

Andhra High Court

Mr. Tammineedi Bhaskara Rao And ... vs State Of A.P. Rep. By Public ... on 18 November, 2006

Equivalent citations: 2007 CriLJ 1204

Author: R Ranganathan

Bench: R Ranganathan

ORDER Ramesh Ranganathan, J.

1. Seeking to have the proceedings in Cr. No. 31 of 2005 of Samalkota Police Station, East Godavari District quashed, the present criminal petition is filed by accused 2 to 4. The complaint, in Cr. No. 31 of 2005, was filed before the Samalkota Police Station against accused 1 to 4 for offences under Sections 417, 418, 420, 498-A, 506 read with Section 34 of IPC and Sections 3 and 4 of the Dowry Prohibition Act.

The allegations in the complaint, filed on behalf of the complainant by her mother and power of attorney holder, are that the complainant is living in St. Kitts in the U.S.A. The 1st accused is her legally wedded husband and the 2nd, 3rd and 4th accused are the father, mother and brother respectively of the 1st accused. The complainant, though born in Kakinada, went away to the U.S.A. along with her parents and was brought up there. She later came down to India for her higher education and joined M.B.B.S. course in the Manipal Medical college in the year 1995. In May 1996, accused 1 to 4 approached the complainant, and her father (L.W-2), at the house of one Betina Setayamma (L.W- 3) seeking marriage alliance of the complainant with the 1st accused, however, with the condition that the complainant and her parents should bear all the expenses of the 1st accused for his career and stay in the U.S.A. The accused are said to have asked the complainant's father as to how much assets would be given by him to his daughter and it is only when the complainant's father informed that the complainant had nearly 2 lakh U.S. dollars in her account, that the accused started marriage talks with the complainant's father. The 2nd accused is alleged to have demanded Rs. 2,50,000/- as dowry for performing the marriage of the 1st accused with the complainant and to have also asked the complainant's parents to bear the entire responsibility of the 1st accused from the date of the wedding, including expenditure towards his education in India, his VISA and other expenses to go to the United States of America for higher education and the entire expenditure for his travel, stay in the U.S.A. etc. The complainant's parents agreed to bear all the expenses in the interest of their daughter anticipating a good future for her. All the accused had made the complainant believe that the 1st accused would look after her well and would live happily with her as husband and wife. The engagement, of the complainant and the 1st accused, took place at Kakinada in May, 1995. At that time the complainant's parents also got the "Lagna Patrika" imprinted of a six sovereign gold plate and gave it to the accused. The 2nd accused also collected Rs. 50,000/- from the complainant's father apart from dowry and at that time all the accused had promised, and had made the complainant believe, that the 1st accused would look after and live happily with her as husband and wife. Believing their words, the parents of the complainant agreed to spend the huge amount required for his stay in the U.S.A. to pursue his career. The marriage, between the complainant and the 1st accused, was solemnized on 19th December, 1996 at Ladies club Building, Kakinada. On the demand of the accused, the complainant's father's elder brother (L.W-4) paid Rs. 2,00,000/- to the 2nd accused in the presence of L.Ws 1 to 3 and 5 to 8 and the same was recorded in a video cassette. The complainant's parents gave a diamond ring to the 1st

