

HON'BLE SRI JUSTICE B. CHANDRA KUMAR

CRIMINAL PETITION NO.157 OF 2014

ORDER:-

The petitioners – A9 to A12 are seeking anticipatory bail for the alleged offences punishable under Sections 498-A IPC and Sections 3 and 4 of Dowry Prohibition Act read with 34 IPC.

The *de facto* complainant – Mrs. Syeda Saba was married to Mohammed Bin Issaq – A1 on 05.09.2011. She alleges that at the time of her marriage, her father gave 40 tulas of gold and Rs.10.00 lakhs as dowry. After the marriage, her husband and in-laws treated her well for few days and thereafter started harassing her demanding to bring additional dowry. It is also her case that she visited her parents' house but she did not disclose the harassment meted out by her husband and in-laws. She further alleges that her father-in-law, mother-in-law, brother-in-law and sister-in-law insisted her to take divorce from her husband so that they would perform second marriage to her husband and get more dowry. She alleges that her husband and the above referred accused forcibly sent her out of her house in the month of August, 2013 demanding her to bring Rs.5.00 lakhs from her parents. According to her, she informed her father about the demand and her father arranged Rs.2.00 lakhs. She again alleges that for some days her in-laws were happy, but again started harassing her and this time the parents of her mother-in-law namely Syed Kaleemulla Hussain and his wife, Bipasha along with their other relatives, Tahmina

Kaleem and Razziuddin started visiting their house and advised her husband and in-laws that if she (*de facto* complainant) is sent out of their house they would bring a rich girl for her husband. Again, she alleges that two more sisters of her husband namely Manal Ishaq, resident of Australia, and Mona Ishaq, resident of Jeddah encouraged her husband and in-laws over phone and they called her on phone and abused and threatened her with dire consequences if she fails to oblige them. She further alleges that her another sister-in-law – Madiha and her husband – Md. Sharif also harassed her on petty issues. She says that she informed her father who tried to pacify the matter and she convinced her parents. She alleges that on 29.10.2013, her husband along with her in-laws and their relatives held meeting in their house and necked her from their house demanding to bring Rs.10.00 lakhs additional dowry.

A perusal of the above complaint would disclose that petitioner Nos.3 and 4 herein are the parents of the mother-in-law of the *de facto* complainant and petitioner Nos.1 and 2 are the relatives of petitioner Nos.3 and 4. The petitioners' case is that they are innocent and have been falsely implicated in this case. The further case of the Petitioners 1 and 2 – A9 and A10 is that they are no way connected to A1 or his family members. The 3rd petitioner is aged 68 years and 4th petitioner is aged 65 years who are said to be taking regular treatment for their ill health.

It is most unfortunate that the *de facto* complainant has

implicated her in laws, brother-in-law, sister-in-law, parents of the mother-in-law and their relatives, two more sisters of her husband and their husbands who are residing in foreign countries. A reading of the complaint gives an impression that the *de facto* complainant has implicated almost all the relatives of her husband and their other close relatives who are visiting her husband's house. This is most unfortunate situation. This type of complaint gives an impression that Section 498-A is being misused to harass not only the husband of the *de facto* complainant but all his relatives. It is alleged that in order to force the husband to come to their terms or in order to meet their huge demands, this kind of complaints are being given. How difficult it would be for those persons staying in Australia, Jeddah or USA to come over to India and face the criminal case and prove their innocence.

Truth or otherwise of the allegations cannot be decided unless fair and dispassionate investigation is completed. Sometimes, after full-fledged trial only, truth may come out. There cannot be any doubt to say that there is dowry menace in the society. But, at the same time, it is also a fact that certain marriages are performed without any dowry. Due to ill-advice or under a wrong impression that if a complaint is lodged under section 498-A IPC, the husband may come to terms, complaints are being lodged with the police. When differences arise, there should be proper counselling before and after marriage. It is quite natural that husband and wife would have faced different circumstances and environment

from their childhood resulting in gaining different impressions and opinions and therefore they may have difference of opinion on life style and on several other issues. Therefore, issues have to be resolved by trying to understand one another, particularly, when the parties have children, special care has to be taken to protect the interest of the children. The welfare of the children should be given utmost importance. Therefore, proper counselling at initial stage would help the parties. It is most unfortunate that Section 498-A IPC has become a weapon in breaking the families rather than in uniting them.

In case between **Preeti Gupta v. State of Jharkhand**^[1], the Apex Court observed as follows.

