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| Q**uashing**  **of F.I.R/Charge Sheet under sec. 498 A , sec.3 &4 of Dowry prohibition Act  =**  **mere general sweeping allegations against the relatives of husband  in order wreck vengeance, never fasten criminal liability against them - criminal case is an abuse of court proceedings and are liable to be quashed  =**  the High Court while exercising  jurisdiction under Section 482 of the Code of Criminal Procedure to quash the  proceedings can scrutinize the allegations leveled in the complaint for the  purpose of arriving at the conclusion whether they are designed to harass the  family members of the husband of the de-facto complainant and to wreak vengeance  against them owing to the differences of the de facto complainant with her  husband.  Merely because there are some general and sweeping allegations against  the accused in the complaint, the Court is not precluded from scrutinizing the  allegations while exercising jurisdiction under Section 482 of the Code of  Criminal Procedure for the purpose of quashing the proceedings. The law does not  mandate that when there are certain allegations, the Court while acting under  Section 482 Cr.P.C. is not supposed to scrutinize them and it has to simply  allow the trial to be proceeded with before the trial Court for the purpose of  deciding the truth or otherwise of the allegations mentioned in the  complaint/charge sheet.  In the instant case, the allegation  that A2 to A.12 have been instigating A1 to harass her and that in connection  with the birth of the male child, they visited the house of the second  respondent and there, all the accused demanded dowry of Rs.2,00,000/- is quite  un-convincing and appears to have been made purposely and designedly to involve  A2 to A12 in the case filed by the second respondent/de facto complainant.   If  there is any harassment meted out by the first accused, the second respondent is  not supposed to make all his relatives accused in the complaint by alleging in  general terms that they committed offences punishable under Section 498-A IPC  and Sections 3 and 4 of the Dowry Prohibition Act.  Such a course shall not be  encouraged. If A2 to A-12 are allowed to face trial basing on such sweeping and  general allegations, in my view, it is nothing but abuse of process of law and  ultimately it would result in miscarriage of justice causing undue hardship and  agony to A2 to A12.  25.     For all the aforesaid reasons, I am of the view that it is a fit case to  quash the proceedings against A2 to A12 since apparently they have been made as  accused only on account of their relationship with A1.  Therefore, the entire  proceedings in C.C.No.87 of 2009 on the file of the Judicial First Class  Magistrate, Penugonda insofar as the petitioners 2 to 12/A2 to A12 concerned are  hereby quashed. Insofar as the petitioner No.1/A-1 is concerned, the criminal  petition is dismissed.  26.     As indicated above, the criminal petition is partly allowed.  THE HON'BLE MR JUSTICE R. KANTHA RAO  Crl.P.No.9407 of 2009  06.09.2012  Y.Sham Kumar and others  State of A.P. and another  Counsel for the Appellant: Sri M.V.Swamy    Counsel for respondent No.1: Addl.Public Prosecutor  Counsel for respondent No.2: Sri K.Maheshwara Rao  <GIST:  >HEAD NOTE:  ? Cases referred:  1 AIR 1992 SC 1379  2 2007(12) SCC 369  32008AIR SCW 6901  4 1988(1)SCC 692  5 1992 Supp.(1) SCC 335  6 (2010) 7 SCC 667  ORDER:          This criminal petition is filed under Section 482 of the Code of Criminal  Procedure to quash the proceedings in C.C.No.87 of 2009 on the file of the  Judicial First Class Magistrate, Penugonda.  2       I have heard the learned counsel appearing for the petitioners/accused,  second respondent/de facto complainant and the learned additional Public  Prosecutor representing the first respondent/State.  3.      The brief facts of the case which is sought to be quashed are that the  second respondent/wife filed a private complaint against the petitioners under  Section498-A, 420 IPC and Sections 3 and 4 of the Dowry Prohibition Act in the  Court of the Judicial First Class Magistrate, Penugonda, Ananthapur District.  The learned Magistrate forwarded the case to the Station House Officer,  Puttaparthy Police Station under Section 156 (3) Cr.P.C for investigation and  report. The police after conducting investigation filed charge sheet against the  petitioners under Sections 498-A, 420 IPC and Sections 3 and 4 of the Dowry  Prohibition Act.  4.      Shortly stated, the averments made in the complaint petition are that the  marriage of the second respondent with the first petitioner was solemnized on  19.05.2006 at Puttaparthi at her parents' house.  Before the marriage, it is  said that all the petitioners represented to the second respondent and her  parents that the first petitioner was an engineering graduate and was working as  Engineer.  They demanded a sum of Rs.2,00,000/- dowry and 20 tolas of gold which  was given by the second respondent's father to the first petitioner at the time  of marriage.  The marriage was consummated and the second respondent found that  A1 was not doing any job and he is also not an engineering graduate.  When the  second respondent questioned the first petitioner about the same, all of them  got offended and told her to leave their house.  Having no other option, she  returned to her parents' house and started living at Puttaparthi.  5.      Subsequently, it is said that the first petitioner came to her parents'  house, requested the second respondent to excuse for mis-representation made and  requested to lead a peaceful life.  