

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF APRIL, 2019

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

CRIMINAL PETITION NO.5423 OF 2015

BETWEEN:

1. SHYAMLAL DEVDA
S/O DHANARAM DEVDA
AGED ABOUT 48 YEARS,
2. SHOBA BAI
W/O SHYAMLAL DEVDA
AGED ABOUT 45 YEARS,
3. SHANKARLAL
S/O DHANARAM DEVDA,
AGED ABOUT 43 YEARS,
4. INDRADEVI
W/O SHANKARLAL,
AGED ABOUT 40 YEARS,
5. SANTOSH KUMAR
S/O DHANARAM DEVDA
AGED ABOUT 39 YEARS,
6. ROOPA
W/O SANTHOSH KUMAR
AGED ABOUT 35 YEARS,

PETITIONER NOS.1 TO 6
ARE R/AT NO.30 (OLD NO.20)
PALLIARASU STREET,

EAST ANNA NAGAR, CHENNAI,
TAMILNADU-600102.

7. DHANARAM
S/O LATE RAMLAL
AGED ABOUT 68 YEARS,
8. MOTIBAI
W/O DHANARAM,
AGED ABOUT 65 YEARS,
9. TULSIRAM
S/O DHANARAM DEVDA,
AGED ABOUT 37 YEARS,
10. SUDHA
W/O TULSIRAM,
AGED ABOUT 35 YEARS,

PETITIONERS 7 TO 10 ARE
R/AT SISARWADA VILLAGE,
VIA-SOJAT ROAD, PALI DISTRICT
RAJASTHAN-306103

11. DUNGARAM
S/O DHANARAM DEVDA,
AGED ABOUT 30 YEARS,
12. CHETAN
S/O DHANARAM DEVDA,
AGED ABOUT 25 YEARS,

PETITIONER NOS.11 TO 12 ARE
R/AT NO.113,
KHODIYAR ROW HOUSE,
GODADARANER GODADARA,
SURAT,
GUJARAT-395010

13. SAPNA
W/O ROOPESH PAWAR,
AGED ABOUT 24 YEARS,
R/AT NO.98,
RESHMA ROW HOUSE,
MAGOB PUNA PATAYA,
SURAT,
GUJARAT-395010.
14. MANOJ KUMAR
S/O SHYAMLAL DEVDA,
AGED ABOUT 28 YEARS,
R/AT NO.30 (OLD NO.20)
PALLIARASU STREET,
EAST ANNA NAGAR,
CHENNAI,
TAMILNADU-600102. ... PETITIONERS

(BY SMT: PRAMILA NESARGI, SR. ADVOCATE FOR
SRI: SHIVA SHANKAR C, ADVOCATE)

AND

1. PARIMALA
W/O MANOJ KUMAR
AGED ABOUT 26 YEARS,
R/AT NO.21/1,
9TH CROSS, CUBBONPET
BANGALORE-560 002.
2. STATE OF KARNATAKA
BY HULSOOR GATE WOMEN POLICE
BENGALURU-560001,
REPRESENTED BY SPP. ... RESPONDENTS

(BY SRI: GOPAL SINGH, ADVOCATE FOR R1;
SRI: VIJAYAKUMAR MAJAGE, ADDL. SPP FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE PROCEEDINGS AGAINST THE PETITIONERS IN CR. NO.46/2015 PENDING ON THE FILE OF THE VI A.C.M.M., BANGALORE OF HALASOOR GATE MAHILA POLICE STATION.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioners are accused Nos.1 to 14 in Crime No.46/2015 registered in Halasurgate police station for the offences punishable under Sections 498A, 504, 323 r/w Section 34 of Indian Penal Code and Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961.

2. Respondent No.1 married accused No.1 (petitioner No.14) on 1.5.2006 at Dudod village, District Pali, Rajasthan. She lodged a private complaint before the Chief Metropolitan Magistrate at Bengaluru (PCR No.7997/2015) arraying the petitioners herein as accused Nos.1 to 14, seeking their prosecution for the alleged offences punishable under Sections 498A, 504, 323 r/w

Section 34 of Indian Penal Code and Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961. In the complaint it is stated that the family of accused No.1 is a joint family. After marriage, she started residing with accused No.1 and his family at Chennai. During this period she was subjected to ill-treatment and harassment in the matrimonial home. The accused demanded dowry in the form of cash of Rs.11,00,000/-, which was settled at Rs.9,00,000/-. She was taunted as a barren woman for not conceiving any issues. During October 2012, accused Nos.1 and 2 contacted the complainant's father and told him that they are purchasing property in the city of Chennai and asked her father to contribute the amount for the said purpose and her father mobilized Rs.6,70,000/- and gave it to the accused.

3. Learned counsel for the petitioners submits that the complaint lodged by the respondent could not have been entertained by the learned Magistrate, since all the offences alleged in the complaint, according to the version

of the complainant herself, had taken place beyond the jurisdiction of the Courts in Bengaluru. According to the complainant, she never lived with accused No.1 at Bengaluru at any point of time and neither the family members, of the accused resided at Bengaluru. Therefore, the learned Magistrate has committed an error in assuming jurisdiction in the matter. Further, she submits that the averments made in the complaint even if accepted as true, do not make out the ingredients of any of the offences alleged against the petitioners. The allegations are vague and general in nature. The complainant has not cited any specific incidences of cruelty or harassment making out the offences within the meaning of Section 498A or under Sections 3, 4 and 6 of the Dowry Prohibition Act. The entire family members of accused No.1 have been roped in solely out of spite and malice and therefore, criminal process has been abused by the complainant to settle personal scores. Thus, she seeks to dismiss the complaint.

