

\* THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

**+ CRIMINAL PETITION No. 12970 of 2010**

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% 30-04-2013

# 1. Markapuram Siva Rao S/o Somaiah,  
Aged 58 years, R/o 8<sup>th</sup> Ward,  
Krosuru Village and Mandal,  
Guntur District and five others

... Petitioners

Vs.

\$ 1. State of Andhra Pradesh,  
rep. by its Public Prosecutor,  
High Court of A.P., Hyderabad  
and another

... Respondents

! Counsel for the Petitioners: Sri Sricharan Telaprolu,  
Advocate.

Counsel for the Respondents: Public Prosecutor

< Gist:

> Head Note:

? Cases referred:  
1. 1992 SCC (CrI.) 426  
2. (2005) 1 SCC 122

3. (2010) 10 SCC 673
4. (2010) 7 SCC 667
5. (2012) 10 SCC 741

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**

**CRIMINAL PETITION No. 12970 of 2010**

**ORDER:**

1. This Criminal Petition is filed by the petitioners, who are respondent Nos.2 to 7 in D.V.C.No.4 of 2010 on the file of II Additional Munsif Magistrate, Narasaraopet, under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") seeking to quash the proceedings in the said D.V.C.

2. The facts of the case are as under:

The 2<sup>nd</sup> respondent herein, who is the wife of 1<sup>st</sup> respondent in the D.V.C., lodged a report before Protection Officer, who enquired and in turn presented the same along with Form-I before the II Additional Munsif Magistrate, Narasaraopet along with Form-II under Section 12 of the Protection of women from Domestic Violence Act, 2005 (for short "the Act"). The 1<sup>st</sup> petitioner is father-in-law, 2<sup>nd</sup> petitioner is mother-in-law, 3<sup>rd</sup> petitioner is sister-in-law, 4<sup>th</sup> petitioner is husband of 3<sup>rd</sup> petitioner, petitioners 5 and 6 are brothers-in-law of the 2<sup>nd</sup> respondent herein. It is alleged that the marriage between 1<sup>st</sup> respondent in DVC and the 2<sup>nd</sup> respondent herein took place on 07.03.1999 at Tirumala Tirupati Devasthanam. It was a love marriage. It is alleged that the 1<sup>st</sup> respondent in DVC i.e. the husband demanded an amount of Rs.20,000/- as dowry and land to an extent of

Ac.0-30 cents situated at Rao's Restaurant, Ameenabad, which is an ancestral property of the 2<sup>nd</sup> respondent herein. Initially her parents were reluctant to register the land but seeing the helplessness of the respondent, they agreed to register the land in joint names. The said

proposal was not accepted and insisted that the land should be registered in his name and that too before the marriage. The engagement took place on 18.02.1999 and the land was registered in favour of her husband. After marriage, the respondent No.2 herein came to know about the bad vices of her husband and when questioned, he harassed her both physically and mentally for additional money. The respondent No.2 was working as a Vidya Volunteer at Primary School, Ameenabad, but her husband used to reside at Guntur on the ground that he was preparing for competitive examinations. The victim i.e. the respondent No.2 herein, was residing with her parents at Vemuluripadu village. The complaint further indicates that the 1<sup>st</sup> respondent in DVC used to say that had he married another woman he would have got more dowry and so saying he used to harass her in many ways. After much persuasion she was taken to her in-laws house and stayed there for few days. It is alleged that to her surprise, her parents-in-law, sister-in-law, brothers-in-law harassed her physically and mentally for additional dowry. When she asked the 1<sup>st</sup> petitioner as to why she is being treated like that and that she should be treated like her daughter, she replied that there is no match to her daughter. At that juncture, the other petitioners are alleged to have abused and beat her saying that she came to their house as 'shani' and that assets will not come to their house. Thereafter, her husband took her to Guntur where she got selected for Secondary Grade Teacher in the year 2002. Her husband also got B.Ed. seat. In the year 2005, they were blessed with a child. Even after birth of the child, the harassment in the hands of her husband continued and he was extracting money from her. In spite of the fact that she was working at Bellamkonda, she agreed the proposal of her husband to stay at Krosuru though it is difficult for her to go to Bellamkonda from Krosuru every day. On 11.03.2006 they took a house at Krosuru. It is alleged that her in-laws used to come there and demand her to sell the land, which was in their joint names

