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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 exercisingjurisdiction under Section 482 of the Code of Criminal Procedure to quash theproceedings can scrutinize the allegations leveled in the complaint for thepurpose of arriving at the conclusion whether they are designed to harass thefamily 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 herhusband.  Merely because there are some general and sweeping allegations against the accused in the complaint, the Court is not precluded from scrutinizing theallegations while exercising jurisdiction under Section 482 of the Code ofCriminal Procedure for the purpose of quashing the proceedings. The law does notmandate that when there are certain allegations, the Court while acting underSection 482 Cr.P.C. is not supposed to scrutinize them and it has to simplyallow the trial to be proceeded with before the trial Court for the purpose ofdeciding the truth or otherwise of the allegations mentioned in thecomplaint/charge sheet.In the instant case, the allegationthat A2 to A.12 have been instigating A1 to harass her and that in connectionwith the birth of the male child, they visited the house of the secondrespondent and there, all the accused demanded dowry of Rs.2,00,000/- is quiteun-convincing and appears to have been made purposely and designedly to involveA2 to A12 in the case filed by the second respondent/de facto complainant.  Ifthere is any harassment meted out by the first accused, the second respondent isnot supposed to make all his relatives accused in the complaint by alleging ingeneral terms that they committed offences punishable under Section 498-A IPCand Sections 3 and 4 of the Dowry Prohibition Act.  Such a course shall not beencouraged. If A2 to A-12 are allowed to face trial basing on such sweeping andgeneral allegations, in my view, it is nothing but abuse of process of law andultimately it would result in miscarriage of justice causing undue hardship andagony to A2 to A12.25.     For all the aforesaid reasons, I am of the view that it is a fit case toquash the proceedings against A2 to A12 since apparently they have been made as  accused only on account of their relationship with A1.  Therefore, the entireproceedings in C.C.No.87 of 2009 on the file of the Judicial First ClassMagistrate, Penugonda insofar as the petitioners 2 to 12/A2 to A12 concerned arehereby quashed. Insofar as the petitioner No.1/A-1 is concerned, the criminalpetition 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 200906.09.2012 Y.Sham Kumar and others   State of A.P. and anotherCounsel for the Appellant: Sri M.V.Swamy                                 Counsel for respondent No.1: Addl.Public ProsecutorCounsel 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 CriminalProcedure to quash the proceedings in C.C.No.87 of 2009 on the file of theJudicial 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 PublicProsecutor representing the first respondent/State.3.      The brief facts of the case which is sought to be quashed are that thesecond respondent/wife filed a private complaint against the petitioners underSection498-A, 420 IPC and Sections 3 and 4 of the Dowry Prohibition Act in theCourt 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 andreport. The police after conducting investigation filed charge sheet against thepetitioners under Sections 498-A, 420 IPC and Sections 3 and 4 of the DowryProhibition Act.4.      Shortly stated, the averments made in the complaint petition are that themarriage of the second respondent with the first petitioner was solemnized on19.05.2006 at Puttaparthi at her parents' house.  Before the marriage, it issaid that all the petitioners represented to the second respondent and herparents that the first petitioner was an engineering graduate and was working asEngineer.  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 timeof 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 thesecond respondent questioned the first petitioner about the same, all of themgot offended and told her to leave their house.  Having no other option, shereturned 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 andstarted leading conjugal life with him at her parents' house at Puttaparti.Later on, the first petitioner got a job at Yadiki, Ananthapur District asJunior Engineer in a cement factory.  He had put up family at Yadiki and startedharassing the second respondent.  It was alleged by the second respondent thatthe first petitioner used to tell her that he had illicit intimacy with hissisters-in-law and some other women, he used to talk to his sisters-in-law overphone (A3 and A7) hours together, A3 and A7 used to write letters to A1 statingtheir illicit intimacy with him and A1 used to hand over the said letters to thesecond respondent and was insisting upon her to go through the letters, and onrefusal by her, he used to beat her.6.      Some time thereafter, the first petitioner secured employment in WestAfrica and left for West Africa.  Later, the second respondent gave birth to amale child on 23.04.2007.  After the birth of the said male child, all thepetitioners/accused visited her parents' house at Puttaparthy under the guise ofseeing the new born child.   At that time, all the accused insisted upon themother of the second respondent to pay an amount of Rs.2,00,000/- as additionaldowry to A1, who was intending to go to West Africa for securing job.  When thesecond respondent and her father expressed their inability to pay the saidamount, the accused threatened that they will desert the complainant and unlessthe amount demanded is paid, they will not visit the second respondent and sosaying, all the accused went away.7.      Subsequently, the second respondent learnt that the first accused havingsecured job in West Africa, left for that place during May, 2007. From there, A1wrote some letters to the complainant admitting all his misdeeds during thematrimonial life.  In number of letters, he admitted that he used to starve thesecond respondent and resorted to beat her for no fault of her.  Subsequently,when her father fell sick, the second respondent requested A1 to visit hisfather, but he refused to come to Puttaparthy on the ground that his father didnot pay the amount which was demanded by him.   8.      