

HONOURABLE JUSTICE G. SRI DEVI

WRIT PETITION No. 41432 of 2018

ORDER:

The present Writ Petition is filed, under Article 226 of the Constitution of India, seeking to quash the proceedings initiated against the petitioner in C.C.No.599 of 2015 on the file of the XIII-Additional Chief Metropolitan Magistrate, Hyderabad, registered for the offences punishable under Sections 498-A, 406 I.P.C. and Sections 4 and 5 of Dowry Prohibition Act.

Brief averments of the affidavit filed in support of the Writ Petition are that the marriage of the petitioner with the 3rd respondent was performed on 20.11.2013 at Sama Papireddy Function Hall, Balapur, Hyderabad, and the same was also registered on 22.11.2013. However, the said marriage was not consummated as the 3rd respondent resisted for the same. There was no giving or taking of dowry and, on the other hand, the petitioner had given gold ornaments worth Rs.2.5 lakhs to the 3rd respondent. The petitioner is a Software employee working in Florida, U.S.A. As the petitioner has no time to stay in India, he left on 24.11.2013 and also informed the 3rd respondent that he will make travel arrangements for her to join with him. Thus, it is clear that after the marriage, the petitioner and the 3rd respondent did not live together. Thereafter, the petitioner has completed VISA process and made arrangements for the arrival of the 3rd respondent to join with him in

U.S.A., and the 3rd respondent joined the petitioner on 21.01.2014. Though the 3rd respondent joined the petitioner, but her behaviour and actions are abusive in nature, which were never expected by the petitioner. The 3rd respondent subjected the petitioner to torture and never allowed him to live with her at any point of time and day-by-day her attitude became unbearable and even then the petitioner bear the agony up to August, 2014. The 3rd respondent once again seriously abused in filthy language by shouting at him and breaking the things in the flat. In those circumstances, the petitioner called the U.S. Police and in their presence he left the house duly providing maintenance for her and started staying in the Hotel at California by the time he was transferred to that place. In view of the above situation, the petitioner approached the local Attorney and got filed a case for legal separation on 15.08.2014 vide Case No.614FL 013077 and on that basis, summons were issued to the 3rd respondent, who was still residing in the petitioner's house, while the petitioner was in a hotel. In response to the said notice, the 3rd respondent issued an e-mail to the petitioner's Attorney expressing her intention to protest the case filed by the petitioner and also seeking for legal expenses from him. Though, as per the U.S.A. Laws, there is no necessity for the petitioner to make any payment towards her legal expenses, the petitioner obliged to make payment by way of a cheque for 2000 dollars and handed over the said cheque to his Attorney. The 3rd respondent on coming to know the said fact through the petitioner's Attorney, approached the Attorney and

collected the cheque from him on 25.08.2014. Apart from the said amount, 500 dollars were already paid by the petitioner along with the summons. It is also stated that though the 3rd respondent received legal expenses from the petitioner, she did not participate in the proceedings, but asked for settlement by demanding Indian Currency of Rs.20.00 lakhs, which is equivalent to 30,000 dollars. The petitioner's Attorney in turn responded by saying that as per California Law, she cannot make such demand. But, she did not stand for the settlement and filed a case against the petitioner under Domestic Violence Act of California. When the petitioner met the police concerned, they informed that the investigation is in progress and it will be subject to the evidence provided by the 3rd respondent. Since the 3rd respondent has not produced any evidence before the Police concerned, they have not assigned any Case Number to the 3rd respondent complaint and it appears that there is no progress in the said case till now. The 3rd respondent instead of participating in legal separation case or cooperating with the U.S. Police in the case filed by her, suddenly left for India on 29.08.2014. Therefore, it makes it clear that the petitioner and the 3rd respondent never lived together either in India or U.S.A. and even pursued the case filed by her. But strangely, after landing in India, the 3rd respondent got issued a Legal Notice, dated 06.11.2014 through her Counsel making all false allegations. The petitioner's Attorney in the U.S.A. had given detailed response bringing to his notice all the events that had taken place including settlement issues on 01.12.2014. Thereafter, a

complaint was lodged against the petitioner and his family members vide Cr.No.384 of 2014. After investigation, the police filed charge sheet against the petitioner only and the same was taken on file as C.C.No.599 of 2015 for the offences punishable under Sections 498-A, 406 I.P.C. and Sections 4 and 5 of Dowry Prohibition Act.