The second respondent pardoned him and  started leading conjugal life with him at her parents' house at Puttaparti.  Later on, the first petitioner got a job at Yadiki, Ananthapur District as  Junior Engineer in a cement factory.  He had put up family at Yadiki and started  harassing the second respondent.  It was alleged by the second respondent that  the first petitioner used to tell her that he had illicit intimacy with his  sisters-in-law and some other women, he used to talk to his sisters-in-law over  phone (A3 and A7) hours together, A3 and A7 used to write letters to A1 stating  their illicit intimacy with him and A1 used to hand over the said letters to the  second respondent and was insisting upon her to go through the letters, and on  refusal by her, he used to beat her.  6.      Some time thereafter, the first petitioner secured employment in West  Africa and left for West Africa.   Later, the second respondent gave birth to a  male child on 23.04.2007.  After the birth of the said male child, all the  petitioners/accused visited her parents' house at Puttaparthy under the guise of  seeing the new born child.  At that time, all the accused insisted upon the  mother of the second respondent to pay an amount of Rs.2,00,000/- as additional  dowry to A1, who was intending to go to West Africa for securing job.  When the  second respondent and her father expressed their inability to pay the said  amount, the accused threatened that they will desert the complainant and unless  the amount demanded is paid, they will not visit the second respondent and so  saying, all the accused went away.  7.      Subsequently, the second respondent learnt that the first accused having  secured job in West Africa, left for that place during May, 2007. From there, A1  wrote some letters to the complainant admitting all his misdeeds during the  matrimonial life.  In number of letters, he admitted that he used to starve the  second respondent and resorted to beat her for no fault of her.  Subsequently,  when her father fell sick, the second respondent requested A1 to visit his  father, but he refused to come to Puttaparthy on the ground that his father did  not pay the amount which was demanded by him.  8.      Subsequently, the father of the second respondent died on 29.01.2008 and  the 1st accused came down to Puttaparthy and started living with the second  respondent at her parents' house at Puttaparthy.  It is alleged that on the  instigation of the remaining accused, the first accused continued harassment by  abusing and beating her.  Some Panchayat was convened before the elders, which  was found to be futile and the second respondent states that under the aforesaid  circumstances she filed a private complaint before the Magistrate.  9.      In the complaint filed by her, the second respondent made all the  relatives close and distant of the first petitioner as accused.  10.     Learned counsel appearing for the second respondent placed the statements  of LWs1 and 2 recorded by the police before this Court and those statements  reveal that the first accused has been harassing the second respondent on the  instigation of the remaining accused.  It is also mentioned therein that when  all the accused came to the parents of the second respondent to visit the new  born child demanded an amount of Rs.2,00,000/- as additional dowry.  11.     Basing on the said statements and also the allegations levelled in the  complaint petition, the learned counsel appearing for the second respondent  contends that the truth or otherwise of the allegations has to be decided in the  course of the trial after the evidence was let in before the Court, since the  allegations prima face disclose the involvement of all the accused in the  commission of offence, the complaint is not liable to be quashed.  12.     The learned counsel appearing for the second respondent invited my  attention to the decision of the Supreme Court in  SMT CHAND DHAWAN v JAWAHR LAL  AND OTHERS1 wherein the Supreme Court held that:  "when the allegations in the complaint prima facie constitute the offence  against any or all of the accused in the absence of materials on record to show  that the continuance of the proceedings would be an abuse of the process of the  court or would defeat the ends of justice, the High Court would not be justified  in quashing the complaint."  13.     He further relied on a decision reported in PRATIBHA v RAMESHWARI DEVI AND  OTHERS2  wherein the Supreme Court held as follows:  "Filing of a divorce petition in a civil court cannot be a ground to quash  criminal proceedings under Section 482 Cr.P.C. as it is well settled that  criminal and civil proceedings are separate and independent and the pendency of  a civil proceeding cannot bring to an end a criminal proceeding even if they  arise out of the same set of facts."  "From a plain reading of the findings arrived at by the High Court while  quashing the FIR, it is apparent that the High Court while exercising its  inherent powers under Section 482 Cr.P.C. has gone beyond the allegations made  in the FIR and has acted in excess of its jurisdiction and, therefore, the High  Court was not justified in quashing the FIR by going beyond the allegations made  in the FIR or by relying on extraneous considerations."  14.     Relying on the aforesaid judgments, the learned counsel appearing for the  respondent No.2 would contend that in the instant case, the fact that the first  petitioner filed a petition under Section 9 of the Hindu Marriage Act for  restitution of conjugal rights and obtained a decree is not a ground to quash  the criminal proceedings in the present case.  