

Y.Sham Kumar and Others Vs. State of A.P. and Another

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Court : Andhra Pradesh

Decided On : Sep-06-2012

Judge : The Hon'Ble Mr Justice R. Kantha Rao

Appellant : Y.Sham Kumar and Others

Respondent : State of A.P. and Another

Advocate for Def. : Sri. M.V.Swamy Counsel

Judgement :

THE HON'BLE MR JUSTICE R. KANTHA RAO CrI.P.No.9407 o

06. 09.2012 Y.Sham Kumar and others State of A.P. and another Counsel for the Appellant: Sri M.V.Swamy Counsel for respondent No.1: Addl.Public Prosecutor Counsel for respondent No.2: Sri K.Maheshwara Rao HEAD NOTE: Cases referred:

1. AIR 199.SC 137.2 2007(12) SCC 36.32008AIR SCW 690.4 1988(1)SCC 69.5 1992 Supp.(1) SCC 33.6 (2010) 7 SCC 66.ORDER: This criminal petition is filed under Section 482 of the Code of Criminal Procedure to quash the proceedings in C.C.No.87 of 2009 on the file of the Judicial First Class Magistrate, Penugonda. 2 I have heard the learned counsel appearing for the petitioners/accused, second respondent/de facto complainant and the learned additional Public Prosecutor representing the first respondent/State.

3. The brief facts of the case which is sought to be quashed are that the second respondent/wife filed a private complaint against the petitioners under Section 498-A, 420 IPC and Sections 3 and 4 of the Dowry Prohibition Act in the Court of the Judicial First Class Magistrate, Penugonda, Ananthapur District. The learned Magistrate forwarded the case to the Station House Officer, Puttaparthi Police Station under Section 156 (3) Cr.P.C for investigation and report. The police after conducting investigation filed charge sheet against the petitioners under Sections 498-A, 420 IPC and Sections 3 and 4 of the Dowry Prohibition Act.

4. Shortly stated, the averments made in the complaint petition are that the marriage of the second respondent with the first petitioner was solemnized on 19.05.2006 at Puttaparthi at her parents' house. Before the marriage, it is said that all the petitioners represented to the second respondent and her parents that the first petitioner was an engineering graduate and was working as Engineer. They demanded a sum of Rs.2,00,000/- dowry and 20 tolas of gold which was given by the second respondent's father to the first petitioner at the time of marriage. The marriage was consummated and the second respondent found that A1 was not doing any job and he is also not an engineering graduate. When the second respondent questioned the first petitioner about the same, all of them got offended and told her to leave their house. Having no other option, she returned to her parents' house and started living at Puttaparthi.

5. Subsequently, it is said that the first petitioner came to her parents' house, requested the second respondent to excuse for mis-representation made and requested to lead a peaceful life. The second respondent pardoned him and started leading conjugal life with him at her parents' house at Puttaparthi. Later on, the first petitioner got a job at Yadiki, Ananthapur District as Junior Engineer in a cement factory. He had put up family at Yadiki and started harassing the second respondent. It was alleged by the second respondent that the first petitioner used to tell her that he had illicit intimacy with his sisters-in-law and some other women, he used to talk to his sisters-in-law over phone (A3 and A7) hours together, A3 and A7 used to write letters to A1 stating their illicit intimacy with him and A1 used to hand over the said letters to the second respondent and was insisting upon her to go through the letters, and on refusal by her, he used to beat her.

6. Some time thereafter, the first petitioner secured employment in West Africa and left for West Africa. Later, the second respondent gave birth to a male child on 23.04.2007. After the birth of the said male child, all the petitioners/accused visited her parents' house at Puttaparthi under the guise of seeing the new born child. At that time, all the accused insisted upon the mother of the second respondent to pay an amount of Rs.2,00,000/- as additional dowry to A1, who was intending to go to West Africa for securing job. When the second respondent and her father expressed their inability to pay the said amount, the accused threatened that they will desert the complainant and unless the amount demanded is paid, they will not visit the second respondent and so saying, all the accused went away.

7. Subsequently, the second respondent learnt that the first accused having secured job in West Africa, left for that place during May, 2007. From there, A1 wrote some letters to the complainant admitting all his misdeeds during the matrimonial life. In number of letters, he admitted that he used to starve the second respondent and resorted to beat her for no fault of her. Subsequently, when her father fell sick, the second respondent requested A1 to visit his father, but he refused to come to Puttaparthi on the ground that his father did not pay the amount which was demanded by him.