accused, apart from silver articles, and spent Rs. 5,00,000/- towards the marriage. The marriage was also registered with the Registrar of Marriages at Kakinada. Ever since the beginning, the complainant found that the 1st accused was reluctant to live with her and was deliberately avoiding her company. The complainant was genuine in her approach towards the accused, and was trying to understand his feelings, but the 1st accused never tried to lead a normal married life with her. The 1st accused used to ask for money and the complainant had no other go but to draw money from her account. The accused had drawn the entire amount, from the complainant's account, from time to time, on some pretext or the other. The complainant was confused over his behaviour and was unsure as to whether he liked her at all or had got married to her for the sake of her money or only with the aim of going to the U.S.A. Whenever the complainant asked the 1st accused about his behaviour he used to talk to her in a rude manner, gave her an ultimatum not to question his behaviour and also insisted that she not to reveal his attitude to any one else. The 1st accused is said to have threatened not to live with her if his green card status was not arranged by the complainant and her parents. The complainant went into a state of dejection. The 1st accused is said to have deserted the complainant for months together without reason and without communicating with her. He remained cold and detached towards her. She had to undergo suffering due to the mental cruelty inflicted by him on her by his behaviour. Accused 2 and 3 supported the 1st accused and abetted him in his acts of cruelty towards the complainant. The 1st and 2nd accused retained with them the gold "Lagna Patrika", silver articles, gold kumkuma bharini etc. After her wedding, it was decided that the 1st accused would go to Manipal to prepare for his exams and live with the complainant. However the 1st accused expresses his unwillingness either to go to Manipal or to join the complainant there and wanted to stay at Hyderabad to prepare for his examination. The complainant's parents advised her to discontinue her studies in Manipal Medical College and to pursue her family life with the 1st accused. Though the complainant's father had spent more than 60,000 U.S. Dollars for her education in the Medical College, they advised her to discontinue her medical education for the sake of her matrimonial life and to join the 1st accused at Hyderabad. To their shock and surprise, the 1st accused declined to take her to Hyderabad to live with him stating that it would be a great hindrance to his education as he would lose concentration in his studies. He is said to have advised the complainant to stay with her parents in the United States of America and pursue her studies there until his behaviour changed. Though the complainant requested the 1st accused to take her along with him, the 2nd accused is said to have supported his son and as there was no alternative she went to the U.S.A. to live with her parents waiting for the 1st accused to get his VISA soon to come to the U.S.A. and join her in matrimony. The 1st accused deceptively promised the complainant, and her parents, that he would join the complainant in the U.S.A. after completing his studies in India as he wanted the complainant's parents to pay his examination fee etc in India and for his VISA to the U.S.A. Believing his promise, the complainant's parents provided the accused with financial support for his studies, paid his examination fees twice, firstly for ECFMG at Hyderabad and later at Bangkok. With the VISA support arrangements being made by the complainant's parents, the 1st accused reached the U.S.A. in July, 1998 to continue his higher education by joining the complainant. However, even in the U.S.A, the 1st accused deliberately avoided her company on some pretext or the other. After a few months in the U.S.A, he went to the United Kingdom for studies promising to join the complainant after his return. The complainant's parents bore the entire expenditure of 50,000 U.S. Dollars for his higher education, travel and living expenses in India, U.S.A, U.K. etc, as the 1st accused had informed them that, only on completion of

his studies, would he permit the complainant to join him at their matrimonial home. Accused 1 to 3 also demanded that the complainant and her parents make arrangements for the job related VISA to the U.S.A. for the 4th accused otherwise they would not allow the 1st accused to live with the complainant. The complainant's parents arranged both for a VISA and a job for the 4th accused in the U.S.A. through their relatives. The complainant, and her parents, came to know later that the 1st accused had been taking the advice of immigration lawyers in the U.S.A. to secure his future stay there and, in order to obtain a permanent green card for which a citizen spouse of the U.S.A. must sign all the supporting documents, the first accused had obtained the complainant's signature for this purpose. The complainant, and her parents, made all necessary arrangements in this regard as they thought that, after he secured his green card, the 1st accused would look after the complainant comfortably. The 1st accused, technically making it appear as though he lived with the complainant in the United States of America for two years, though he was living separately from her on the pretext of his studies, presented his papers for securing the green card. He had, however, cheated the complainant and her parents as also the Government of the United States of America's immigration authority for the purpose of obtaining a permanent green card. The complainant and her parents were initially unaware, of the intention of the 1st accused, that he had married the complainant only to get a permanent green card in the U.S.A, that he was gaining a period of seven years of stay in the U.S.A. to get a green card as also to take his brother, the fourth accused, to the U.S.A. After obtaining all the supporting documents from the complainant and her parents, and having presented his green card papers, the 1st accused openly challenged during 2003 that he would never take the complainant into his fold at any cost and that he would not give divorce to the complainant on the ground of fraud until he got a green card from the U.S.A. government. The complainant filed a petition for nullity of marriage against the 1st accused for his acts of cruelty in the U.S.A. The annulment petition was rejected on the ground of being barred by limitation according to the State Laws. Thereafter the complainant came to India in September 2003, along with her mother L.W-1, and filed O.P. No. 25 of 1994 against the 1st accused for annulment of marriage which is said to be pending on the file of the Principal Senior Civil Judge, Kakinada. Later the complainant left India to Caribbean Islands for her education. The complainant still hoped that the 1st accused would realise his mistakes and come back to her. The complainant, and her parents, recently came to know that the 1st accused was not fit for married life and was therefore avoiding the complainant. Though she gave all support to him, and his family members, the 1st accused used his marriage with the complainant only as a stepping stone to gain entry into the United States of America to get a permanent green card through her and only to earn huge amounts of money for himself and his brother. The 1st accused had stolen all documents, including diaries and passport of the complainant, since he had planned to abandon the complainant once and for all. The 1st accused, along with the other accused, is alleged to have committed an offence of cheating under the Indian Penal Code. It is alleged that the permanent green card is worth lakhs of U.S dollars earning capacity to the 1st accused and the complainant realized that obtaining the same was his goal after getting married to her. The 1st accused, after presenting all his permanent green card papers signed by her, proceeded to permanently desert the complainant filing a separation case against her in the U.S courts and in this process the 1st accused had joined the other accused and had committed various offences punishable under the Indian Penal Code. According to the complainant, the accused had committed an offence under Section 417 IPC since the 1st accused, right from the beginning of his marriage with the complainant, had used their marriage only as a spring board for