He would further contend that  since the allegations made in the complaint prima facie constitute the offences  punishable under Sections 498A, 420 IPC and Sections 3 and 4 of the Dowry  Prohibition Ac, the complaint is not liable to be quashed.  15.     On the other hand, the learned counsel appearing for the petitioners would  contend that only certain omnibus allegations have been made against the  petitioners in the complaint, the police without conducting proper investigation  mechanically filed a charge sheet which is nothing but reproduction of the  contents of the complaint which was forwarded by the Magistrate, the Court can  go into the question whether the criminal proceedings initiated would result in  abuse of process of law and if they are allowed to continue, they would cause  miscarriage of justice and on such scrutiny, according to the learned counsel,  this is a fit case to quash the proceedings in exercise of powers under Section  482 Cr.P.C.  16.     The crucial question to be determined in the criminal petition therefore  is when there are certain allegations levelled against the accused in the  complaint petition whether the court in exercise of jurisdiction under Section  482 Cr.P.C. can go in to the correctness of the allegations to decide the  question as to  whether the criminal proceedings initiated are abuse of process  of Court and whether they would result in miscarriage of justice if the accused are made to face the trial of the case.  17.     In this case, it is true that the complaint petition filed by the second  respondent/de facto complainant was forwarded by the Magistrate to the police  under Section 156(3) Cr.P.C for investigation and the police after conducting  investigation filed charge sheet.   It is also a fact that the learned Magistrate  took cognizance of the offences under Section 498A, 420 IPC and Sections 3 and 4  of the Dowry Prohibition Act against all the accused.  Under these  circumstances, therefore, it is required to be examined whether this Court can  scrutinize the allegations levelled in the complaint so as to take a decision as  to whether the proceedings are in fact abuse of process of Court and if they are  allowed to continue would result in miscarriage of justice.  18.     In GORIGE PENTAIAH v STATE OF A.P. AND OTHERS3  the Supreme Court held as  follows:  "Inherent powers under Section 482 Cr.P.C. though wide have to be exercised  sparingly, carefully and with great caution and only when such exercise is  justified by the tests specifically laid down in this section itself.  Authority  of the court exists for the advancement of justice. If any abuse of the process  leading to injustice is brought to the notice of the Court, then the Court would  be justified in preventing injustice by invoking inherent powers in absence of  specific provisions in the Statute."  It is further held as under:  "The High Court should normally refrain from giving a prima facie decision in a  case where all the 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 such magnitude that they cannot be seen in  their true perspective without sufficient material. Of course, no hard and fast  rule can be laid down in regard to cases in which the High Court will exercise  its extraordinary jurisdiction of quashing the proceedings at any stage."  19.     Similarly in MADHAVRAO JIWAJIRAO SCINDIA AND OTHERS v SAMBHAJIRAO  CHANDROJIRAO ANGRE AND OTHERSS 4  the Supreme Court observed as follows:  "The legal position is well settled that when a prosecution at the initial stage  is asked to be quashed, the test to be applied by the court is as to whether the  un-controverted allegations as made prima facie establish the offence.  It is  also for the court to take into consideration any special features which appear  in a particular case to consider whether it is expedient and in the interest of  justice to permit a prosecution to continue.  This is so on the basis that the  court cannot be utilized for any oblique purpose and where in the opinion of the  court chances of an ultimate conviction is bleak and, therefore, no useful  purpose is likely to be served by allowing a criminal prosecution to continue,  the court may while taking into consideration the special facts of a case also  quash the proceeding even though it may be at a preliminary stage."  20.     In STATE OF HARYANA AND OTHERS v BHANJAN LAL AND OTHERS5 the Supreme Court  expressed the view that:  "Where the allegations made in the FIR or complaint are so absurd and inherently  improbable on the basis of which no prudent person can ever reach a just  conclusion that there is sufficient ground for proceeding against the accused,  then the proceedings are liable to be quashed."    The Supreme Court further held that:  "Where a criminal proceeding is manifestly attended with mala fide and/or where  the proceeding is maliciously instituted with an ulterior motive for wreaking  vengeance on the accused and with a view to spite him due to private and  personal grudge., the proceeding is liable to be quashed".  21.     From the legal position which emerges out of the aforesaid judicial  pronouncements, it is therefore, obvious that the High Court while exercising  jurisdiction under Section 482 of the Code of Criminal Procedure to quash the  proceedings can scrutinize the allegations levelled in the complaint for the  purpose of arriving at the conclusion whether they are designed to harass the  family members of the husband of the de-facto complainant and to wreak vengeance  against them owing to the differences of the de facto complainant with her  husband.  