It is further stated in the affidavit that a fair look at the Charge Sheet and the facts narrated therein would disclose that all born on the soil of the U.S.A. and none of the events are traceable in India. That apart, the petitioner and the 3rd respondent lived in India not more than three days to attract the territorial jurisdiction. The offences alleged under Sections 498-A, 406 of I.P.C. or Sections 4 and 6 of the Dowry Prohibition Act cannot be invoked against the petitioner as the basic requirements to satisfy the offences or factual matrix are not satisfied, as all the facts are not traceable in India. It is also stated that the 3rd respondent, in spite of service of summons for legal separation and receiving of legal expenses from the petitioner, left the said proceedings and deliberately filed the present case only to harass the petitioner. Admittedly, even as per the complaint, she disclosed that legal separation case was already filed by the petitioner against her and expressed her intention to participate in the said proceedings by seeking legal expenses and having received the same, she also proposed settlement by demanding huge amount, which was promptly clarified that she is not entitled for the same as per the California Law.

It is further stated that the petitioner had filed legal separation proceedings in California Court, thereafter his Attorney sent summons to the 3rd respondent on 15.08.2014 and also informed the 3rd respondent that, when the jurisdictional requirements are met, the petitioner will seek a divorce from her. The 3rd respondent is thus aware that the marriage between her and the petitioner would come to an end by an order of Court. Having perceived the said situation, the 3rd respondent demanded Rs.20.00 lakhs towards full and final settlement of the issue and the petitioner's Attorney sent an appropriate response as per California Law to the 3rd respondent. Thereafter, the 3rd respondent without attending the proceedings, left for India and lodged F.I.R. against the petitioner in Hyderabad and started working in a School for a monthly salary of Rs.40,000/- and in spite of the same, the petitioner continuing to pay maintenance of Rs.12,000/- per month to the 3rd respondent as per the orders of the Court in the Maintenance Case. It is also stated that in accordance with the provisions of California Law, after expiry of statutory period of six months, the petitioner filed a petition for amendment of the legal separation petition to that of petition for dissolution of marriage and on 01.12.2014 the Court passed orders treating the petition as the petition for dissolution of marriage. A notice in this regard was also served upon the 3rd respondent via regular U.S. Mail on 06.12.2014. In spite of receipt of notice, the 3rd respondent remained *ex parte* and on 30.01.2015, the petitioner filed a declaration before the Court to the said effect. The Superior Court of

California, County of Santa Clara passed judgment dated 27.05.2015 granting dissolution of marriage between the petitioner and the 3rd respondent and also issued a Summary of the Document to be served on the 3rd respondent. Thereupon, the same was sent to the Ministry of Law and Justice Legal Affairs, New Delhi, requesting to cause service of the judgment on the 3rd respondent and consequently the same was served on the 3rd respondent through the Court of Chief Judge, City Civil Courts, Hyderabad, and the said fact was communicated to the originating Court in California. It is also stated that it is not a case of harassment or torture or coercion to satisfy the unlawful demand of dowry or additional dowry. The 3rd respondent has resolved the disputes with the petitioner and as a result thereof, she has willingly parted the company of the petitioner and is living on her own knowing fully well that the marriage having been dissolved. In such circumstances, the question of initiation of criminal proceedings does not arise. The criminal proceedings are maliciously instituted with an ulterior motive to wreck vengeance against the petitioner. The police without conducting any preliminary enquiry, registered F.I.R. and the allegations in the F.I.R. do not constitute the offence alleged. The police without conducting proper investigation and without application of mind filed charge sheet and no useful purpose will be served by allowing the criminal prosecution to continue, thereby the Court has to prevent the abuse of the Court by quashing the criminal proceedings. It is also submitted that in the above backdrop,

continuation of prosecution against the petitioner would be nothing but an abuse of process of law.

The 2nd respondent filed Counter stating that basing on the complaint lodged by the 3rd respondent against the petitioner herein, in-laws and family members, the 2nd respondent registered a case in Crime No.384 of 2014 for the offences under Sections 498-A and 406 of I.P.C. and Sections 4 and 5 of the Dowry Prohibition Act, 1961. After completion of investigation, the 2nd respondent filed charge sheet, which was taken on file as C.C.No.599 of 2015. It is further stated in the counter that the investigation revealed that *prima facie* case has been established against the petitioner and the Investigating Officer has conducted the investigation in an impartial and sincere manner and there was no foul play in it. When the case is under trial before the Court, at this stage, the petitioner filed the present Wit Petition. The contention of the petitioner that the charge sheet is illegal, arbitrary and without jurisdiction is incorrect, baseless and far from truth. Basing on the evidence and merits of investigation, *prima facie* case has been established against the petitioner. The petitioner is at liberty to adduce his evidence before the trial Court and instead of adducing his evidence before the trial Court, the petitioner filed the present writ petition with baseless allegations and that there are no grounds for quashing of C.C.No.599 of 2015.

