

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

CRIMINAL PETITION No. 13197 of 2011**Between:**

1. Desavath Rama Naik, S/o.Mathre Naik,
Aged about 40 years, R/o.NGOs Colony,
Nandyal Town, Kurnool District.
 2. Desavath Kala Bai, W/o.Rama Naik,
Aged 30 years, R/o.NGOs Colony,
Nandyal Town, Kurnool District.
 3. Male Krishna Naik, S/o.Boke Naik,
Aged 45 years, R/o.Pesaravai Village,
Gadivemula Mandal, Kurnool District.
 4. Male Nagi Bai W/o.Krisna Naik,
Aged 32 years, R/o.Pesaravai Village,
Gadivemula Mandal, Kurnool District.
 5. Modirecha Narayana Naik S/o.Polu Naik,
Aged 55 years, R/o.Gummitham Thanda Village,
Orvakal Mandal, Kurnool District.
 6. Modiecha Devi Bai W/o.M.Narayana Naik
Aged 50 years, R/o.Gummitham Thanda Village,
Orvakal Mandal, Kurnool District.
 7. Modirecha Ravi Naik S/o.M.Narayana Naik,
Aged 22 years, R/o.Gummitham Thanda Village,
Orvakal Mandal, Kurnool District.
- ... Petitioners/Accused Nos.5 to 11

And

1. The State of A.P., rep. by its Public Prosecutor,
High Court, Amaravati.
 2. Modirecha Padma Bai W/o.M.Venkatesh Naik
Aged 25 years, now at Hussainapuram village,
Orvakal Mandal, Kurnool District.
- ... Respondent/Complainant

DATE OF JUDGMENT PRONOUNCED: **14-06-2023****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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- ... Respondents

! Counsel for Petitioners

: Sri J.Janakirami Rededy

^ Counsel for Respondents

: Asst.Public Prosecutor (State)
Sri Banda Prasada Rao (R.2)



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> Head Note:

? Cases referred:

1. 2020(3) ALT (CrI.) 42 (SC)
2. AIR 1992 SC 604
3. (2018) 14 SCC 452
4. (2022) 6 SCC 599
5. (2012) 10 SCC 741
6. (2010) 7 SCC 667

This Court made the following:

**HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA****CRIMINAL PETITION No.13197 of 2011****ORDER:**

This Criminal Petition is filed by the Petitioners/Accused Nos.5 to 11 under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C") seeking to set aside the docket order dt.21.11.2011 passed in C.F.R.No.6562 of 2011 by the Judicial Magistrate of First Class, Kurnool and to quash the proceedings in Crime No.142 of 2010 of Orvakal Police Station, Kurnool against them.

2. Heard Sri J.Janaki Rami Reddy, learned counsel for the petitioners and learned Assistant Public Prosecutor for the State.

3. The facts of the case, in brief, are that the 2nd respondent is the *de facto* complainant and she is the wife of A.1. A.2 is the mother and A.3 is the brother of A.1. A.4 is the wife of A.3. A.6 and A.8 are the sisters and A.5 and A.7 are the brothers-in-law of A.1. A.9 and A.10 are the junior paternal uncle and aunt of A.1 and A.11 is the son of A.9 and A.10.

(ii) The marriage between the 2nd respondent and A.1 took place on 17.10.2002 at Kalva Bugga Temple as per Hindu customs. At the time of marriage, her parents had given Rs.1,50,000/- dowry and 5 tulas of gold. After some time, A.1



stayed back at his village. Later they went to Hyderabad on account of his job. Thereafter, she became pregnant and the said pregnancy was got terminated by A.1 at Hyderabad and he also used to beat her and harassed her both physically and mentally to get additional dowry. The mother-in-law and sisters-in-law whenever came to Hyderabad used to harass the 2nd respondent. Later the 2nd respondent was blessed with a female child. When she was pregnant for the third time, A.1 dropped her at Gummatamthanda. Thereafter, she informed her parents about the demand for additional dowry by the accused. A mediation took place but was not fruitful.