Merely because there are some general and sweeping allegations against  the accused in the complaint, the Court is not precluded from scrutinizing the  allegations while exercising jurisdiction under Section 482 of the Code of  Criminal Procedure for the purpose of quashing the proceedings. The law does not  mandate that when there are certain allegations, the Court while acting under  Section 482 Cr.P.C. is not supposed to scrutinize them and it has to simply  allow the trial to be proceeded with before the trial Court for the purpose of  deciding the truth or otherwise of the allegations mentioned in the  complaint/charge sheet.  22.     In PREETI GUPTA AND ANOTHER v STATE OF JHARHAND AND ANOTHER6 the Supreme  Court held as follows:  "It is a matter of common knowledge that unfortunately matrimonial litigation is  rapidly increasing in our country. All the courts in our country including the  Supreme Court are flooded with matrimonial cases.  This clearly demonstrates  discontent and unrest in the family life of a large number of people of society.  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.  It is seen that a large number of such complaints 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 is also a matter of serious  concern.  The learned members of the Bar have enormous social responsibility and  obligation to ensure that the social fibre 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.  ---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 by the husband's close relations who had been  living in different cities and never visited or rarely visited the place where  the complainant wife resided would have an entirely different complexion.  Such  allegations of the complainant are required to be scrutinized with great care  and circumspection."  23.     Now, turning to the facts of the present case, the second respondent-de  facto complainant implicated all the relatives close and distant of her husband  as accused in this case and only some general and sweeping allegations, which  are referred above have been made against A2 to A.12.  If we examine the crux of  the complaint petition, it seems that the grievance of the second respondent is  mainly against the first petitioner/husband.  24.     It cannot be accepted that all the accused collectively represented that  the first accused is an engineering graduate and is working as an Engineer.  The  fact which cannot be disputed is that the first accused has a diploma in  Engineering.  Ultimately, he secured a job in a cement factory at Yadiki as  Junior Engineer. The second respondent herself stated in the complaint petition  that after the first accused revealed these facts to her, she condoned his  representation and started living with him and gave birth to a male child.  Subsequently, the first accused secured employment in West Africa as an Engineer  and worked there for some time.  Therefore, what all can be understood from the  facts of the case is that even if there is any representation made that the  first accused is an Engineering graduate and was working as an engineer, it was  by the first accused himself, but not by all the accused.  Even if there is any  demand for dowry, from the facts and circumstances of the case, it must have  been from the first accused, but not from all the other accused who are the  relatives of the first accused.  It can be clearly understood from the nature of  the allegations levelled in the complaint that A2 to A.12 have been implicated  in this case only for the sole reason that they are related to the first  accused.  The Apex Court in Preethi Gupta (6th cited supra) observed that the  allegations in the complaint have to be scrutinized with great care and  circumspection especially when they are made against the husband's relatives.  The Supreme Court also held that there is a need for serious re-look at the  entire provision of Section 498-A IPC, and it made recommendation to the  Parliament to revisit the said provision.   In the instant case, the allegation  that A2 to A.12 have been instigating A1 to harass her and that in connection  with the birth of the male child, they visited the house of the second  respondent and there, all the accused demanded dowry of Rs.2,00,000/- is quite  un-convincing and appears to have been made purposely and designedly to involve  A2 to A12 in the case filed by the second respondent/de facto complainant.   If  there is any harassment meted out by the first accused, the second respondent is  not supposed to make all his relatives accused in the complaint by alleging in  general terms that they committed offences punishable under Section 498-A IPC  and Sections 3 and 4 of the Dowry Prohibition Act.  Such a course shall not be  encouraged. If A2 to A-12 are allowed to face trial basing on such sweeping and  general allegations, in my view, it is nothing but abuse of process of law and  ultimately it would result in miscarriage of justice causing undue hardship and  agony to A2 to A12.  25.     For all the aforesaid reasons, I am of the view that it is a fit case to  quash the proceedings against A2 to A12 since apparently they have been made as  accused only on account of their relationship with A1.  Therefore, the entire  proceedings in C.C.No.87 of 2009 on the file of the Judicial First Class  Magistrate, Penugonda insofar as the petitioners 2 to 12/A2 to A12 concerned are  hereby quashed. Insofar as the petitioner No.1/A-1 is concerned, the criminal  petition is dismissed.  26.     As indicated above, the criminal petition is partly allowed. |