for clearing the debts. She did not agree for the same. Since the aggrieved person could not give money as demanded by the respondents in DVC, the husband of the aggrieved person tried to kill her by putting his leg on her throat. Seeing the condition of the respondents herein her parents took her back to their house on 30.04.2006.

3. O.P.No.123 of 2007 on the file of Principal Senior Civil Judge, Narasaraopet was filed by the husband seeking divorce, which was dismissed on 22.07.2009. After dismissal of the same, the 1<sup>st</sup> respondent in DVC is alleged to have come for compromise stating that they should forget the past and live peacefully. Believing his words, respondent started living with him at Vemuluripadu. Both of them lived happily for three months, thereafter the harassment continued. At that time she came to know that the land, which was given as dowry by her father, was sold by her husband for an amount of Rs.10 lakhs to Perumalla Ramakrishna and Desineni Siva Babu. When she questioned the same, her husband told her that since he could not raise funds from anybody, he sold the same. It is further alleged that about six months prior to lodging of the present report, the brother-in-law of her husband by name Hari Prasad came to her house at Vemuluripadu and told her that he will maintain her properly and admit her daughter for higher studies if she joins his conjugal society. When she told him that she is like her younger sister and threatened to complain to her parents, he is alleged to have left the place. It is further alleged that all the petitioners utilized the dowry given as land, which was taken from her and the 1<sup>st</sup> respondent in DVC is trying to marry the daughter of his elder sister. On 13.06.2010 her in-laws came to her parents house at about 7.00 p.m. and insisted her to give divorce or bring a sum of Rs.5,00,000/- as additional dowry. All of them have alleged to have abused her and her husband, poured kerosene on her while her mother-in-law, father-in-

law, sister-in-law held her. It is further alleged that when her brother-in-law tried to light a match stick, she raised cries, upon which the neighbours came and rescued her.

4. Basing on these allegations, a report was given to the Project Officer on 21.07.2010, who in turn submitted the complaint under Form-I for the reliefs under Sections 18 and 20 of the Act apart from seeking interim reliefs.

5. Heard Sri Sricharan Telaprolu, the learned counsel for the petitioners and the learned Public Prosecutor for the State. In spite of service of notice on the respondent No.2, she did not choose to appear.

6. The learned counsel for the petitioners mainly contends that even accepting the allegations in the report given to the Project Officer as true, no relief can be claimed against the petitioners. According to him, the allegations made in the said report are all false and invented for the purpose of this case. He further contends that the petitioners 3 and 4 are living separately at Sangareddy in Medak District, which is far away from the place where the respondent No.2 was living along with her husband. The petitioners 5 and 6 are married brothers of the husband of the respondent No.2 and they have nothing to do with the family of their brother. He also submits that the 1<sup>st</sup> petitioner herein, who the father-in-law of the 2<sup>nd</sup> respondent herein, is no more. He mainly contends that the entire averments in the DVC do not show any cause of action against them and they are impleaded only to harass them.

7. On the other hand, the learned Public Prosecutor would contend that the allegations made in the complaint are to be enquired during the trial and the relief under Section 18 of the Act can be sought for against all the petitioners because allegations of domestic violence are alleged in the report.

8. While exercising the jurisdiction under Section 482 Cr.P.C., the High Court should not adopt a casual or mechanical approach. It is under a duty to scrutinize the allegations made in the complaint. If the allegations are *ex facie* absurd and inherently improbable, the Court has to quash the proceedings to prevent abuse of process of the Court and miscarriage of justice.