(iii) On 23.06.2010, at 7.00 p.m., A.1, his mother and their relatives beat the 2nd respondent indiscriminately and tried to kill her by pouring kerosene and blaming the illicit relationship. On information, her father took her to her native place. Therefore, the 2nd respondent lodged a report with the Police alleging that A.1 and his family members subjected her to cruelty both physically and mentally by demanding additional dowry. Based on the said report, a case in Crime No.142 of 2010 was registered by Orvakal Police, Kurnool, against A.1 to A.4 and Petitioners/A.5 to A.11 for the offences under Sections 498-A, 494 IPC and Sections 3 and 4 of the Dowry Prohibition Act,



1961. The crime was investigated and eventually having found a *prima facie* case against A.1 to A.4 regarding their complicity in the commission of the said offences, the Investigating Officer filed a charge sheet against A.1 to A.4 and after service of notice to the 2nd respondent, the Petitioners/A.5 to A.11 were deleted as there was no *prima facie* case against them.

(iv) The 2nd respondent filed a protest petition before the Judicial Magistrate of First Class, Kurnool, to take cognizance against the Petitioners/A.5 to A.11 stating that they beat her indiscriminately with hands and legs by keeping her in the house and tried to kill her by pouring kerosene. On information, her father came and took her to Hussainpuram Village. The learned Magistrate having examined the 2nd respondent and the witnesses, being satisfied that there is sufficient ground for proceeding against them, took cognizance of the case against the petitioners/A.5 to A.11. The present petition is filed by the Petitioners/A.5 to A.11 to quash the proceedings against them.

4. The 2nd respondent filed counter contending *inter alia* that the learned Magistrate found *prima facie* case against the petitioners/A.5 to A.11 and took cognizance against them. It is further contended that on the very date of filing of the complaint, the names of the Petitioners/A.5 to A.11 were mentioned in the



FIR on the ground that they are also responsible along with A.1 to A.4 for harassing the 2nd respondent by demanding additional dowry and all of them tried to kill her by pouring kerosene. It is further contended that the petitioners/A.5 to A.11 are required to face trial to arrive at a just conclusion by the learned Magistrate. Therefore, prayed to dismiss the petition.

5. Learned counsel for the Petitioners/A.5 to A.11 would submit that there are no specific allegations made against the petitioners/A.5 to A.11 and they never intervened with the family life of the 2nd respondent and A.1. Further, he would submit that the 2nd respondent exaggerated the facts by adding the names of the petitioners/A.5 to A.11, with a *mala fide* intention to cause troubles to them. Since there is no sufficient evidence to prove the guilt of the petitioners/A.5 to A.11, their names were deleted from the charge sheet. Therefore, prayed to quash the proceedings against the petitioners/A.5 to A.11.

6. Learned Assistant Public Prosecutor vehemently opposed the criminal petition. He would submit that there is no merit in the contention of the petitioners/A.5 to A.11 that there are no allegations against them with regard to the commission of the offence. Therefore, he would pray to dismiss the criminal petition.



7. Having perused the relevant facts of the case and contentions raised by the counsel for the petitioners/A.5 to A.11 and the learned Assistant Public Prosecutor, the first and foremost issue which requires determination in the instant case, is as to whether the allegations made against the petitioners/A.5 to A.11 are in nature of general omnibus allegations and are liable to be quashed?

POINT:

8. A charge sheet was filed on 20.02.2010 under Section 498-A and 494 IPC and Sections 3 & 4 of the Dowry Prohibition Act and after completion of the investigation into the said crime and the petitioners/A.5 to A.11 were deleted from the charge sheet and filed against A.1 to A.4. The marriage of A.1 and the 2nd respondent took place on 17.10.2002 and after the marriage, they had set up family at Hyderabad and A.1 caused harassment to the 2nd respondent by suspecting her chastity and demanding additional dowry. Further, A.1 got second marriage without the consent of the 2nd respondent. A.1 and his mother, brother and sister-in-law caused harassment both physically and mentally to the 2nd respondent. After a thorough investigation, the investigating officer laid a charge sheet against



A.1 to A.4 and deleted petitioners/A.5 to A.11, though their names were shown in the FIR.

9. The marital relationship between the 2nd respondent and A.1 was subsisting at the time of the commission of the alleged offences. As regards the contention that there are no allegations against the petitioners/A.5 to A.11, who are not residing under the same roof, admittedly, the petitioners/A.5 to A.11 were staying away from the 2nd respondent and A.1. There are absolutely no valid and legal grounds against the petitioners/A.5 to A.11. When the Investigating Officer investigated the crime and deleted the names of the petitioners/A.5 to A.11 as there was no material evidence to connect them with the commission of the offence, at that stage, on the protest petition filed by the 2nd respondent, the learned Magistrate has to be satisfied whether there is any sufficient ground to proceed further, and whether there is an adequate evidence for supporting the contentions of the 2nd respondent to take the cognizance of the case. But, in the present case of nature, the learned Magistrate mechanically took cognizance without there being any sufficient material evidence to determine whether a *prima facie* case is made out and whether there is any sufficient ground to proceed against the petitioners/A.5 to A.11.



10. In **Birla Corporation Ltd. Vs. Adventz Investments And Holdings**¹, the Hon'ble Supreme Court of India has been held as follows:

“82. Exercise of power under [Section 482](#) Cr.P.C. envisages three circumstances in which the inherent jurisdiction may be exercised namely:-

(i) to give effect to an order under [the Code](#);

(ii) to prevent abuse of the process of court; and

(iii) to otherwise secure the ends of justice. Inherent jurisdiction under [Section 482](#) Cr.P.C. though wide has to be exercised sparingly, carefully and with caution.

83. It is well settled that the inherent jurisdiction under [Section 482](#) Cr.P.C. is designed to achieve a salutary purpose and that the criminal proceedings ought not to be permitted to degenerate into a weapon of harassment. When the Court is satisfied that the criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon the accused, in exercise of the inherent powers, such proceedings can be quashed. [In Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Others](#) (1976) 3 SCC 736, the Supreme Court reviewed the earlier decisions and summarised the principles as to when the issue of process can be quashed and held as under:-

“5. Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under [Section 202](#) of the Code of Criminal Procedure which culminates into an order under [Section 204](#) of the Code. Thus it may be safely held

¹ 2020(3) ALT (CrI.) 42 (SC)



that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like. The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.”

11. In **State of Haryana & Others Vs. Ch.Bhajanlal and Others**² the Hon'ble Apex Court has laid down the following guidelines as to when the High Court can exercise its plenary powers under Section 482 Cr.P.C to quash the proceedings to prevent abuse of process of the Court. They are,

(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 or make out a case against the accused;

² AIR 1992 SC 604



(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.

12. As can be seen, the 1st guideline is to the effect that even if the complaint allegations are accepted to be true on their face, if they do not constitute any offence, then the FIR can be quashed. On this touchstone, when the complaint allegations are perused, there are no pivotal allegations made against the petitioners/A.5 to A.11. Further, the uncontroverted allegations made in the FIR and the complaint and the evidence collected in support of



the same do not disclose the commission of any offence and do not make out a case against the petitioners/A.5 to A.11. Therefore, their names were deleted from the charge sheet by the Investigating Officer. In such circumstances, this Court can exercise the inherent powers under Section 482 Cr.P.C to prevent abuse of the process of the Court or otherwise to secure the ends of justice.

13. In a decision reported in **K.Subbarao & Others Vs. State of Telangana and others**³ the Hon'ble Apex Court held as follows at Para 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. 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.”

14. In another decision reported in **Kahkashan Kausar @ Sonam & Others Vs. State of Bihar and others**⁴ the Hon'ble Supreme Court of India while referring to the case in **Geeta Mehrotra Vs. State of U.P**⁵, at Para No.15 held as follows:

³ (2018) 14 SCC 452

⁴ (2022) 6 SCC 599

⁵ (2012) 10 SCC 741



“It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of [G.V. Rao vs. L.H.V. Prasad & Ors.](#) reported in (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

“12....there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their cases in different courts.’

The view taken by the judges in this matter was that the courts would not encourage such disputes.”



15. A perusal of the complaint, which was given by the 2nd respondent on 03.09.2010 shows that her mother-in-law and sister-in-law, whenever visited Hyderabad, used to abuse and harass her. On 23.06.2010, all the accused came to their house and tried to kill her by pouring kerosene. These are the allegations against the petitioners/A.5 to A.11, apart from A.1 to A.4. After deleting the petitioners/A.5 to A.11 from the charge sheet, the 2nd respondent had given a sworn statement before the Magistrate on 01.11.2011 stating that one year ago, on one day, the petitioners/A.5 to A.11 came to their house and tried to pour kerosene on her. In the meanwhile, neighbours came and informed the same to the mother of the 2nd respondent. Therefore, the petitioners/A.5 to A.11 should be tried along with A.1 to A.4.

16. The above allegations are nothing but omnibus allegations. Petitioners/A.5 to A.11 are not residing at one place and they are staying at various places. A.6 and A.8 are the sisters and A.5 and A.7 are the brothers-in-law of A.1. A.9 and A.10 are the junior paternal uncle and aunt of A.1 and A.11 is the son of A.9 and A.10. In such relationship, the Petitioners/A.5 to A.11 would have no interest in raising any demand for dowry or causing any harassment to the 2nd respondent. Therefore, their



implication was a clear abuse of the process of the Court. A tendency has developed for roping in all relations of the in-laws of the *de facto complainant* in dowry harassment cases which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. No doubt, the 2nd respondent is having over enthusiasm and anxiety to seek conviction for maximum people. The parents of the 2nd respondent have been found to be making efforts for involving other relations, which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case.

17. It is not in dispute that the Petitioners/A.5 to A.11 are residing at different addresses during the time of the alleged demand for additional dowry. In the complaint, the 2nd respondent alleged that all the accused shown in the FIR came to their house, poured kerosene and tried to kill her. Except bald allegations, there was no evidence against the Petitioners/A.5 to A.11. Charge sheet was filed by the Investigating Officer after going through the investigation against A.1 to A.4. Admittedly, the Petitioners/A.5 to A.11 are the distant relatives of the 2nd respondent. In the absence of specific allegations and overt acts against the Petitioners/A.5 to A.11, this Court is of the considered view that, if the proceedings are allowed to go on



against the Petitioners/A.5 to A.11, it amounts to an abuse of process of the Court. Applying the ratio laid down in the judgment of the Hon'ble Apex Court in *Bhajanlal's case (supra)*, it is a clear case which falls within one of the categories of the case where powers can be exercised under Section 482 Cr.P.C to quash the proceedings.

18. In a decision reported in **Preeti Gupta & another Vs. State of Jharkhand & another**⁶, Hon'ble Apex Court held at Para 37 as under:

“37.Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy.....”

19. In the present case of nature, the allegations of harassment of A.1's close relations who had been living in different places and never visited or rarely visited the place where the 2nd respondent resided, would have an entirely different complexion. The allegations of the 2nd respondent are

⁶ (2010) 7 SCC 667



required to be scrutinized with great care and circumspection and most of the complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues, without proper deliberations and the allegations in the complaint which are not even in the sworn statement and report, are not even *bona fide* and are filed with oblique motive to cause harassment to the distant relatives of A.1. Summoning the distant relatives without there being specific material and naming the distant relatives is not enough to summon them in the absence of any specific role and material to support such role.

20. Therefore, the aforesaid analogy squarely applies to the present facts of the case. As per the investigation, A.1 is her husband, A.2 is the mother, A.3 and A.4 are the brother and sister-in-law of A.1. At the time of the commission of the offence of subjecting the *de facto* complainant to physical and mental cruelty, their marital relationship was subsisting, so also petitioners/A.5 to A.11 are the relatives of A.1 and their names were deleted by the Investigating Officer, who are residing elsewhere and filed charge sheet against A.1 to A.4. As can be seen from the charge sheet and the material available on record, specific allegations are made against A.1 to A.4 regarding the harassment said to have been caused by them both physically



and mentally to the *de facto* complainant. There are absolutely valid legal grounds emanating from the record warranting interference of this Court under Section 482 Cr.P.C to quash the criminal proceedings against the petitioners/A.5 to A.11.

21. Therefore, the very cognizance taken by the learned Magistrate against the petitioners/A.5 to A.11 is not in accordance with law and it does not disclose the factors that weighed with the Magistrate in coming to the said conclusion. Therefore, the impugned order runs foul of the law. Applying the above principles, the proceedings against the petitioners/A.5 to A.11 in the present case are clearly an abuse of the Court process, and quashing jurisdiction can be exercised.

22. Resultantly, the criminal petition is allowed and the docket order dt.21.11.2011 passed in C.F.R.No.6562 of 2011 by the Judicial Magistrate of First Class, Kurnool is set aside and the proceedings against the petitioners/A.5 to A.11 in Crime No.142 of 2010 of Orvakal Police Station, Kurnool are hereby quashed.

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

JUSTICE DUPPALA VENKATA RAMANA

14.06.2023

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HON'BLE SRI JUSTICE DUPPALA VENKATA RAMANA

CRIMINAL PETITION No.13197 OF 2011

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