



HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

CRIMINAL PETITION No. 11796 of 2015

ORDER:

This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C") is filed by the petitioners/A.1 to A.3 seeking quash of proceedings in Crime No.196 of 2015 of Gopalapatnam Police Station, Visakhapatnam, registered for the offence under Sections 498-A and 324 IPC and Sections 3 & 4 of the Dowry Prohibition Act.

2. Heard Sri N.Subbarao, learned Senior Counsel for the petitioners and Sri P.M.Mithileswara Reddy, learned Assistant Public Prosecutor for the 1st respondent/State and Sri Ch.Venkata Raman, learned counsel for the 2nd respondent.

3. The brief facts of the case are that the 2nd respondent is the de facto complainant and wife of the 1st Petitioner/A.1. She lodged a Complaint with the Police alleging that the 1st petitioner/A.1 and Petitioners 2 and 3/A.2 and A.3, who are the parents of A.1 subjected her to physical and mental cruelty by making illegal demands of additional dowry. Further, she stated that her marriage was performed in President Hotel, Mysore, on 03.06.2009 with the 1st petitioner/A.1 and their marriage was consummated on 07.06.2009 and they both lived at their house



in Visakhapatnam for one week and thereafter shifted to Mysore. In the month of August, 2010, the 1st petitioner/A.1 met with an accident and received grievous injuries, he was under treatment for one and half months and he underwent surgery on spine. The 2nd respondent/wife looked after the 1st petitioner with all care. Further, she stated that from the beginning, her husband (1st petitioner) was having the habit of consuming alcohol. As the 2nd respondent and the 1st petitioner shifted to other Companies in Bengaluru in the year 2012, they shifted their family to Bengaluru and resided in a rented house. Further, she stated that the 1st petitioner/A.1 used to abuse the 2nd respondent for not bringing additional dowry as a result, he lost the love and affection of his parents and gradually started demand of dowry. Further, she stated that on 10.08.2015, the 1st petitioner/A.1 insisted to ask her father to arrange Rs.10.00 lakhs to purchase a flat and she politely refused the same. On that, he became wild, abused and assaulted, and tried to kill her and as a result, she sustained bleeding injuries. The 2nd respondent informed the same to her younger brother over the phone and immediately, he came and took her to the hospital in Bengaluru. She apprehended danger to her life, if she goes to Mysore or Bengaluru to join with the 1st petitioner/A.1, who



subjected her to cruelty both physically and mentally making illegal demands of dowry. Based on the complaint dated 17.08.2015, the police registered the same as a case in Crime No.196 of 2015 of Gopalapatnam Police Station, Visakhapatnam, for the offence punishable under Sections 498-A and 324 IPC and Sections 3 & 4 of the Dowry Prohibition Act. The crime was investigated and eventually having found *prima facie* case against all the accused regarding their complicity in the commission of the said offences, A.1 was arrested and remanded to judicial custody and subsequently, released on bail. At the fag end of the investigation, the petitioners/A.1 to A.3 filed the present Criminal Petition seeking to quash the proceedings in the above crime.

4. Fulminating the complaint allegations as false and motivated, the learned Senior Counsel for the petitioners would firstly argue that the complaint allegations even if accepted to be true and correct, the subsequent events should be looked into. Further, he would submit that after filing this criminal petition, the *de facto* complainant filed an additional affidavit along with the material papers. She filed FCOP No.536 of 2016, on the file of Judge, Family Court-cum-V Additional District and Sessions Judge, Visakhapatnam and the marriage of the 1st petitioner



and the 2nd respondent was dissolved by way of a decree of divorce dated 24.01.2017 and thereafter, they have been living separately. Further, he would submit that the *de facto* complainant got married to V.Avinash on 06.09.2018, at Kamakshamma Temple, Jonnavada, Nellore and the marriage was registered by the Marriage Registrar, Nellore, on 07.09.2018. He would further submit that most of the matrimonial cases are being filed in a fit of anger. Similarly, the 2nd respondent at the instance of her family members, might have given a false report to the Police against the petitioners/A.1 to A.3. Subsequently, she realized and obtained divorce and remarried. He would further submit that, taking into consideration of the above aspects, and in view of the fact that both have remarried, hoping that they may lead their family lives peacefully, he would pray to quash the criminal proceedings in Crime No.196 of 2015 against the petitioners/A.1 to A.3.

5. Learned Assistant Public Prosecutor submitted that subsequent events should not be taken into consideration. Further, he would submit that the subsequent decree of divorce will not come in the way of prosecution of the petitioners for the offences committed by them. He would further submit that there



is no merit in the contention of the petitioners that there are no allegations against these petitioners with regard to the commission of the offence. Therefore, he would pray for the dismissal of the criminal petition.