Heard Sri T.Suryakaran Reddy, learned Senior Counsel appearing for Sri U.D.Jai Bhima Rao, learned Counsel for the

petitioner and learned Assistant Government Pleader for Home appearing for respondent Nos.1 and 2. There is no representation on behalf of the 3rd respondent.

Learned Senior Counsel appearing for the petitioner would submit that though the marriage was performed on 20.11.2013, the same was not consummated as the 3rd respondent objected for the same. Since the petitioner has no time to stay in India, within three days after the marriage he left for U.S.A. and thereafter, made arrangements for the arrival of the 3rd respondent and subsequently the 3rd respondent joined the petitioner on 21.01.2014. The 3rd respondent subjected the petitioner to torture and never allowed him to live with her at any point of time. In the month of August, 2014, the 3rd respondent abused the petitioner and also damaged the belongings in the flat, in such circumstances, the petitioner called U.S. Police and in their presence he left the house and stayed in a hotel in California, but he had provided maintenance to the 3rd respondent. In view of the above, the petitioner approached the Local Attorney and filed a case for legal separation. The 3rd respondent received legal expenses from the petitioner, but she did not participate in the proceedings and asked for settlement by demanding Indian currency of Rs.20.00 lakhs from the petitioner. The 3rd respondent suddenly left for India on 29.08.2014 and lodged the present case against the petitioner. The petitioner and the 3rd respondent lived in India only for three days and the allegations

contained in the complaint and charge sheet are regarding the occurrences in the United States of America. It is further submitted that no sanction has been obtained under Section 188 of Cr.P.C., which mandates that no Court shall take cognizance except the previous sanction by the Central Government when an offence is committed outside the jurisdiction of India. It is also submitted that the Superior Court of California, Country of Santa Clara, passed judgment on 27.05.2015 and that the marriage between the petitioner and the 3rd respondent has been dissolved and issued a summary document to be served on the 3rd respondent. In support of his contention, learned Senior Counsel for the petitioner relied on the decision of this Court in *Rajesh Gutta v. State of Andhra Pradesh and another*¹.

Reiterating the contents made in the Counter, learned Assistant Government Pleader for Home appearing for respondents 1 and 2 would submit that the investigation done by the police *prima facie* established that the petitioner had committed the offences punishable under Sections 498-A and 406 of I.P.C. and Sections 4 and 5 of the Dowry Prohibition Act.

A perusal of the complaint and charge sheet would show that the marriage between the petitioner and the 3rd respondent took place on 20.11.2013 and that the said marriage was not consummated as the 3rd respondent had resisted for the same. As

¹ (2011) 1 ALD (CrL.) 885 (AP)

the petitioner had no time to stay in India, he left for U.S.A within three days after the marriage i.e., on 24.11.2013 and thereafter, he made arrangements for the arrival of the 3rd respondent and that the 3rd respondent joined the petitioner on 21.01.2014. Further, it is evident that the petitioner and the 3rd respondent lived in India only for three days. Apart from that, the entire allegations mentioned in the charge sheet are regarding the occurrences in U.S.A. It is mainly contended by the learned Senior Counsel for the petitioner that no sanction has been obtained under Section 188 of Cr.P.C. before taking cognizance of the offence.

Section 188 of Cr.P.C. reads as under:

"188. Offence committed outside India. When an offence is committed outside India-

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found: Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government."

Section 188 of Cr.P.C. clearly mandates that no Court shall take cognizance except the previous sanction by the Central Government when an offence is committed outside the jurisdiction of India.

In *Rajesh Gutta v. State of Andhra Pradesh* (1 supra), this Court held in para Nos.8 and 10 as under:

“8. The entire reading of the complaint and charge-sheet, it is evident that the entire occurrence took place in the United States of America. The allegations contained in the complaint also regarding the occurrences in the United States of America. Of course, the offence committed by a person, which is punishable under the law in India, he can be prosecuted for the offence committed abroad. But, at the same time Section 188 of Cr.P.C. mandates that no Court shall take cognizance except the previous sanction by the Central Government when an offence is committed outside the jurisdiction of India.

