

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

Criminal Petition No.1966 of 2013

ORDER:

This Criminal Petition has been taken out under Section 482 Cr.P.C., by the accused, Movva Raja Ram in Crime No.89 of 2013 of Madhapur P.S., Cyberabad to quash the proceedings therein.

2. The 2nd respondent is the wife of the petitioner. She filed a report before the Inspector of Police, Madhapur P.S., Cyberabad on 07-02-2013 alleging *inter alia* that her husband retired in Central Government Service as Director General of Labour & Employment, Government of India and he fell in trap of one lady, namely, Smt. Padma, who has been engaged as a caterer at home. The said Smt. Padma took advantage of some misunderstandings between her and her husband, who is the petitioner. Smt. Padma and the petitioner are found absconding and their whereabouts are not known. She suspected Borkar, Prakash and Sheshank for disappearance of her husband-petitioner. Smt. Padma, who has been maintaining illicit relationship with the petitioner, is a married woman and mother of a son, aged 21 years. Therefore, she has been facing mental torture and social stigma and her health is being deteriorated due to mental agony. Basing on the said report, a case in Crime No.89 of 2013 for the offence under Section 498-A I.P.C and 'man missing' came to be registered. Hence, this Criminal Petition by accused Movva Raja Ram in Crime No.89 of 2013 of Madhapur P.S., Cyberabad seeking the relief stated supra.

3. Heard learned counsel appearing for the petitioner, *Sri*
C.Malla Reddy, learned senior counsel representing *Sri*

G.Anandam, learned counsel appearing for the 2nd respondent and learned Additional Public Prosecutor appearing for the 1st respondent-State.

4. It is contended by the learned counsel appearing for the petitioner that the 2nd respondent/complainant lodged a report with the police on some misgivings when the petitioner left for Mumbai and Ahmedabad in the last week of January and 1st week of February to attend various seminars on his private affairs and due to pre-occupation with his work, he could not contact the 2nd respondent and it resulted the 2nd respondent-complainant to assume as if the petitioner is missing due to his illicit relationship with Padma. He further contends that even if the entire allegations in the complaint are taken into consideration, no ingredients of Section 498-A IPC are made out and therefore, continuation of proceedings in Crime No.89 of 2013 amounts to abuse of process of law. He would further contend that mere illicit intimacy of the husband does not amount to 'Cruelty' as described in terms of explanation appended to Section 498-A IPC. In support of his contentions, reliance has been placed on the decision of Supreme Court in **U.Suvetha v. State** ^[1].

5. *Sri C.Malla Reddy*, learned senior counsel submits that the investigation in Crime No.89 of 2013 is in initial stage and this Court cannot scuttle investigation at the threshold. A further submission has been made that the petitioner resorted to have illicit intimacy with Smt. Padma, a married woman and that itself constitutes cruelty and therefore, further investigation in Crime No.89 of 2013 cannot be interdicted. In support of his submissions, reliance has been placed

on the decision of this Court in **Goremiya and others v. State of A.P.**^[2], wherein it has been held that inherent powers of the High Court cannot be exercised for scuttling the investigation at the threshold especially when the offences alleged are serious in nature. Learned senior counsel would submit that the entire petition has been drafted as if the petitioner and the 2nd respondent settled their disputes and as the settlement has been denied by the 2nd respondent/complainant, the basis on which the petition has been drafted, falls to the ground, in which case, the petition is liable to be dismissed.

6. The power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is of wide plenitude with no statutory limitation but it has to be exercised in accordance with the guidelines engrafted in such power, viz.,(i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. Proceedings can be quashed only where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. There is no hard and fast rule, no straightjacket formula and no rigid test, which must apply to every application under Section 482. Every case is to be decided in the context of its particular facts and circumstances and the predominant concern of the Court is to secure the ends of justice and to prevent abuse of process of Court. Though the Court may look into the uncontroverted and incontrovertible documents placed before it in order to decide whether the continuation of criminal proceedings would be an abuse of process of the Court, it cannot embark upon a detailed enquiry by thorough appreciation of evidence which can be done only at the stage of trial.

7. The only allegation against the petitioner in the complaint presented by the 2nd respondent/complainant is that he maintained illicit relationship with one Padma. The question is whether the illicit intimacy simplicitor constitutes cruelty as defined in terms of the explanation appended to Section 498-A. Section 498-A IPC reads as hereunder:-

“**498.A.** Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this Section, ‘Cruelty’ means----

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman-- Where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

8. The aforementioned provision of Section 498-A was inserted in the Penal Code by reason of the Criminal Law (Second Amendment) Act, 1983 (Act 46 of 1983). The Statement of Objects and Reasons thereof reads as hereunder:-

“ The increasing number of dowry deaths is a matter of serious concern. The extent of the evil has been commented upon by the Joint Committee of the Houses to examine the working of the Dowry Prohibition Act, 1961. Cases of cruelty by the husband and relatives of the husband which culminate in suicide by, or murder of, the hapless woman concerned, constitute only a small fraction of the cases involving such cruelty. It is, therefore, proposed to amend the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act suitably to deal effectively not only with cases of dowry deaths but also cases of cruelty to married woman

by their in-laws”.

9. The ingredients of Section 498-A of the Penal Code are:-
- (a) The woman must be married;
 - (b) She must be subjected to cruelty or harassment; and
 - (c) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.

The word “cruelty” having been defined in terms of the aforesaid Explanation, no other meaning can be attributed thereto. Living with another woman may be an act of cruelty on the part of the husband for the purpose of judicial separation or dissolution of marriage but the same, in my opinion, would not attract the wrath of Section 498-A of the Penal Code. Therefore, continuance of proceedings against the petitioner in Crime No.89 of 2013 of Madhapur P.S., amounts to abuse of process of law.

10. Accordingly, the Criminal Petition is allowed quashing the proceedings in Crime No.89 of 2013 of Madhapur P.S., Cyberabad against the petitioner.

B.SESHASAYANA REDDY, J

Dt.18-06-2013
RAR

[1] (2009) 6 Supreme Court Cases 757

[2] 2008(1) ALD (Cr.) 221 (AP)