6. The learned counsel for the 2nd respondent conceded to the arguments submitted by the learned Senior Counsel for the petitioners.

7. *Apropos* the contention that the decree of divorce was granted dissolving the marriage of the 1st petitioner/A.1 and the de facto complainant, the prosecution of the petitioners/A.1 to A.3 under Section 498-A IPC is not maintainable. As can be seen from the decree of divorce passed in FCOP No.536 of 2016 filed along with the material papers, it is evident that the decree of divorce was passed on 24.01.2017 and it is an *ex parte* decree. Now, it is relevant to note that subsequent to the decree of divorce, the 2nd respondent/*de facto* complainant got married to V.Avinash on 06.09.2018 and their marriage was registered and the Certificate of Marriage was issued by the Marriage Registrar, Nellore on 07.09.2018. The 2nd respondent filed an additional affidavit along with ex-parte order of decree of divorce, and photographs of her marriage with V.Avinash etc.,



Thereafter, the *de facto* complainant and the petitioner/A.1 have been living separately.

8. Further, it is relevant to note that the 2nd respondent filed a complaint on 17.08.2015 regarding the harassment said to have been caused by the petitioners/A.1 to A.3, long prior to the passing of the aforesaid decree of divorce. However, the learned Senior Counsel relied on a decision in **Kahkashan Kausar Alias Sonam and others Vs. State of Bihar and others**¹ wherein, at Para No.17, the Hon'ble Apex Court held as follows:

“17. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-A 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.”

9. In the light of the above decisions, most of the complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. There is a predominant increase in matrimonial disputes in recent days. In fact, there is no allegation made in the complaint against

¹ (2022) 6 SCC 599



petitioners 2 and 3/A.2 and A.3, who are the parents of petitioner/A.1. The provisions under Section 498-A IPC are used as a weapon rather than shield by disgruntled wives. The simplest way to harass is to get the husband, his relatives, and in-laws arrested under the guise of this provision.

10. In the present set of facts, subsequent lodging of the report with the Police by the 2nd respondent on 17.08.2015, in this criminal petition, she filed an additional affidavit along with material papers in Court, she stated that after submitting a report to the Police, her marriage with the 1st petitioner/A.1 was dissolved by way of decree of divorce in FCOP 536 of 2016 on the file of Family Court at Visakhapatnam, dated 24.01.2017. Thereafter, the 1st petitioner and herself have been living separately as there was no chance of reunion. Further, she stated in the affidavit that she got married to one V.Avinash on 06.09.2018 and their marriage was registered with the Registrar of Marriages on 07.09.2018. Further, she stated that pendency of the above F.I.R in this Criminal Petition, her family life will be leading to misunderstandings and cause mental agony and she sought to quash the FIR No.196 of 2015 of Gopalapatnam Police Station, Visakhapatnam by allowing the present Criminal Petition.



11. The subsequent events, which are narrated above, should be taken into consideration. It is relevant to refer to the decision of the Hon'ble Apex Court in **Ruchi Agarwal Vs. Amit Kumar Agarwal and others**² wherein, at Para No.9, it was held as follows:

“9. In view of the above said 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.”

12. In the light of the above decision, considering the above facts, and the conduct of the 2nd respondent herein, this Court is of the opinion that the continuation of criminal proceedings against the petitioners/A.1 to A.3 is an abuse of process of law.

13. In view of the above subsequent events and the conduct of the 2nd respondent, it would be an abuse of process of the Court, if the criminal proceedings from which this criminal petition arises is allowed to continue. Therefore, this Court is of the view that to do complete justice, to quash the proceedings arising out of Crime No.196 of 2015 registered in Gopalapatnam Police

² (2005) 3 SCC 299



Station, Visakhapatnam City filed under Section 498-A and 324 IPC and Sections 3 & 4 of the Dowry Prohibition Act against the petitioners/A.1 to A.3.

14. Thus, as already observed, on perusal of the First Information Report, they go to show that vague and bald accusations have been made against the 1st petitioner/A.1 that she was demanded dowry. Even, in the complaint, there was no allegation against the parents of 1st petitioner/A.1, who are petitioners 2 & 3 /A.2 and A.3. But the simplest way of the *de facto* complainant to harass them is to get the husband and her in-laws arrested under the guise of this provision.

15. It is relevant to refer to the decision of the Hon'ble Apex Court in **K.Subbarao & others Vs. State of Telangana**³ wherein, at Para No.6 it was held as follows:

“6. Criminal proceedings are not normally interdicted by us at the interlocutory stage unless there is an abuse of the process of a court. This Court, at the same time, does not hesitate to interfere to secure the ends of justice. See State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426]. The 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.”