“It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.

The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human

problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

Before parting with this case, we would like to observe that a serious relook of the entire

provision is warranted by the legislature. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society.....”

In ***Kans Raj v. State of Punjab***^[2], the Apex Court observed as follows.

“A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused.”

In ***Sushil Kumar Sharma v. Union of India***^[3], the Apex Court observed as follows.

“The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have been filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignomy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial

measures can be taken to prevent abuse of the well-intentioned provision.”

In the case between ***K.Srinivas Rao Vs.***

D.A.Deepa^[4], the Apex Court observed as follows:-

“Quite often, the cause of the misunderstanding in a matrimonial dispute is trivial and can be sorted. Mediation as a method of alternative dispute resolution has got legal recognition now. We have referred several matrimonial disputes to mediation centres. Our experience shows that about 10 to 15% of matrimonial disputes get settled in this Court through various mediation centres. We, therefore, feel that at the earliest stage i.e. when the dispute is taken up by the Family Court or by the court of first instance for hearing, it must be referred to mediation centres. Matrimonial disputes particularly those relating to custody of child, maintenance, etc. are pre-eminently fit for mediation. Section 9 of the Family Courts Act enjoins upon the Family Court to make efforts to settle the matrimonial disputes and in these efforts, Family Courts are assisted by Counsellors. Even if the Counsellors fail in their efforts, the Family Courts should direct the parties to mediation centres, where trained mediators are appointed to mediate between the parties. Being trained in the skill of mediation, they produce good results.

The idea of pre-litigation mediation is also catching up. Some mediation centres have, after giving wide publicity, set up “Help Desks” at prominent places including facilitation centres at court complexes to conduct pre-litigation mediation. We are informed that in Delhi Government Mediation and Conciliation Centres, and in Delhi High Court Mediation Centre, several matrimonial disputes are settled. These centres have a good success rate in pre-litigation mediation. If all mediation centres set up pre-litigation desks/clinics by giving sufficient

publicity and matrimonial disputes are taken up for pre-litigation settlement, many families will be saved of hardship if, at least, some of them are settled.

We recognize 'mediation' as an effective method of alternative dispute resolution in matrimonial matters and that is the reason why we want the parties to explore the possibility of settlement through mediation in matrimonial disputes.

We, therefore, issue directions, which the courts dealing with the matrimonial matters shall follow:

a) In terms of Section 9 of the Family Courts Act, the Family Courts shall make all efforts to settle the matrimonial disputes through mediation. Even if the Counsellors submit a failure report, the Family Courts shall, with the consent of the parties, refer the matter to the mediation centre. In such a case, however, the Family Courts shall set a reasonable time limit for mediation centres to complete the process of mediation because otherwise the resolution of the disputes by the Family Court may get delayed. In a given case, if there is good chance of settlement, the Family Court in its discretion, can always extend the time limit.

b) The criminal courts dealing with the complaint under Section 498-A of the IPC should, at any stage and particularly, before they take up the complaint for hearing, refer the parties to mediation centre if they feel that there exist elements of settlement and both the parties are willing. However, they should take care to see that in this exercise, rigour, purport and efficacy of Section 498-A of the IPC is not diluted. Needless to say that the discretion to grant or not to grant bail is not in any way curtailed by this direction. It will be for the concerned court to work out the modalities taking into consideration the facts of each case.

c) All mediation centres shall set up pre-litigation desks/clinics; give them wide publicity and

make efforts to settle matrimonial disputes at pre-litigation stage.

In similar circumstances, Hon'ble Mr. Justice R. Regupathi of Madras High Court, in his order dated 04.08.2008, passed in M.P.No.1 of 2008 in CrI.O.P.No.10896 of 2008, has observed as follows.

“It must be borne in mind that the object behind the enactment of Section 498-A IPC and the Dowry Prohibition Act is to check and curb the menace of dowry and at the same time, to save the matrimonial homes from destruction. Our experience shows that, apart from the husband, all family members are implicated and dragged to the police stations. Though arrest of those persons is not at all necessary, in a number of cases, such harassment is made simply to satisfy the ego and anger of the complainant. By suitably dealing with such matters, the injury to innocents could be avoided to a considerable extent by the Magistrates, but, if the Magistrates themselves accede to the bare requests of the police without examining the actual state of affairs, it would create negative effects thereby, the very purpose of the legislation would be defeated and the doors of conciliation would be closed forever. The husband and his family members may have difference of opinion in the dispute, for which, arrest and judicial remand are not the answers. The ultimate object of every legal system is to punish the guilty and protect the innocents.”