him, and his brother the 4th accused, to migrate to the U.S.A, without any intention to live with her and with a view to extract huge sums of Rs. 25,00,000/- by way of dowry, marriage expenses, including the huge expenditure for his studies at Visakhapatnam, Hyderabad, U.S.A, Bangkok and U.K, had falsely promised the complainant and her parents that he would start living with the complainant after completing his studies, and that he had induced in a fraudulent manner by cheating the complainant, (ii) that the accused had committed an offence under Section 418 IPC as they were bound by law to protect the complainant and had cheated her with the knowledge that they were using her money, influence and position in the U.S.A. for their gain, causing wrongful loss to the complainant in every aspect of her life. (iii) the accused had committed an offence under Section 506 IPC by way of criminal intimidation to the complainant, (iv) the 1st accused had committed an offence under Section 498-A IPC since, for the sake of dowry from the parents of the complainant, in the form of his marriage and educational expenses at Vizag, Hyderabad, U.S.A. and England, apart from his green card expenses, he had occasioned mental cruelty to her which was likely to drive her to mad or commit suicide. Accused 2 to 3 also abetted the 1st accused in all the said offences; and (v) all the accused had committed offences under Sections 3 and 4 of Dowry Prohibition Act.

2. Sri K. Jagadishchandra Prasad, learned Counsel for the petitioner, would submit that most of the allegations in the complaint relate to the 1st accused who was abroad and that there are no specific allegations in the complaint against the petitioners herein (accused 2 to 4). Learned Counsel would submit that it is only with a view to harass the petitioners herein that the 2nd respondent-complainant had needlessly filed a complaint against them levelling false and baseless allegations in the complaint. According to the learned Counsel, even if the complaint were to be read as a whole, and accepted in its entirety as true, no case has been made out against the petitioners herein of their having committed the offences of which they are charged. Learned Counsel would submit that, except to state that the petitioners herein had committed offences under Sections 417, 418, 420, 498-A and 506 IPC and Sections 3 and 4 of Dowry Prohibition Act, the complaint is bereft of even the basis particulars to indicate as to how the ingredients of the offences, of which the petitioners herein are charged, are attracted. Learned Counsel would submit that the specific allegations made in the complaint, against the petitioners herein, relate to the demand of dowry attracting the ingredients of Sections 3 and 4 of the Dowry Prohibition Act. Learned Counsel would refer to Rule 10, of the A.P. Dowry Prohibition Rules, to contend that since the allegation of demand of dowry against respondents 2 to 4 are at the time of the marriage which, even according to the complaint, took place in December 1996 and as the complaint was filed eight years thereafter in December 2004, it was barred by limitation. Learned Counsel would submit that, in any event, no allegations are made in the complaint against the 3rd petitioner (4th accused) and as such the complaint filed against him is liable to be quashed. Learned Counsel would place reliance on *Ruchi Agarwal v. Amit Kumar Agrawal* .

Sri B. Adinarayana Rao, learned Counsel for the 2nd respondent-complainant, on the other hand, would submit that this Court, under Section 482 Cr.P.C, would not stifle an investigation into the allegations made in the complaint. Learned Counsel would submit that, since the jurisdiction under Section 482 Cr.P.C. is to be exercised only in the rarest of rare cases, it was not open to the petitioners herein to have this Court minutely examine the veracity of the allegations made in the

complaint to ascertain as to whether all the ingredients of the offence, of which the petitioners herein are charged, has been made out. Learned Counsel would submit that the truth, or otherwise of the allegations in the complaint, are all matters for the trial Court to examine, that too when a charge sheet is filed. According to the learned Counsel, the scope of interference under Section 482 Cr.P.C. against F.I.Rs is even more limited and it is only in very exceptional circumstances that this Court would interfere to quash a complaint. Learned Counsel places reliance on M. Narayandas v. State of Karnataka ; State of Punjab v. Subhash Kumar (2004) 13 SCC 437; Savita v. State of Rajasthan (2005)12 SCC 338 and the judgment of the Division Bench of this Court in Pavana Sutha Plate Embossers Private Ltd., Eluru v. Commissioner of Transport, Govt. of A.P. Hyderabad 2006(2) ALD (CrL.) 384 (AP).

Before examining the rival contentions, it is necessary to take note of Sections 417, 418, 420, 498-A and Section 506 IPC and Sections 3 and 4 of Dowry Prohibition Act which read as under:

INDIAN PENAL CODE:

417 Punishment for cheating:

Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

418 Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect:

Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420 Cheating and dishonestly inducing delivery of property:

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

498A Husband or relative of husband of a woman subjecting her to cruelty:

Whoever, being the husband or the relative of the husband of a woman, subject 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 is on account or failure by her or any person related to her to meet such demand.] 506 Punishment for criminal, intimidation:

Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both. If threat be to cause death or grievous hurt, etc.-and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Dowry Prohibition Act

3. Penalty for giving or taking dowry:- (1) If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than [five years, and with fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more:] Provided that the Court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than [five years.] [(2) Nothing in Sub-section (1) shall apply to, or in relation to,-

(a) presents which are given at the time of a marriage to the bride (without any demand having been made in that behalf):

Provided that such presents are entered in a list maintained in accordance with the rules made under this Act;

(b) presents which are given at the time of a marriage to the bridegroom (without any demand having been made in that behalf):

Provided that such present are entered in a list maintained in accordance with the rules made under this Act:

Provided further that where such presents are made by or on behalf of the bride or any person related to the bride, such presents are of a customary nature and the value thereof is not excessive having regard to the financial status of the person by whom, or on whose behalf, such presents are given.] [4. Penalty for demanding dowry:- If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which

may extend to two years and with fine which may extend to ten thousand rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.] It is no doubt true that summoning an accused, in a criminal case, is a serious matter and criminal law cannot be set in motion as a matter of course. The accused can approach this Court, under Section 482 Cr.P.C, to have the proceedings quashed `when the complaint does not make out any case against him and he is still required to undergo the agony of a criminal trial, for the provisions of Section 482 of the Code are devised to advance justice and not to frustrate it. (Pepsi Foods Ltd. v. Special Judicial Magistrate . While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section, though wide, has to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of these powers the Court would be justified in quashing any proceeding if it finds that initiation/ continuance of it amounts to an abuse of process of court or quashing of these proceedings would otherwise serve the ends of justice. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see that its decision, in exercise of this power, is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court, being the highest court of a State, should normally refrain from giving a prima facie decision in a case where the entire 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 magnitude and cannot be seen in their true perspective without sufficient material. (Minu Kumari v. State of Bihar). Under Section 482 of the Code, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of court or otherwise to secure the ends of justice. But the expressions "abuse of the process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court and the alleged abuse of the process of law or the ends of justice can only be secured in accordance with law including procedural law and not otherwise. Further, inherent powers are in the nature of extraordinary powers to be used sparingly for achieving the objects mentioned in Section 482 of the Code. (Arun Shankar Shukla v. State of U.P.) Exercise of power under Section 482 of the Code is the exception and not the rule. Inherent jurisdiction under the Section, though wide, has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. While judicial process should not be an instrument of oppression, or needless harassment, at the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. (State of Karnataka v. M. Devendrappa ; State of A.P. v. Golconda Linga Swamy). Cases which require interference, under Section 482 Cr.P.C, are few and far between. The most common cases where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. The inherent power under Section 482 Cr.P.C must be exercised only in the rarest of rare cases, (State v. Navjot Sandhu ; State of Bihar v. Rajendra Agrawalla , M. Narayandas , Mohd. Malek

Mondal v. Pranjai Bardalai (2005) 10 SCC 608), for such a power does not confer arbitrary jurisdiction on the High Court to act according to whim or caprice. (Kurukshetra University v. State of Haryana).

3. The High Court should not act as an investigating agency at the stage when the F.I.R is under investigation or enter into the factual arena while quashing the complaint under Section 482 Cr.P.C. It is not for the High Court, while exercising jurisdiction under Section 482 Cr.P.C, to weigh the evidence or to examine the truth or otherwise of the allegations in the complaint. It is also not for this Court to minutely examine each and every sentence of the complaint or carry out a microscopic examination as to whether the allegations made therein cover each and every ingredient of the offence of which the accused is charged.