³ (2018) 14 SCC 452



16. In the light of the above decision and taking into consideration of subsequent events that the 2nd respondent herself came forward to file an affidavit praying to quash the FIR in Crime No.196 of 2015 of Gopalapatnam Police Station, Visakhapatnam by allowing the present criminal petition and she decided not to proceed against the petitioners/A.1 to A.3 and that she got decree of divorce in FCOP No.536 of 2016, dated 24.01.2017 and she got married with V.Avinash subsequent to the decree of divorce on 06.09.2018 and they have been living separately, and due to the pendency of the proceedings in the above crime, the family life of the 2nd respondent will be leading to misunderstandings and causing mental agony, continuation of the criminal proceedings against the petitioners is an abuse of process of law.

17. There are absolutely valid and legal grounds, in view of the subsequent events, as stated in the additional affidavit emanating from the record warranting interference of this Court to exercise powers under Section 482 Cr.P.C. Therefore, continuation of criminal proceedings against the petitioners/A.1 to A.3 is nothing but an abuse of the process of the Court and it would be a futile exercise. Hence, this Court is of the considered opinion that to do complete justice, this criminal petition is to be



allowed by quashing the proceedings in Crime No.196 of 2015 of Gopalapatnam Police Station, Visakhapatnam, as the matter does not require investigation to ascertain the truth or otherwise of the said allegations made in the complaint.

18. Resultantly, the criminal petition is allowed and the proceedings in Crime No.196 of 2015 of Gopalapatnam Police Station, Visakhapatnam City against the petitioners/A.1 to A.3 are hereby quashed.

As a sequel, the miscellaneous petitions, pending if any, shall stand disposed of.

JUSTICE DUPPALA VENKATA RAMANA

18.07.2023

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HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA
CRIMINAL PETITION No.11796 OF 2015

18.07.2023

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*Mjl/ **
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IN THE HIGH COURT OF ANDHRA PRADESH, AMARAVATI

CRIMINAL PETITION No. 11796 of 2015

Between:

1. Rakesh Boraiah, S/o.V.B.Boraiah, Age 30 yaers,
R/o.B-1, Block No.802, ALPINE E.Co Apartment,
Doddankundi, Bengaluru, State of Karnataka – 520 037.
 2. V.B.Boraiah, S/o.V.Boraiah, Aged 62 years,
R/o.Lashkar Mohalla, Mysore, Karnataka State.
 3. Smt.Geetha Devi, W/o.V.B.Boraiah, Aged 59 years,
R/o.Lashkar Mohalla, Mysore, Karnataka State.
- ... Petitioners/Accused Nos.1 to 3

And

1. The State of A.P., Represented by Station House Officer,
Gopalapatnam Police Station, Visakhapatnam,
Visakhapatnam District, through Public Prosecutor,
High Court of Andhra Pradesh, Amaravati.
2. Kalivarapu Lavanya,
W/o.Boraiah Rakesh, Aged 31 years,
R/o.D.No.6-166/19, Flat No.502,
Sri Lakshmi Narasimha Residency, Gopalapatnam,
Visakhapatnam, Visakhapatnam District. .. Respondents

DATE OF JUDGMENT PRONOUNCED: **18-07-2023**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes/No
3. Whether His Lordship wish to
see the fair copy of the Judgment? Yes/No

DUPPALA VENKATA RAMANA, J



*** THE HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA**

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% 18-07-2023

Between:

1. Rakesh Boraiah, S/o.V.B.Boraiah, Age 30 yaers,
R/o.B-1, Block No.802, ALPINE E.Co Apartment,
Doddankundi, Bengaluru, State of Karnataka – 520 037.
2. V.B.Boraiah, S/o.V.Boraiah, Aged 62 years,
R/o.Lashkar Mohalla, Mysore, Karnataka State.
3. Smt.Geetha Devi, W/o.V.B.Boraiah, Aged 59 years,
R/o.Lashkar Mohalla, Mysore, Karnataka State.
... Petitioners/Accused Nos.1 to 3

And

1. The State of A.P., Represented by Station House Officer,
Gopalapatnam Police Station, Visakhapatnam,
Visakhapatnam District, through Public Prosecutor,
High Court of Andhra Pradesh, Amaravati.
2. Kalivarapu Lavanya,
W/o.Boraiah Rakesh, Aged 31 years,
R/o.D.No.6-166/19, Flat No.502,
Sri Lakshmi Narasimha Residency, Gopalapatnam,
Visakhapatnam, Visakhapatnam District. .. Respondents

! Counsel for Petitioners : Sri N.Subbarao

^ Counsel for Respondents : Asst.Public Prosecutor (State)
Ch.Venkat Raman for R.2.

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> Head Note:

? Cases referred:

1. (2022) 6 SCC 599
2. (2005) 3 SCC 299
3. (2018) 14 SCC 452

This Court made the following: