

THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY

CRIMINAL PETITION No.13821 OF 2018

ORDER :

This Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed to quash the proceedings in C.C.No.349 of 2018 on the file of the V Metropolitan Magistrate, Anakapalle. The petitioner herein is A.2 in the said Calendar Case.

2. Heard both sides.

3. Basing on a report lodged by 1st respondent-defacto complainant, police registered a case in crime No.39 of 2017 of Women police station, Anakapalle, and after completion of investigation, laid charge sheet against the petitioner/A.2 and another for the offences punishable under Sections 498A, 324, 506 and 109 IPC and 3 and 4 of the Dowry Prohibition Act, 1961. The allegations in the charge sheet, in brief, may be stated as follows.

1st respondent-defacto complainant is wife of A.1. Their marriage was performed on 19.05.2015. On the demand made by A.1, her parents gave Rs.5,00,000/- cash, 5 tulas of gold, Rs.70,000/- for purchasing a motor bike and Rs.1,00,000/- for sari samanulu, as dowry besides cash of Rs.2,00,000/- towards marriage expenses, as A.1 is working as a Constable in Police Department. After marriage, the couple lived in police quarters, K.G.H. down, Visakhapatnam. Some time after the marriage, A.1 started subjecting her to

cruelty demanding additional dowry from her parents. The couple was blessed with a female baby.

In September, 2016, when 1st respondent-defacto complainant was washing clothes, she noticed a slip in the trouser pocket of A.1 which contained naming function details of Baby Kelvin. When she questioned A.1 about the baby, A.1 annoyed and informed that he was having intimacy with petitioner/A.2 and the baby was blessed to them. Since then, he accelerated his cruelty towards 1st respondent-defacto complainant and her daughter, and started threatening with dire consequences. Unable to bear the harassment, she informed the matter to her parents, who placed the matter in panchayat, wherein A.1 admitted his guilt and assured that he would take care of 1st respondent-defacto complainant well. But, there was no change in the attitude of A.1. He used to come home late in night in drunken state, and when 1st respondent-defacto complainant questioned, he used to beat her indiscriminately. In March, 2017, A.1 demanded 1st respondent-defacto complainant to bring Rs.1,00,000/- as additional dowry from her parents as he intended to purchase a car, and when she expressed inability of her parents, A.1 beat 1st respondent-defacto complainant and her daughter with stick, as a result of which, she received bleeding injury on her forehead and her daughter got fracture on her right shoulder. A.1 rendered treatment to them at K.G.H. and A.M.G. Hospital, Visakhapatnam. Since she did not bring additional dowry

from her parents, A.1 dropped her and her daughter at the house of her parents at Mamidipalem with a warning to return back with the amount demanded by him. Hence, the report.

4. Learned counsel for the petitioner contended that petitioner/A.2 is second wife of A.1 and there is absolutely no offence made out as against her. He took this Court to the allegations in the First Information Report, Section 161 Cr.P.C. statements and charge sheet and submits that no offence has been made out as against the petitioner/A.2.

5. Per contra, learned counsel for 1st respondent-defacto complainant contended that the allegations in the First Information Report, recitals in Section 161 Cr.P.C. statements and the charge sheet clearly disclose a *prima facie* case against the petitioner/A.2 for the offences alleged as against her, and in view of the specific accusations, there are no grounds to quash the impugned proceedings.

6. On the other hand, Sri Soora Venkata Sainath, learned Special Assistant Public Prosecutor appearing for 2nd respondent-State opposed the quashment of the charge sheet on the ground that there are averments contained in the charge sheet and the First Information Report as against her, and truth or otherwise of the allegations has to be decided in the course of trial.

7. There cannot be any dispute that inherent powers of this Court under Section 482 CrPC 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 perused the record. A reading of the charge sheet makes it clear that all the allegations are directed as against A.1. Marriage of A.1 with 1st respondent-defacto complainant took place on 19.05.2015. For certain period, they lived happily. Thereafter, it is alleged that A.1 started subjecting 1st respondent-defacto complainant to cruelty both physically and mentally demanding her to bring additional dowry from her parents. Out of the conjugal life, 1st respondent-defacto complainant was blessed with a female baby. In the month of September, 2016, when 1st respondent was washing clothes, she noticed a slip in the trouser pocket of A.1, which contained naming function details of Baby Kelvin. When she questioned A.1 about details of Baby Kelvin, A.1 got annoyed and informed that he is having intimacy with petitioner/A.2 and Baby Kelvin was blessed through her. He also stated that he performed naming function at Kancharapalem, and since then, he accelerated his cruelty towards 1st respondent/defacto complainant and her daughter and threatened them with dire consequences. A panchayat was held wherein 1st respondent/defacto complainant informed about the harassment of A.1 and his illegal intimacy with petitioner/A.2. In fact, A.1 admitted his guilt and assured that he would take care of her well. Later, A.1 took 1st respondent/defacto complainant for conjugal life, but there was no change in his attitude. A.1 used to come home late in

drunken state in the night and beat her indiscriminately. With the aforesaid allegations, 1st respondent/defacto complainant lodged a report before Women police station, Anakapalle on 31.07.2017 alleging that A.1 was subjecting her to cruelty at the instigation of petitioner/A.2.

8. It is pertinent to mention here that in the First Information Report, there is an accusation as against petitioner/A.2 that the petitioner/A.2, having illicit intimacy with A.1, instigated A.1 to demand additional dowry of Rs.1,00,000/- from, and harass, 1st respondent/defacto complainant mentally and physically. There are specific accusations in the statement under Section 161 Cr.P.C. also.

9. Learned counsel for the petitioner relied upon a judgment in *Suraj Yadav v. State of West Bengal*¹, wherein Section 107 IPC has been discussed. The facts of the said case have no relevance to the facts and circumstances of the present case for the reason that the petitioner is second wife of A.1 and it has been alleged in the First Information Report and in the statement under Section 161 Cr.P.C. and the charge sheet that petitioner herein had illicit intimacy with A.1 and at the instigation of the petitioner, A.1 was harassing 1st respondent/defacto complainant physically and mentally to get additional dowry. Therefore, the above judgment is not applicable to the facts and circumstances of the present case.

¹ I (2008) DMC 314

10. In another decision in *Rajeev Kourav v. Baisahab and others*², it is held thus: (paragraph 8)

“8. It is no more *res integra* that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge-sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a *prima facie* case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.”

There is no dispute with regard to the aforesaid proposition.

11. This court finds that the specific accusation has been made as against the petitioner. In a proceedings under Section 482 Cr.P.C., this Court would not be in a position to conduct a roving enquiry into the facts of the case. *Prima facie* when an accusation has been made, this Court would not embark upon appreciation of the material in a petition under Section 482 Cr.P.C. for quashing the proceedings.

² (2020) 3 SCC 317

Apparently, on the face of it, a *prima facie* case has been made out disclosing the ingredients of the offences alleged against the petitioner. In view of the same, this Court is not inclined to interfere in the matter at the premature stage.

12. Accordingly, the Criminal Petition is dismissed.

Miscellaneous petitions, if any pending, in the Criminal Petition, shall stand closed.

JUSTICE K. SREENIVASA REDDY

.04.2022
DRK

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