In exercise of the powers under Section 482 Cr.P.C, the Court would be justified in quashing any proceeding if it finds that its initiation/continuance amounts to an 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 for the Court 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.

The inherent power, under Section 482 Cr.P.C., should, however, not be exercised to stifle a legitimate prosecution. It would not be proper for the High Court to analyse the case of the complainant, in the light of the probabilities, in order to determine whether a conviction would be sustainable and on such premise arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on a complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offences of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of its inherent powers under Section 482 of the Code. It is not, however, necessary that there should be a meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears, on a consideration of the allegations and in the light of the statement made on oath by the complainant, that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is malafide, frivolous or vexatious, there would be no justification for interference by the High Court. When an information is lodged at the police station, and an offence is registered, it is the material collected during the investigation and evidence led in court which decides the fate of the accused. (Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque . In M. Narayandas , the Supreme Court observed:

...It must also be mentioned that it is settled law that the power to quash must be exercised very sparingly and with circumspection. It must be exercised in the rarest of rare cases. It is also settled law that the court would not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR. The court also cannot inquire whether

the allegations in the complaint are likely to be established or not. Keeping the abovementioned principles in mind, let us now see what the High Court has done in the impugned judgment. In the impugned judgment, the High Court proceeds to consider the case of the appellant in the complaint and the case made out by the respondents. The High Court examines the documents, compares the signatures thereon and then proceeds to arrive at the conclusion that the documents are not false or fabricated. The High Court takes into consideration certain photographs and other material produced by the respondents and concludes that the complaint was vexatious, frivolous and false. On this basis the High Court proceeds to quash the complaint and impose cost of Rs. 10,000 on the appellant. The High Court does not conclude, as it could not have, that the allegations made in the complaint, if 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. The High Court does not conclude, as it could not have, that the allegations in the complaint do not disclose a cognizable offence justifying an investigation by the police officer. The conclusion of the High Court that the complaint was false, vexatious and frivolous is based on the material produced by the respondents. One fails to understand how without evidence the High Court could have relied on this material. It is clear that the impugned order is totally unsustainable....

It was next submitted that on the material placed before it the High Court was right in concluding that the complaint was false, frivolous and vexatious. It was to be noted that the High Court arrived at this conclusion on the basis of the unsubstantiated allegations made by the respondents....

... If, as claimed, there is no substance in the complaint the investigation will say so. At this stage there were only allegations and recriminations. The High Court could not have anticipated the result of the investigation or rendered a finding on the question of mala fides. Even if the appellant had made the complaint on account of personal vendetta, that by itself was not a ground to discard the complaint which had to be tested and weighed after the evidence was collected....

In Subhash Kumar (2004) 13 SCC 437, the Supreme Court held:

... Curiously, the High Court by entering into the factual arena has passed the impugned order quashing the FIR. Such a course is wholly impermissible. The High Court acted more as an investigating agency at a stage when the FIR was under investigation....

Again in Savita (2005)12 SCC 338:

...The High Court while entertaining the petition under Section 482 of the Code of Criminal Procedure took into consideration certain statements made by the appellant Savita in a divorce proceeding between her and the first respondent and based on such evidence, as if it was sitting in an appeal, proceeded to give a finding that it does not disclose any cognizable offence against any of the respondents herein in a Section 482 petition.

We think that this was too premature a stage for the High Court to give such a finding when even the investigation had not started and the said agency had no occasion to find out whether there was material to file a charge-sheet or not.

... The second respondent further contended that subsequently in the divorce proceeding the Court has given a conclusive finding that the allegation made by the appellant Savita is not established, but that is a finding again given by the civil court subsequent to the impugned judgment in this case. Even otherwise as held by us hereinabove, that is a material to be taken note of by the investigating agency or the court before which the charge-sheet is filed....