9. In **State of Haryana v. Bhajanlal**<sup>[1]</sup>, the Hon'ble Supreme Court pointed out as under:

“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, the proceedings are liable to be quashed.”

10. In **Zandu Pharmaceutical Works Ltd., v. Mohd. Sharaful Haque**<sup>[2]</sup>, the Hon'ble Supreme Court held as follows:

“It would be an abuse of process of Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted *in toto*.”

11. The Hon'ble Supreme Court in **Manoj Mahavir Prasad Khaitan v. Ram Gopal Poddar and another**<sup>[3]</sup>, held as follows:

“We reiterate that when the criminal Court looks into the complaint, it has to do so with an open mind. True it is that that is not the stage for finding out the truth or otherwise in the allegations; but where the allegations themselves are so absurd that no reasonable man would accept the same, the High Court could not have thrown its arms in the air and expressed its inability to do anything in the matter. Section 482 Cr.P.C. is invested with the tremendous powers thereunder to pass any order in the interests of justice. Therefore,

this would have been a proper case for the High Court to look into the allegations with the openness and then to decide whether to pass any order in the interest of justice. In our opinion, this was a case where the High Court ought to have used its powers under Section 482 Cr.P.C.”

12. While dealing with matrimonial litigation, the Apex Court in **Preeti Gupta and another v. State of Jharkhand and another** <sup>[4]</sup>, observed thus:

“Exaggerated versions of small incidents should not be reflected in the criminal complaints. The Supreme Court pointed out that the allegations in the complaint should be scrutinized with great care and circumspection especially against the husband’s relatives, who were living in different cities, who were never visited or rarely visited the matrimonial home of the complainant. The Supreme Court reminded the learned members of the Bar and Bench of their social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. It made a recommendation to the Parliament emphasizing the need for serious re-look at the entire provision of Section 498-A IPC.”

13. Before proceeding further, it would be apt to mention here that a report was lodged at Phirangipuram police station on 24.06.2010 against all the petitioners herein for the offences punishable under Sections 498-A and 506 of IPC and Sections 3 and 4 of Dowry Prohibition Act and the same was registered as Cr.No.67 of 2010. The allegations made in the said report are verbatim identical with the report lodged with the Project Officer. It appears that a report was prepared and copies of which were sent to police station and Project Officer. During the course of investigation in Cr.No.67 of 2010, the police found that the allegations made against the petitioners 3 and 4 in the present complaint were false and charge sheet was filed against five accused by deleting the names of petitioners 3 and 4 herein. It is brought to my notice that the five accused were tried in S.C.No.763 of 2010 on the file of Additional Assistant Sessions Judge, Narasaraopet for the offences punishable under Sections 498-A, 506 and 307 read with Section 34 of IPC and Sections 3 and 4 of Dowry Prohibition Act. The learned Additional Assistant

Sessions Judge by judgment dt.25.07.2011 acquitted all the accused except the husband holding that the allegations made therein are false.

14. As stated above, the reliefs claimed are only under Sections 18 and 20 of the Act, apart from seeking interim reliefs. It is clear that no interim relief was granted to the 2<sup>nd</sup> respondent herein.

15. Section 18 of the Act deals with the orders of protection to be passed in favour of an aggrieved person and prohibits the respondent from the following acts, namely, committing any act of domestic violence, aiding or abetting in the commission of domestic violence; entering the place of employment of the aggrieved person; attempting to communicate in any form, whatsoever, with the aggrieved person, alienating any assets, operating bank lockers or bank accounts, etc.; causing violence to the dependants or relatives and committing any other act. Section 20 of the Act deals with monetary reliefs to be granted while disposing of an application under Section 12 of the Act. The Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence.

16. A perusal of the material available on record, more particularly the allegations made in the report given to the Protection Officer, would indicate that no allegations of threat is alleged against the petitioners. Further, it is not alleged that the petitioners at any time entered the place of employment of aggrieved person, alienated the assets like bank lockers, bank accounts, etc. of the aggrieved person and caused any violence to the dependants and relatives or any person, who has given the aggrieved person assistance from domestic violence. It is not even alleged that the petitioners attempted to communicate in any form including personal, oral or

written or electronic or telephonic with the aggrieved person. The record clearly reveals that the 2<sup>nd</sup> respondent hardly stayed with her in-laws. Admittedly, at the time of marriage, the respondent No.2 herein was working as Vidya Volunteer and A1 was unemployed and studying B.L. in R.V.R. Guntur night college. After marriage A1 took PW.1 to Guntur where she was staying along with her husband alone. In the month of October, 2002 the 2<sup>nd</sup> respondent herein got a job as Secondary Grade Teacher and later they shifted to Vemuluripadu village. Thereafter the 1<sup>st</sup> respondent in DVC got B.Ed. seat at Eluru of West Godavari District. After the birth of the child and when the child was about six months, the wife and husband started living together at Krosuru village from March, 2006 and they resided in a rented house for a period of one month. In view of the harassment in the hands of her husband, her parents took her to their village. Therefore, at no point of time, except for few days in the month of November she stayed with her in-laws. Therefore, the question of apprehending danger in the hands of petitioners, and thereby seeking protection under Section 18 of the Act does not arise.

17. Further the respondent herein did not suffer any loss in the hands of the petitioners. The dowry amount of Rs.20,000/- along with Ac.0-30 cents of land was given to her husband. It was he who was harassing the respondent for additional dowry and was taking away chunk of her salary. When the resources got drained, he sold away the land and misappropriated the sale proceeds. From the above, it is clear that no relief under Section 20 of the Act can be directed against the petitioners.

18. One of the main ingredients to be established for claiming benefit under the provisions of the Act is that there should be domestic violence as defined under Section 3 of the Act. When the allegations of domestic violence/harassment made in a case

instituted at the behest of the respondent were found to be false and baseless by a criminal Court after a full fledged trial and when identical allegations are made in the present complaint made under Section 12 of the Act, I am of the opinion that continuation of proceedings against the petitioners, who are acquitted in an earlier criminal case, though may not amount to double jeopardy, but the same will definitely amount to an abuse of process of the Court. No useful purpose would be served in continuing such proceedings as the acts of domestic violence were found to be false by a criminal Court and the findings given by the said Court have become final. Allowing the petitioners to face trial on general and wild allegations without any specific instance of domestic violence is nothing but an abuse of process of the Court.

19. In **Geeta Mehrotra and another Vs., State of Uttar Pradesh and another** <sup>[5]</sup> the Apex Court has categorically held that “casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify in taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding”. The petitioners 3 and 4 were living at Sangareddy in Medak District, which is far away from the place where she was living with her husband (A1). The married brothers-in-law i.e. petitioners 5 and 6 were also living separately.

20. That being the position, in the light of the facts and circumstances of the case, as the allegations made being vague and general in nature, and in view of the legal principles laid down by the Apex Court, referred to above, I am inclined to quash the proceedings.

21. Accordingly, the Criminal Petition is allowed and the proceedings against the petitioners/respondent Nos.2 to 7 in D.V.C.No.4 of 2010 on the file of II Additional Munsif Magistrate, Narasaraopet are hereby quashed. The miscellaneous petitions, if any pending shall stand closed.

**C. PRAVEEN KUMAR, J**

Date: 30-04-2013

Note: LR copy to be marked

B/o MR



**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**

**CRIMINAL PETITION No. 12970 of 2010**

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**DATE: 30-04-2013**

MR

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[\[1\]](#) 1992 SCC (Cri.) 426

[\[2\]](#) (2005) 1 SCC 122

[\[3\]](#) (2010) 10 SCC 673

[\[4\]](#) (2010) 7 SCC 667

[\[5\]](#) (2012) 10 SCC 741