parents at Tirupati with prior intimation on 11.07.2019, whereas the complaint was lodged on 09.06.2020. By referring the same, learned counsel for the petitioners would submit that there is abnormal delay in lodging the complaint.

13. The learned counsel for the petitioners would submit that the 2nd petitioner, who is the father of accused No.1, is aged about 64 years, a retired Government servant, and suffering from various old-age ailments and the 3rd petitioner, who is the mother of accused No.1, is also aged about 57 years and suffering from old-age ailments. They are residents of Tirupati Urban, Chittoor. He would submit that the police without following the procedure under Section 41-A of

Cr.P.C. are calling the petitioners, who are residents of Tirupati Urban, Chittor, and harassing them.

14. Whereas the learned senior counsel appearing for the *de facto* complainant would submit that the harassment is continuous one and there are specific allegations in the complaint. The matter is at investigation stage. The petitioners herein have filed the present application seeking to quash the proceedings in Crime No.400 of 2020. The aspects discussed *supra* would reveal that there are disputes between the petitioners herein and the daughter of the *de facto* complainant. There are several factual aspects which are to be investigated by the investigating officer.

15. According to the learned counsel for the petitioners, the marriage of accused No.1 and the daughter of the *de facto* complainant took place on 08.07.2017 and in proof of the same, he has filed marriage certificate issued by the State of Nevada, United States of America. In the complaint dated 09.06.2020, the *de facto* complainant has mentioned that the marriage was held at Hyderabad on 10.03.2018. It is a matter to be investigated by the investigating officer. With regard to cause of action and jurisdiction of the police, Pet Basheerbad Police Station is also an issue to be investigated by the investigating officer.

16. The complaint dated 09.06.2020 lodged by the *de facto* complainant is a detailed complaint. He has narrated entire facts from 10.03.2018 till 09.06.2020. Admittedly, the 1st petitioner and the

daughter of the *de facto* complainant are in Canada at present. Their statements have to be recorded. Even according to the learned counsel for the petitioners, the 1st petitioner has already initiated proceedings seeking dissolution of marriage in accordance with law of Canada. Thus, there are matrimonial disputes between accused No.1 and the daughter of the *de facto* complainant. Thus, there are several aspects to be investigated by the investigating officer.

17. The Hon'ble Supreme Court in a recent decision in **Sau. Kamal Shivaji Pokarnekar v. State of Maharashtra**¹, categorically held that quashing of criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence disclose, there would be no justification for the High Court to interfere. The defences that may be available, or facts/aspects which when established during trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only question relevant is whether the

¹ AIR 2019 SC 847

averments in the complaint spell out the ingredients of a criminal offence or not. It was further held in the very same judgment that on perusal of the complaint, if discloses *prima facie* offences that are alleged against the respondents, it is sufficient. The correctness or otherwise of the said allegations has to be decided only in the trial. At the initial stage of issuance of process, it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are *prima facie* made out in the complaint, the criminal proceedings shall not be interdicted.

18. In view of the above settled legal proposition, coming to the facts on hand, as discussed supra, there are specific allegations/overt-acts against the petitioners herein. The contents of the complaint dated 09.06.2020 would *prima facie* disclose commission of offences. There are several factual matrix to be investigated by the investigating officer.

19. It is trite to note that the punishment prescribed for the offences alleged against the petitioners is imprisonment of seven years or below seven years.

20. Therefore, the Criminal Petition is disposed of directing the Station House Officer, Pet Basheerbad Police Station, Cyberabad, to follow the procedure laid down under Section 41-A of Cr.P.C. and

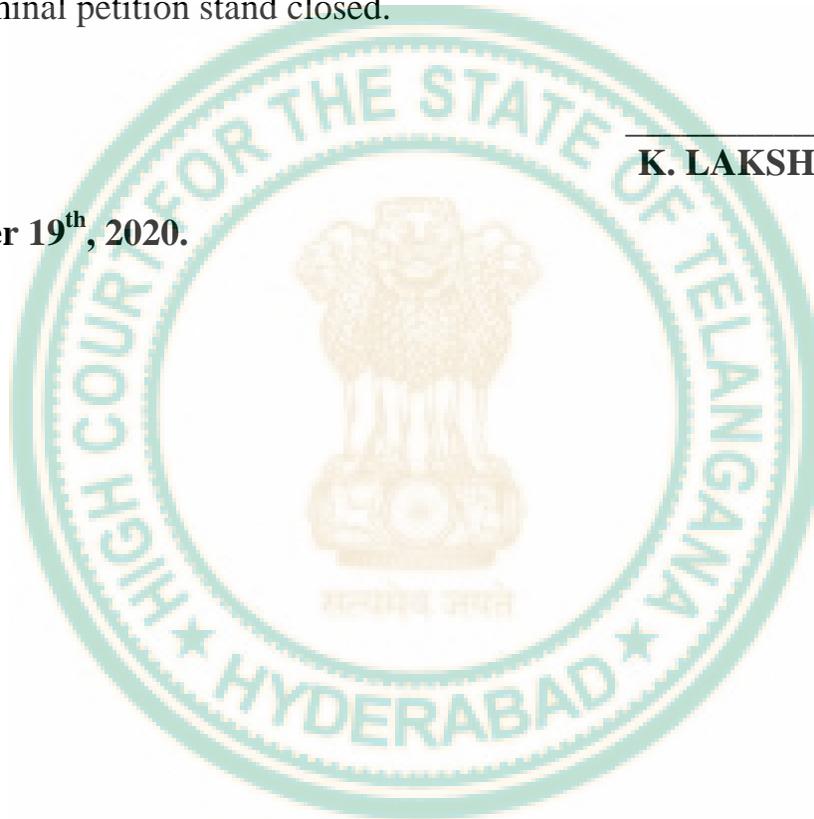
also the guidelines issued by the Apex Court in **Arnesh Kumar v. State of Bihar**². The Police are further directed not to take any coercive steps against the petitioners herein - accused Nos.1, 2 and 3 including their arrest till completion of the investigation and filing final report. The police are also directed not to harass petitioner Nos.2 and 3 under the guise of investigation.

As a sequel thereto, miscellaneous petitions, if any, pending in the criminal petition stand closed.

K. LAKSHMAN, J

October 19th, 2020.

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² (2014) 8 SCC 273