In Pavana Sutha Plate Embossers Private Ltd., Eluru 2006(2) ALD (CrL.) 384 (AP), the Division bench of this Court observed:

...In State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335, Janata Dal v. H.S.Chowdhary , State of Bihar v. P.P. Sharma (1992) Supp. 1 SCC 222, Roopan Deol Bajaj v. Kanwar Pal Singh Gill , State of Maharashtra v. Ishwar Piraji Kalpatri , State of U.P. v. O.P. Sharma , Rashmi Kumar v. Maheswh Kumar Bhada , Rajesh Bajaj v. State NCT of Delhi , Satvinder Kaur v. State (Govt. of NCT of Delhi) , Jagdish Ram v. State of Rajasthan , A.V. Mohan Rao v. M. Kishan Rao , State of Karnataka v. M. Devendrappa and State of Orissa v. Saroj Kumar Sahoo , the Supreme Court has repeatedly held that the High Court should not readily exercise its power under Article 226 of the Constitution of India or Section 482 of the Code of Criminal Procedure, 1973 for quashing the proceedings emanating from a First Information Report or complaint and that such power should be exercised sparingly and with great care and circumspection. In Bhajan Lal's case (supra), the Supreme Court considered the ambit and scope of the power vested in the High Court under Article 226 of the Constitution and Section 482 Cr.P.C. and ruled that the High Court should not embark upon an enquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task....

4. The primary question, which arises for consideration in proceedings under Section 482 Cr.P.C, is whether the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in its entirety, do not make out a case against the accused? For determination of this question it becomes relevant to note the nature of the offences alleged, its ingredients and the averments made in the complaint. (Hridaya Ranjan Prasad Verma v. State of Bihar (2000) 4 SCC 168)).

In Anil Mahajan v. Bhor Industries Ltd. (2005) 10 SCC 228 the Supreme Court observed:

... The substance of the complaint is to be taken. Mere use of the expression "cheating" in the complaint is of no consequence. Except mention of the words "deceive" and "cheat" in the complaint filed before the Magistrate and "cheating" in the complaint filed before the police, there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into MOU wherefrom it can be inferred that the accused had the intention to deceive the complainant to pay....

No doubt, exercise of the powers, under Section 482 CrPC, by the High Court should be limited to very extreme exceptions but in a case where the ingredients of the alleged offences are not satisfied, even prima facie, it cannot be said that power under Section 482 CrPC should not be exercised. If no offence is made out, from the allegations in the complaint, there should be no hesitation in

exercising the power under Section 482 CrPC to pass appropriate orders. (S.W. Palanitkar v. State of Bihar).

5. While it is true that a complaint need not verbatim reproduce in the body of the complaint all the ingredients of the offences alleged nor is it for this Court to split up the definition into different components of the offence to make a meticulous scrutiny whether all the ingredients have been precisely spelt out in the complaint, in cases where the information in the complaint is so bereft of even the basic facts which are essential for making out the offence, the complaint is liable to be quashed. (Rajesh Bajaj v. State NCT of Delhi). The allegations in the complaint must be read as a whole and in its entirety, (R.P. Kapoor v. State of Punjab , Anil Mahajan (2005) 10 SCC 228, Hridaya Rajnan Prasad Verma (2000) 4 SCC 168, Zandu Pharmaceuticals Works Ltd) and a prima facie case of the accused having committed the offences of which they are charged must be made out. (Dr. Sharma's Nursing Home v. Delhi Administration 1998 (8) SCC 745). If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open for the High Court to quash the same in exercise of its powers under Section 482 Cr.P.C. (Zandu Pharmaceuticals Works Ltd.). In cases where the ingredients of the alleged offences are not satisfied, even prima facie, the power under Section 482 Cr.P.C. must be exercised. (S.W.

Palnitkar).

6. While the allegations in the complaint relate mainly to the 1st accused, (who is not before this Court), the allegations against Accused 2 to 4, (petitioners 1 to 3 herein), are:

(1) Accused 2 and 3 supported the 1st accused and abetted him in his acts of cruelty towards the complainant;

(2) The 1st and 2nd accused retained with them the gold "Lagna Patrika", silver articles, gold kumkuma bharini etc;

(3) Though the complainant requested the 1st accused herein to take her along with him to Hyderabad the 2nd accused supported his son, and as there was no alternative she went to the U.S.A to live with her parents;

(4) Accused 1 to 3 demanded that the complainant, and her parents, make arrangements for the job related VISA to the U.S.A. for the 4th accused. Otherwise, they would not allow the 1st accused to live with the complainant;

(5) The 1st accused, along with the other accused, committed the offence of cheating punishable under the I.P.C.