9. xxxxxx

10. In such a case, the cognizance taken by the learned Magistrate also bad in law.”

In *Syed Asgar v. Government of A.P. and others*² this Court held as under:

“17. Further more, the very object of Section 188 of Cr.P.C., appears to be that in order to meet two particular contingencies; firstly, about the offence committed by the Indians in a foreign country or by a foreigner in India and secondly, in both the contingencies, prior sanction of the Central Government is imperative, as postulated under Section 188 of the Cr.P.C. Otherwise, the very purpose and object of incorporating Sections 179 and 188 Cr.P.C., is wholly superfluous.”

In *Thota Venkateswarlu v. State of Andhra Pradesh*³ the Apex Court in Para Nos.14 to 16 held as under:

² (2005) 3 ALD 877

"14. The language of Section 188 Cr.P.C. is quite clear that when an offence is committed outside India by a citizen of India, he may be dealt with in respect of such offences as if they had been committed in India. The proviso, however, indicates that such offences could be inquired into or tried only after having obtained the previous sanction of the Central Government. As mentioned hereinbefore, in Ajay Aggarwal's case (supra), it was held that sanction under Section 188 Cr.P.C. is not a condition precedent for taking cognizance of an offence and, if need be, it could be obtained before the trial begins. Even in his concurring judgment, R.M. Sahai, J., observed as follows :-

"29. Language of the section is plain and simple. It operates where an offence is committed by a citizen of India outside the country. Requirements are, therefore, one -- commission of an offence; second -- by an Indian citizen; and third -- that it should have been committed outside the country."

15. Although the decision in Ajay Aggarwal's case (supra) was rendered in the background of a conspiracy alleged to have been hatched by the accused, the ratio of the decision is confined to what has been observed hereinabove in the interpretation of Section 188 Cr.P.C. The proviso to Section 188, which has been extracted hereinbefore, is a fetter on the powers of the investigating authority to inquire into or try any offence mentioned in the earlier part of the Section, except with the previous sanction of the Central Government. The fetters, however, are imposed only when the stage of trial is reached, which clearly indicates that no sanction in terms of Section 188 is required till commencement of the trial. It is only after the decision to try the offender in India was felt necessary that the previous sanction of the Central

³ (2011) 9 SCC 527

Government would be required before the trial could commence.

16. Accordingly, up to the stage of taking cognizance, no previous sanction would be required from the Central Government in terms of the proviso to Section 188 Cr.P.C. However, the trial cannot proceed beyond the cognizance stage without the previous sanction of the Central Government. The Magistrate is, therefore, free to proceed against the accused in respect of offences having been committed in India and to complete the trial and pass judgment therein, without being inhibited by the other alleged offences for which sanction would be required."

In the instant case also, no sanction has been obtained by the Magistrate before taking cognizance of the offence and as such the cognizance taken by the learned Magistrate is bad in law.

That apart, all the witnesses, whose statements have been recorded under Section 161 of Cr.P.C., have categorically stated that the petitioner and his family members never raised any demand for dowry at the time of marriage and the marriage was performed without taking or giving any dowry. Hence, the allegation that the petitioner has demanded additional dowry is un-imaginary. A perusal of the charge sheet clearly shows that there is no allegation or whisper about any particular date regarding demand of additional dowry. Moreover, the 3rd respondent herself has sent an e-mail to the petitioner to book a ticket to India to look after her mother, who is suffering from some ailment. So, the question of the 3rd respondent has been necked out by the petitioner does not arise.

On over all consideration of entire material placed on record and the contentions urged before this Court by the learned Senior Counsel appearing for the petitioner and learned Assistant Government Pleader for Home appearing for respondents 1 and 2, it is suffice to conclude that the contentions raised by the 3rd respondent are without any substance and the material produced before this Court, directly indicates the *mala fides* in prosecution of criminal proceedings against the petitioner, so also, by abuse of process of the Court.

In view of my foregoing discussion, I find that it is a fit case to quash the proceedings against the petitioner in C.C.No.599 of 2015 on the file of the XIII-Additional Chief Metropolitan Magistrate, Hyderabad.

Accordingly, the Writ Petition is allowed and the proceedings against the petitioner in C.C.No.599 of 2015 on the file of the XIII-Additional Chief Metropolitan Magistrate, Hyderabad, for the offences punishable under sections 498-A and 406 of I.P.C. and Sections 4 and 5 of the Dowry Prohibition Act, 1961, are hereby quashed.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G.SRI DEVI

16.03.2020
Gsn/gkv.