8. Subsequently, the father of the second respondent died on 29.01.2008 and the 1st accused came down to Puttaparthi and started living with the second respondent at her parents' house at Puttaparthi. It is alleged that on the instigation of the remaining accused, the first accused continued harassment by abusing and beating her. Some Panchayat was convened before the elders, which was found to be futile and the second respondent states that under the aforesaid circumstances she filed a private complaint before the Magistrate.

9. In the complaint filed by her, the second respondent made all the relatives close and distant of the first petitioner as accused.

10. Learned counsel appearing for the second respondent placed the statements of LWs1 and 2 recorded by the police before this Court and those statements reveal that the first accused has been harassing the second respondent on the instigation of the remaining accused. It is also mentioned therein that when all the

accused came to the parents of the second respondent to visit the new born child demanded an amount of Rs.2,00,000/- as additional dowry.

11. Basing on the said statements and also the allegations levelled in the complaint petition, the learned counsel appearing for the second respondent contends that the truth or otherwise of the allegations has to be decided in the course of the trial after the evidence was let in before the Court, since the allegations prima face disclose the involvement of all the accused in the commission of offence, the complaint is not liable to be quashed.

12. The learned counsel appearing for the second respondent invited my attention to the decision of the Supreme Court in SMT CHAND DHAWAN v JAWAHR LAL AND OTHERS¹ wherein the Supreme Court held that: "when the allegations in the complaint prima facie constitute the offence against any or all of the accused in the absence of materials on record to show that the continuance of the proceedings would be an abuse of the process of the court or would defeat the ends of justice, the High Court would not be justified in quashing the complaint." 13. He further relied on a decision reported in PRATIBHA v RAMESHWARI DEVI AND OTHERS² wherein the Supreme Court held as follows: "Filing of a divorce petition in a civil court cannot be a ground to quash criminal proceedings under Section 482 Cr.P.C. as it is well settled that criminal and civil proceedings are separate and independent and the pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out of the same set of facts." "From a plain reading of the findings arrived at by the High Court while quashing the FIR, it is apparent that the High Court while exercising its inherent powers under Section 482 Cr.P.C. has gone beyond the allegations made in the FIR and has acted in excess of its jurisdiction and, therefore, the High Court was not justified in quashing the FIR by going beyond the allegations made in the FIR or by relying on extraneous considerations." 14. Relying on the aforesaid judgments, the learned counsel appearing for the respondent No.2 would contend that in the instant case, the fact that the first petitioner filed a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights and obtained a decree is not a ground to quash the criminal proceedings in the present case. He would further contend that since the allegations made in the complaint prima facie constitute the

offences punishable under Sections 498A, 420 IPC and Sections 3 and 4 of the Dowry Prohibition Act, the complaint is not liable to be quashed.

15. On the other hand, the learned counsel appearing for the petitioners would contend that only certain omnibus allegations have been made against the petitioners in the complaint, the police without conducting proper investigation mechanically filed a charge sheet which is nothing but reproduction of the contents of the complaint which was forwarded by the Magistrate, the Court can go into the question whether the criminal proceedings initiated would result in abuse of process of law and if they are allowed to continue, they would cause miscarriage of justice and on such scrutiny, according to the learned counsel, this is a fit case to quash the proceedings in exercise of powers under Section 482 Cr.P.C.

16. The crucial question to be determined in the criminal petition therefore is when there are certain allegations levelled against the accused in the complaint petition whether the court in exercise of jurisdiction under Section 482 Cr.P.C. can go in to the correctness of the allegations to decide the question as to whether the criminal proceedings initiated are abuse of process of Court and whether they would result in miscarriage of justice if the accused are made to face the trial of the case.

17. In this case, it is true that the complaint petition filed by the second respondent/de facto complainant was forwarded by the Magistrate to the police under Section 156(3) Cr.P.C for investigation and the police after conducting investigation filed charge sheet. It is also a fact that the learned Magistrate took cognizance of the offences under Section 498A, 420 IPC and Sections 3 and 4 of the Dowry Prohibition Act against all the accused. Under these circumstances, therefore, it is required to be examined whether this Court can scrutinize the allegations levelled in the complaint so as to take a decision as to whether the proceedings are in fact abuse of process of Court and if they are allowed to continue would result in miscarriage of justice.

18. In *GORIGE PENTIAIAH v STATE OF A.P. AND OTHERS*³ the Supreme Court held as follows: "Inherent powers under Section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority

of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the Court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute." It is further held as under: "The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage." 19. Similarly in MADHAVRAO JIWAJIRAO SCINDIA AND OTHERS v SAMBHAJIRAO CHANDROJIRAO ANGRE AND OTHERS⁴ the Supreme Court observed as follows: "The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the un-controverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage." 20. In STATE OF HARYANA AND OTHERS v BHANJAN LAL AND OTHERS⁵ the Supreme Court expressed the view that: "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, then the proceedings are liable to be quashed." The Supreme Court further held that: "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., the proceeding is liable to be quashed".