(6) The accused had committed the offence under Section 417 I.P.C. since the 1st accused, right from the beginning of his marriage with the complainant, had used their marriage only as a spring board for him, and his brother the 4th accused, to migrate to the U.S.A, without any intention to live with

her and to extract a huge sum of Rs. 25,00,000/- by way of dowry, marriage expenses, including the huge expenditure for his studies etc. by falsely promising the complainant, and her parents, that he would start living with the complainant after completing his studies;

(7) The accused had committed the offence under Section 418 I.P.C. as they were bound by law to protect the complainant and had cheated her with the knowledge that they were using her money, influence and position in the U.S.A. for their gain, causing wrongful loss to the complainant in every aspect of her life;

(8) the 1st accused had committed the offence under Section 498-A since, for the sake of dowry from the parents of the complainant in the form of his marriage and educational expenses apart from green card expenses. He had occasioned mental cruelty to her which was likely to drive her mad or to commit suicide and;

(9) all the accused had committed offences under Sections 3 and 4 of the Dowry Prohibition Act.

7. It is necessary to examine whether the aforesaid allegations in the complaint against the petitioners herein, (Accused 2 to 4), when read in its entirety and accepted as true, attract the ingredients of Sections 417, 418, 420, 498-A and 506 I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act. Since Sections 417, 418 and 420 relate to cheating, in one form or the other, it is necessary to note the ingredients of "cheating" in Section 415 I.P.C, which are:

(1) deception of any person;

(2)(a) Fraudulently or dishonestly inducing that person (i) to deliver property to any person; or (ii) to consent that any person shall retain any property ; or (b) intentionally inducing that person to do or omit to do anything which he would not do or omit to do if he were not so deceived; and which act of omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. The definition of cheating contains two classes of acts which the person deceived may be induced to do. Firstly he may be induced fraudulently or dishonestly to deliver any property to any person or to consent that any person shall retain any property. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he/she were not so deceived. In the first class of acts, the inducement must be fraudulent or dishonest and in the second class of acts it must be intentional but not fraudulent or dishonest. "Deceiving" means causing to believe what is false or misleading as to a matter of fact or leading into error. Whenever a person fraudulently represents as an existing fact, that which is not an existing fact, he commits deception. The person cheated must have been intentionally induced to do an act which he would not have done, but for the deception practiced on him. The intention at the time of the offence and the consequence of the act or omission has to be considered. The damage which is caused by the act or omission must be direct, natural or a probable consequence of the induced act. The person deceived must have acted under the influence of the deceit. It is necessary that harm should be caused to the person deceived. The allegations in the complaint, in relation to "cheating" under Sections 417, 418 and 420 I.P.C, are that the accused had cheated the complainant with the knowledge that they were using her money, influence and position in the U.S.A for their gain,

causing wrongful loss to the complainant in every aspect of her life. Accepting as true the allegations that the intention of the accused was that the 1st accused should use his marriage, with the complainant, to go to the USA and to make them part with their money towards his studies, stay in the USA and as dowry, in effect, the complainant and her parents were induced to do something which they would not have done had they not been so deceived. It cannot, therefore, be said that the ingredients of 'cheating' are not attracted, even prima facie.

8. It is not every harassment or every type of cruelty that would attract Section 498-A I.P.C. The complainant must allege that the harassment in question was with the intention to force her to commit suicide or to fulfill illegal demands of dowry. It is only when the harassment is shown to have been caused for the purpose of coercing a woman to meet such demands does it amount to cruelty which is made punishable under Section 498-A I.P.C. Cruelty postulates such harassment as to cause a reasonable apprehension in the mind of the wife that her living with her husband would be harmful and injurious to her life. Cruelty under Section 498 - A I.P.C must be of such a nature as to coerce the wife to meet the illegal demands or to commit suicide. While there are specific allegations against the 1st accused that he had occasioned mental cruelty on the complainant which was likely to drive her mad or to commit suicide, the allegations, in so far as accused 2 and 3 are concerned, are that they had supported the 1st accused and had abetted him in the acts of cruelty towards the complainant. Since the allegations against the 1st accused attract the ingredients of Section 498-A I.P.C. and as accused 2 and 3 (Petitioners 1 and 2 herein) are alleged to have abetted the 1st accused in his acts of cruelty towards the complainant, it cannot be said that there are no allegations against petitioners 1 and 2, (Accused 2 and 3), attracting the ingredients of Section 498-A I.P.C. While it is true that there are no specific acts of cruelty attributed to petitioners 1 and 2 herein, it must not be lost sight of that this Court, in proceedings under Section 482 Cr.P.C, would not sieve the complaint to minutely examine each and every sentence to verify as to whether each and every part of the ingredients of the offence, which the accused are alleged to have committed, has been made out, more so, when investigation into the complaint has not been completed and no charge sheet has, as yet, been filed.