4. Learned counsel appearing for the respondent No.1-complainant, however, submits that the allegations made in the complaint prima facie constitute the offences alleged against the petitioners. Accused No.1 himself has filed a divorce petition. The said petition has been dismissed making it evident that the complainant has been persistently subjected to ill-treatment and harassment in the matrimonial house. The matter being under investigation. In the wake of clear and definite allegations made against the petitioners, there is no reason to quash the complaint.

5. Learned Additional State Public Prosecutor appearing for respondent No.2-State also has argued in support of the impugned charges contending that the allegations made in the complaint prima facie constitute the offences alleged against the petitioners and further he submits that the investigation is completed and charge sheet is sent for scrutiny.

6. Having heard the learned counsel appearing for the parties and on going through the material on record, I find that the complainant has initiated the proceedings on vague and general allegations. The averments made in the complaint, in my view, do not prima facie constitute the ingredients of offence under Section 498A of Indian Penal Code or under the provisions of the Dowry Prohibition Act.

7. Insofar as the averments relating to the offences under Dowry Prohibition Act are concerned, in the complaint it is stated that during the marriage the complainant's father gifted certain articles to the accused persons. It is not the case of the complainant that any of these jewelries or household articles were either demanded or given as dowry, as such, the assertions made in paragraph 6 of the complaint do not attract the offence under any of the provisions of Dowry Prohibition Act. Further, the allegations made in paragraph 7 of the complaint that in the month of October 2012, accused

Nos.1 and 2 contacted the complainant's father and told him that they intend to purchase a property in Chennai and asked the complainant's father to contribute amount for the purchase, even if accepted as true, does not amount to demand for dowry. If for any reasons, accused Nos.1 and 2 have approached the complainant's father seeking his contribution for the purchase of property, the same does not fall within the term "Dowry" as defined under the provisions of the Dowry Prohibition Act. Section 2 of the Dowry Prohibition Act, 1961 defines as under:

"2. Definition of "Dowry" - In this Act "Dowry" means any property or valuable security given or agreed to be given either directly or indirectly -

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."

A request for contribution for the purchase of immovable property cannot be construed as 'dowry demand' within the meaning of Dowry Prohibition Act.

8. In paragraph No.4 of the petition it is stated that the accused demanded dowry of Rs.11,00,000/- which was settled at Rs.9,00,000/-. This again is an omnibus and general allegation. The complaint is lodged against as many as 14 accused persons. The said accused persons are shown as the residents of Tamil Nadu, Rajasthan and Gujarat. The date of the alleged demand is not specified. It is also not forthcoming as to whom and when the said amount was paid and the mode in which the said amount was given. Merely on the basis of such vague and general statement, no prosecution can be launched against the entire relatives of the husband of complainant. Therefore, in my view, even these allegations cannot be construed as a dowry demand falling within the meaning of Section 2 of the Dowry Prohibition Act. Barring the above allegations, no other material is available to substantiate the demand

by any one of the accused including accused No.1. In my view, the allegations made by the complainant alleging dowry demand is baseless and cannot be sustained.

9. Coming to the allegations constituting the offence under Section 498A of Indian Penal Code is concerned, according to the complainant, her matrimonial home was at Chennai. In the petition she has unequivocally stated that during the span of six years, she had visited her parents house at Bengaluru in all for 8-9 times. It is not her case that during this visit she stayed with any one of the petitioners. According to her own version, whenever she visited Bengaluru, she stayed in her parents house. Under the said circumstance, even if any such incidence has taken place, the same having been taken place beyond the jurisdiction of this Court, no enquiry or investigation can be conducted into the said offence by the Courts in Bengaluru in view of Section 177 of the Code of Criminal Procedure. Even in this regard the allegations are vague and general. The complainant has not cited any specific

incidence of alleged cruelty except that on 15.3.2015 when accused Nos.1 and 6 are stated to have visited the house of her parents, at that time, accused Nos.1 and 6 assaulted the complainant, her father and mother. To this extent, the prosecution initiated against accused Nos.1 and 6 for the offence under Sections 323 and 504 of Indian Penal Code can be maintained. Insofar as the other charges are concerned, in my view, the respondent-police are not entitled to proceed with the investigation nor is the Court entitled to proceed against other accused persons in respect of the offence under Sections 498A and Sections 3, 4 and 6 of the Dowry Prohibition Act.

10. Accordingly, petition is allowed in part. The proceedings initiated against accused Nos. 2 to 5 and 7 to 14 for the offences punishable under Sections 498A, 504 and 323 r/w Section 34 of Indian Penal Code and Sections 3, 4 and 6 of the Dowry Prohibition Act are quashed. The proceedings initiated against accused Nos.1 and 6 for the offences punishable under Section 498A of Indian Penal

Code and Sections 3, 4 and 6 of the Dowry Prohibition Act are quashed. It is made clear that the investigation against accused Nos.1 and 6 for the offences under Sections 323 and 504 of the Indian Penal Code shall be proceeded with. Liberty is reserved to the complainant to initiate criminal action, if desired, against the accused before the competent Court having jurisdiction on the same cause of action.

**Sd/-
JUDGE**

bkp