With similar observations certain guidelines have been issued by Madras High Court.

I have also perused the judgement of the Delhi High Court passed in Bail application No.1627 of 2008, dated

04.08.2008, by His Lordship Justice Kailash Gambhir and also the judgment dated 30.09.2011 passed in Criminal Misc. Writ Petition No.3322 of 2010 by the Allahabad High Court.

It appears that there is every need to give similar directions in Andhra Pradesh. Under Domestic Violence Act, protection officer is required to assist the police and the Court. Section 14 of the Protection of Women from Domestic Violence Act, 2005 envisages that the Magistrate may, at any stage of the proceedings under this Act, direct the respondents or the aggrieved person either singly or jointly to undergo counselling with any member of a service provider who possesses such qualification and experience in counselling as may be prescribed. Section 498-A IPC is a cognizable and non-compoundable offence.

In the light of the above discussion, the following guidelines have been issued.

- a) A fair and dispassionate investigation should be conducted. After completing investigation, the same should be verified by an officer not below the rank of Deputy Superintendent of Police.
- b) During the course of investigation, if the investigating officer is satisfied that there is false implication of any person in the complaint then he may delete the names of such persons from the charge sheet after obtaining necessary permission from the Superintendent of Police or any other officer equivalent to that rank.
- c) As soon as a complaint is received either from the wife alleging dowry harassment or from the

husband that there is every likelihood of him being implicated in a case of dowry harassment, then, both the parties should be asked to undergo counselling with any experienced counsellor or counsellors. The report of such counsellors should be made as a part of the report to be submitted by the investigating officer to the Court.

- d) The Superintendent of Police, in consultation with the Chairman, District Legal Services Authority, may prepare a panel of counsellors and such panel of counsellors along with their address and phone numbers should be made available at all the police stations.
- e) Normally, no accused should be arrested, where the allegation is simple dowry harassment. If the arrest is necessary during the course of investigation, the investigating officer should obtain permission of the Superintendent of Police or any other officer of the equal rank in metropolitan cities. If arrest is not necessary, the police may complete the investigation and lay charge sheet before the Court without arresting the accused and seek necessary orders from the Court. However, in the case of dowry death, suspicious death, suicide or where the allegations are serious in nature such as inflicting of bodily injury etc., the police officer may arrest the accused. However, the intimation of such arrest should be immediately sent to the concerned Superintendent of Police who may give necessary guidance to the arresting officer.
- f) No accused or witness should be unnecessarily called to the police station and as soon as the purpose of summoning them to the police station is over they should be sent back. There should not be any unnecessary harassment to any person i.e. either to the relatives of the *de facto* complainant or to the relatives of the husband.

- g) The higher police officers should see that the parties do not make any allegations that they are forced to come to any settlement in police stations against their wish. However, this does not mean that the police officers should not make any effort for amicable settlement.
- h) The advocates have to play their role in trying to unite the families. They must act as social reformers while dealing with these kind of cases, particularly, where the couple have children. Even when an accused is produced before the Magistrate, they should examine the matter judiciously and consider whether there are valid grounds for remanding the accused to the judicial custody. No accused should be remanded to judicial custody mechanically in routine manner. If the Magistrate feels that the accused cannot be released after taking bonds, necessary orders may be passed accordingly.

The Director General of Police, Andhra Pradesh, is requested to issue necessary instructions to all the concerned in this regard.

In the instant case, having regard to the allegations made against the petitioners and in the facts and circumstances of the case, I am inclined to grant anticipatory bail to the petitioners.

In the event of arrest of the petitioners, they shall be enlarged on bail on their executing a bond for a sum of Rs.5,000/- (Rupees Five Thousand Only) each with one surety for a like sum each to the satisfaction of the arresting officer, Falaknuma Police Station, Hyderabad.

Accordingly, the Criminal Petition is allowed.

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Justice B.Chandra Kumar

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17th January 2014

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Note:

The Registry is directed to mark a copy of this order to the Director General of Police, Andhra Pradesh for issuing necessary instructions to all the concerned.

(B/o)

Bcj / Bvv / Nsr

[1] (2010) 7 SCC 667

[2] AIR 2000 SC 2324(1)

[3] 2005(2) ALD (Cr.) 633(SC)

[4] (2013) 5 SCC 226