In order to attract the ingredients of Section 506 I.P.C the intention of the accused must be to cause alarm to the victim. Mere expression of words, without any intention to cause alarm, would not suffice. To constitute an offence under Section 506 I.P.C. it must be shown that the person charged actually threatened another with injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with the intention to cause alarm.

Even if the allegations in the complaint are read as a whole, and are accepted in their entirety as true, the ingredients of Section 506 I.P.C. are not attracted in so far as the petitioners herein are concerned. Except to allege that the 1st petitioner had supported his son in his refusal to take the complainant along with him to Hyderabad, there is no specific allegation that the petitioners herein had threatened the complainant with injury to her person, reputation or property or to the reputation of any one in whom the complainant is interested with the intention to cause her alarm. The complaint, in so far as the petitioners herein are alleged to have committed an offence under Section 506 I.P.C, is quashed.

Section 3 of the Dowry Prohibition Act, 1961 prescribes the penalty for giving or taking dowry and thereunder if any person, after commencement of the Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years and with fine which shall not be less than Rs. 15000/- or the amount of the value of such dowry, whichever is more. Section 2 defines 'dowry' and, under Clause (b) thereof, dowry means any property or valuable security given or agreed to be given either directly or indirectly by the parent of either party to a marriage at or before or at any time after the marriage in connection with the marriage of the said parties. As such giving of property, even after marriage, falls within the definition of 'dowry'. Section 4 prescribes the penalty for demanding dowry. The allegations in the complaint, in so far as petitioners 1 and 2 (Accused 2 and 3) are concerned, if accepted as true, do attract the ingredients of Sections 3 and 4 of the Dowry Prohibition Act. There is considerable force in the submission of Sri K. Jagdishchandra Prasad, learned Counsel for the petitioner that, since Rule 10 of the A.P. Dowry Prohibition Rules prescribes a limitation of one year, the complaint filed eight years after the marriage is barred by limitation. Rule 10 of the A.P. Dowry Prohibition Rules, 1998 provides that any offence under Section 3 and 4 shall be filed before expiry of one year. It cannot, however be lost sight of that giving of property or valuable security at any time after the marriage also falls within the definition of "dowry" and any person who either takes or abets the taking of dowry or directly or indirectly demands dowry is liable to be punished for offences under Sections 3 and 4 of the Dowry Prohibition Act. From which date is this period of limitation of one year required to be computed is the question which would arise; for consideration. As held in *Minu Kumari*⁷, the High Court should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been produced before the Court and the issues involved are of magnitude and cannot be seen in their true perspective without adequate material. The question whether the offences under Sections 3 and 4 of the Dowry Prohibition Act are barred by limitation is a matter for the trial court to examine, in case a charge sheet is filed after completion of investigation, and not for this Court to examine in proceedings under Section 482 Cr.P.C. Suffice to state that this is not one of the rarest of rare cases where this Court should exercise its jurisdiction under Section 482 Cr.P.C. to stifle an investigation into the complaint. The judgment of the Apex Court, in *Ruchi Agarwal* (2005) 3 SCC 299, was not a case under Section 482 Cr.P.C and as such has no application.

There are no specific allegations in the complaint against the 3rd petitioner (4th accused). While the 1st accused is alleged to have contracted marriage, with the complainant, with a view to go to the U.S.A along with the 3rd petitioner, (the 4th accused), there are no specific allegations against the 3rd petitioner, (Accused No. 4), of his having committed any of the offences under Sections 417, 418, 420, 498-A and 506 I.P.C. or under Sections 3 and 4 of the Dowry Prohibition Act. The complaint in Crime No. 31 of 2005, of Samalkot Police Station, East Godavari District, in so far as petitioner No. 3, (4th accused), is concerned, is quashed.

In so far as Petitioners 1 and 2, (Accused 2 and 3), are concerned the complaint in Crime No. 31 of 2005 of Samalkot Police Station, in so far as they are alleged to have committed an offence under Section 506 I.P.C, is quashed. The Criminal Petition, in so far as Petitioners 1 and 2, (Accused 2 and 3), are alleged to have committed offences under Sections 417, 418, 420 and 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act, is dismissed.

It is made clear that dismissal of the criminal petition would not preclude the petitioners herein from availing such remedies as are open to them in law after the matter has been investigated into and, in case, a charge sheet is filed.