Subsequently, the father of the second respondent died on 29.01.2008 andthe 1st accused came down to Puttaparthy and started living with the secondrespondent at her parents' house at Puttaparthy.  It is alleged that on theinstigation of the remaining accused, the first accused continued harassment byabusing and beating her.  Some Panchayat was convened before the elders, which was found to be futile and the second respondent states that under the aforesaidcircumstances she filed a private complaint before the Magistrate.9.      In the complaint filed by her, the second respondent made all therelatives 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 statementsreveal that the first accused has been harassing the second respondent on theinstigation of the remaining accused.  It is also mentioned therein that whenall the accused came to the parents of the second respondent to visit the newborn child demanded an amount of Rs.2,00,000/- as additional dowry.11.     Basing on the said statements and also the allegations levelled in thecomplaint petition, the learned counsel appearing for the second respondentcontends that the truth or otherwise of the allegations has to be decided in thecourse of the trial after the evidence was let in before the Court, since theallegations prima face disclose the involvement of all the accused in thecommission of offence, the complaint is not liable to be quashed.12.     The learned counsel appearing for the second respondent invited myattention 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 offenceagainst any or all of the accused in the absence of materials on record to showthat the continuance of the proceedings would be an abuse of the process of thecourt or would defeat the ends of justice, the High Court would not be justifiedin 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 quashcriminal proceedings under Section 482 Cr.P.C. as it is well settled thatcriminal and civil proceedings are separate and independent and the pendency ofa civil proceeding cannot bring to an end a criminal proceeding even if theyarise out of the same set of facts.""From a plain reading of the findings arrived at by the High Court whilequashing the FIR, it is apparent that the High Court while exercising itsinherent 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 HighCourt was not justified in quashing the FIR by going beyond the allegations madein the FIR or by relying on extraneous considerations."14.     Relying on the aforesaid judgments, the learned counsel appearing for therespondent No.2 would contend that in the instant case, the fact that the firstpetitioner filed a petition under Section 9 of the Hindu Marriage Act forrestitution of conjugal rights and obtained a decree is not a ground to quashthe criminal proceedings in the present case.  He would further contend thatsince the allegations made in the complaint prima facie constitute the offencespunishable 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 wouldcontend that only certain omnibus allegations have been made against thepetitioners in the complaint, the police without conducting proper investigationmechanically filed a charge sheet which is nothing but reproduction of thecontents of the complaint which was forwarded by the Magistrate, the Court cango into the question whether the criminal proceedings initiated would result inabuse of process of law and if they are allowed to continue, they would causemiscarriage 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 Section482 Cr.P.C.16.     The crucial question to be determined in the criminal petition thereforeis when there are certain allegations levelled against the accused in thecomplaint petition whether the court in exercise of jurisdiction under Section482 Cr.P.C. can go in to the correctness of the allegations to decide thequestion as to whether the criminal proceedings initiated are abuse of processof 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 secondrespondent/de facto complainant was forwarded by the Magistrate to the policeunder Section 156(3) Cr.P.C for investigation and the police after conductinginvestigation filed charge sheet.  It is also a fact that the learned Magistratetook cognizance of the offences under Section 498A, 420 IPC and Sections 3 and 4of the Dowry Prohibition Act against all the accused.  Under thesecircumstances, therefore, it is required to be examined whether this Court canscrutinize the allegations levelled in the complaint so as to take a decision asto whether the proceedings are in fact abuse of process of Court and if they areallowed 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 exercisedsparingly, carefully and with great caution and only when such exercise isjustified by the tests specifically laid down in this section itself.  Authorityof the court exists for the advancement of justice. If any abuse of the processleading to injustice is brought to the notice of the Court, then the Court wouldbe justified in preventing injustice by invoking inherent powers in absence ofspecific provisions in the Statute."It is further held as under:"The High Court should normally refrain from giving a prima facie decision in acase where all the facts are incomplete and hazy; more so, when the evidence hasnot been collected and produced before the court and the issues involved,whether factual or legal, are of such magnitude that they cannot be seen intheir true perspective without sufficient material. Of course, no hard and fastrule can be laid down in regard to cases in which the High Court will exerciseits 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 stageis asked to be quashed, the test to be applied by the court is as to whether theun-controverted allegations as made prima facie establish the offence.  It isalso for the court to take into consideration any special features which appearin a particular case to consider whether it is expedient and in the interest ofjustice to permit a prosecution to continue.  