21. From the legal position which emerges out of the aforesaid judicial pronouncements, it is therefore, obvious that the High Court while exercising jurisdiction under Section 482 of the Code of Criminal Procedure to quash the proceedings can scrutinize the allegations levelled in the complaint for the purpose of arriving at the conclusion whether they are designed to harass the family members of the husband of the de-facto complainant and to wreak vengeance against them owing to the differences of the de facto complainant with her husband. Merely because there are some general and sweeping allegations against the accused in the complaint, the Court is not precluded from scrutinizing the allegations while exercising jurisdiction under Section 482 of the Code of Criminal Procedure for the purpose of quashing the proceedings. The law does not mandate that when there are certain allegations, the Court while acting under Section 482 Cr.P.C. is not supposed to scrutinize them and it has to simply allow the trial to be proceeded with before the trial Court for the purpose of deciding the truth or otherwise of the allegations mentioned in the complaint/charge sheet.

22. In PREETI GUPTA AND ANOTHER v STATE OF JHARHAND AND ANOTHER⁶ the Supreme Court held as follows: "It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including the Supreme Court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of society. 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. It is seen that a large number of such complaints are 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 is also a matter of serious concern. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre 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. --- 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 by the husband's close relations who had been living in different cities and never visited or rarely visited

the place where the complainant wife resided would have an entirely different complexion. Such allegations of the complainant are required to be scrutinized with great care and circumspection." 23. Now, turning to the facts of the present case, the second respondent-de facto complainant implicated all the relatives close and distant of her husband as accused in this case and only some general and sweeping allegations, which are referred above have been made against A2 to A.12. If we examine the crux of the complaint petition, it seems that the grievance of the second respondent is mainly against the first petitioner/husband.

24. It cannot be accepted that all the accused collectively represented that the first accused is an engineering graduate and is working as an Engineer. The fact which cannot be disputed is that the first accused has a diploma in Engineering. Ultimately, he secured a job in a cement factory at Yadiki as Junior Engineer. The second respondent herself stated in the complaint petition that after the first accused revealed these facts to her, she condoned his representation and started living with him and gave birth to a male child. Subsequently, the first accused secured employment in West Africa as an Engineer and worked there for some time. Therefore, what all can be understood from the facts of the case is that even if there is any representation made that the first accused is an Engineering graduate and was working as an engineer, it was by the first accused himself, but not by all the accused. Even if there is any demand for dowry, from the facts and circumstances of the case, it must have been from the first accused, but not from all the other accused who are the relatives of the first accused. It can be clearly understood from the nature of the allegations levelled in the complaint that A2 to A.12 have been implicated in this case only for the sole reason that they are related to the first accused. The Apex Court in *Preethi Gupta* (6th cited supra) observed that the allegations in the complaint have to be scrutinized with great care and circumspection especially when they are made against the husband's relatives. The Supreme Court also held that there is a need for serious re-look at the entire provision of Section 498-A IPC, and it made recommendation to the Parliament to revisit the said provision. In the instant case, the allegation that A2 to A.12 have been instigating A1 to harass her and that in connection with the birth of the male child, they visited the house of the second respondent and there, all the accused demanded dowry of Rs.2,00,000/- is quite un-convincing and appears to

have been made purposely and designedly to involve A2 to A12 in the case filed by the second respondent/de facto complainant. If there is any harassment meted out by the first accused, the second respondent is not supposed to make all his relatives accused in the complaint by alleging in general terms that they committed offences punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act. Such a course shall not be encouraged. If A2 to A-12 are allowed to face trial basing on such sweeping and general allegations, in my view, it is nothing but abuse of process of law and ultimately it would result in miscarriage of justice causing undue hardship and agony to A2 to A12.

25. For all the aforesaid reasons, I am of the view that it is a fit case to quash the proceedings against A2 to A12 since apparently they have been made as accused only on account of their relationship with A1. Therefore, the entire proceedings in C.C.No.87 of 2009 on the file of the Judicial First Class Magistrate, Penugonda insofar as the petitioners 2 to 12/A2 to A12 concerned are hereby quashed. Insofar as the petitioner No.1/A-1 is concerned, the criminal petition is dismissed.

26. As indicated above, the criminal petition is partly allowed.
_____ R. KANTHA RAO, J Date:

06. 09.2012

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