This is so on the basis that thecourt cannot be utilized for any oblique purpose and where in the opinion of thecourt chances of an ultimate conviction is bleak and, therefore, no usefulpurpose 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 alsoquash 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 inherentlyimprobable on the basis of which no prudent person can ever reach a justconclusion 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 wherethe proceeding is maliciously instituted with an ulterior motive for wreakingvengeance on the accused and with a view to spite him due to private andpersonal grudge., the proceeding is liable to be quashed".21.     From the legal position which emerges out of the aforesaid judicialpronouncements, it is therefore, obvious that the High Court while exercisingjurisdiction under Section 482 of the Code of Criminal Procedure to quash theproceedings can scrutinize the allegations levelled in the complaint for thepurpose of arriving at the conclusion whether they are designed to harass thefamily 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 herhusband.  Merely because there are some general and sweeping allegations against the accused in the complaint, the Court is not precluded from scrutinizing theallegations while exercising jurisdiction under Section 482 of the Code ofCriminal Procedure for the purpose of quashing the proceedings. The law does notmandate that when there are certain allegations, the Court while acting underSection 482 Cr.P.C. is not supposed to scrutinize them and it has to simplyallow the trial to be proceeded with before the trial Court for the purpose ofdeciding the truth or otherwise of the allegations mentioned in thecomplaint/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 israpidly increasing in our country. All the courts in our country including theSupreme Court are flooded with matrimonial cases.  This clearly demonstratesdiscontent 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 Section498-A IPC are filed in the heat of the moment over trivial issues without properdeliberations.  It is seen that a large number of such complaints are not evenbona fide and are filed with oblique motive.  At the same time, rapid increasein the number of genuine cases of dowry harassment is also a matter of seriousconcern.The learned members of the Bar have enormous social responsibility andobligation to ensure that the social fibre of family life is not ruined ordemolished. They must ensure that exaggerated versions of small incidents shouldnot be reflected in the criminal complaints.---The courts have to be extremely careful and cautious in dealing with thesecomplaints and must take pragmatic realities into consideration while dealingwith matrimonial cases."The allegations of harassment by the husband's close relations who had beenliving in different cities and never visited or rarely visited the place wherethe complainant wife resided would have an entirely different complexion.  Suchallegations of the complainant are required to be scrutinized with great careand circumspection."23.     Now, turning to the facts of the present case, the second respondent-defacto complainant implicated all the relatives close and distant of her husbandas accused in this case and only some general and sweeping allegations, whichare referred above have been made against A2 to A.12.  If we examine the crux ofthe complaint petition, it seems that the grievance of the second respondent ismainly against the first petitioner/husband.24.     It cannot be accepted that all the accused collectively represented thatthe first accused is an engineering graduate and is working as an Engineer.  Thefact which cannot be disputed is that the first accused has a diploma inEngineering.  Ultimately, he secured a job in a cement factory at Yadiki asJunior Engineer. The second respondent herself stated in the complaint petitionthat after the first accused revealed these facts to her, she condoned hisrepresentation 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 thefacts of the case is that even if there is any representation made that thefirst accused is an Engineering graduate and was working as an engineer, it wasby the first accused himself, but not by all the accused.  Even if there is anydemand for dowry, from the facts and circumstances of the case, it must havebeen from the first accused, but not from all the other accused who are therelatives of the first accused.  It can be clearly understood from the nature ofthe allegations levelled in the complaint that A2 to A.12 have been implicatedin this case only for the sole reason that they are related to the firstaccused.  The Apex Court in Preethi Gupta (6th cited supra) observed that theallegations in the complaint have to be scrutinized with great care andcircumspection 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 theentire provision of Section 498-A IPC, and it made recommendation to theParliament to revisit the said provision.  In the instant case, the allegationthat A2 to A.12 have been instigating A1 to harass her and that in connectionwith the birth of the male child, they visited the house of the secondrespondent and there, all the accused demanded dowry of Rs.2,00,000/- is quiteun-convincing and appears to have been made purposely and designedly to involveA2 to A12 in the case filed by the second respondent/de facto complainant.  Ifthere is any harassment meted out by the first accused, the second respondent isnot supposed to make all his relatives accused in the complaint by alleging ingeneral terms that they committed offences punishable under Section 498-A IPCand Sections 3 and 4 of the Dowry Prohibition Act.  Such a course shall not beencouraged. If A2 to A-12 are allowed to face trial basing on such sweeping andgeneral allegations, in my view, it is nothing but abuse of process of law andultimately it would result in miscarriage of justice causing undue hardship andagony to A2 to A12.25.     For all the aforesaid reasons, I am of the view that it is a fit case toquash the proceedings against A2 to A12 since apparently they have been made as  accused only on account of their relationship with A1.  Therefore, the entireproceedings in C.C.No.87 of 2009 on the file of the Judicial First ClassMagistrate, Penugonda insofar as the petitioners 2 to 12/A2 to A12 concerned arehereby quashed. Insofar as the petitioner No.1/A-1 is concerned, the criminalpetition is dismissed.26.     As indicated above, the criminal petition is partly allowed. |