

HON'BLE SRI JUSTICE K.LAKSHMAN

CRIMINAL PETITION No.6427 OF 2019

ORDER:

This Criminal Petition under Section 482 of Cr.P.C. is filed seeking to quash the proceedings in P.R.C.No.9 of 2019 pending on the file of the Principal Junior Civil Judge, Mahaboob Nagar. The petitioners herein are accused Nos.4 and 5. The offences alleged against them are under Sections 302, 304-B, 498-A of IPC, 109 read with Section 34 of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

2. The allegations against the petitioners herein, as per the charge sheet, are as follows.

A1 is the husband of the deceased. The 2nd petitioner/A5 is elder brother of A1 and the 1st petitioner/A4 is wife of the 2nd petitioner-A5. The marriage of deceased with A1 was performed on 25.05.2011 and it is an arranged marriage. A1 and deceased stayed happily for one year. Thereafter, according to the *de facto* complainant, the father of the deceased, all the accused have started harassing the deceased both mentally and physically and demanded additional dowry. A6 is the mediator of the said marriage. On 10-5-2014, there was an altercation between the deceased and A1 regarding the said additional dowry. A1 took the deceased into bath room and forcibly made her to consume acid with an intention to kill her. She was shifted to SVS hospital and thereafter, to Apollo hospital and again, they have shifted to Susrutha

Hospital, Mahabubnagar, against the medical advice of Apollo Hospital. On the intervening night of 19/20.7.2014 around 00.15 hours, the deceased died due to acid injuries.

3. The *de facto* complainant-father of the deceased lodged a complaint with WPS, Mahabubnagar on 19.7.2014. On receipt of the said complaint, the police have initially registered a case in Cr.No.14 of 2014 for the offences under Sections 498-A, 307 IPC and Sections 3 and 4 of the Dowry Prohibition Act. Thereafter, they have added Sections 304-B, 302 IPC and Section 109 read with Section 34 IPC to the existing Sections of 498-A of IPC.

4. The police, after completion of investigation, laid charge sheet against the petitioners herein *vide* P.R.C. No.9 of 2019 for the aforesaid offences.

5. Learned counsel appearing for the petitioners would submit that there is abnormal delay of 69 days in lodging the complaint. The contents of the complaint and charge sheet lacks the ingredients of offences alleged against the petitioners herein. The 2nd petitioner-A5 is a Judicial Officer and he was posted at Mancheri and thereafter, he was posted at Nizamabad at the relevant point of time. The 1st petitioner-A4, wife of the 2nd petitioner-A5, is also a Homeopathy Doctor and therefore, the petitioners are nothing to do with the marital life of A1 and deceased. There are no allegations, much less specific allegations, against the petitioners. The medical evidence is also not

supported. The Investigating Officer in Cr.No.14 of 2014 did not consider the statement of LW23 i.e., Parshiya Srinivasa Rao, Police Constable, Banjara Hills Police Station, Hyderabad, who recorded the statement of the deceased under Section 161 Cr.P.C. The Investigating Officer did not consider the attendance particulars of the 2nd petitioner-A5 though the same was collected by him. Without conducting proper investigation in accordance with law and also without considering the statements of the witnesses properly, the Investigating Officer has laid the charge sheet against the petitioners herein, at the instance of the *de facto* complainant, and LW11, a Police Constable. There is no eye witness to the entire incident. None of the witnesses spoke about the alleged harassment of the deceased by the petitioners herein. Even then just to harass the petitioners herein, the *de facto* complainant with the help of LW11, his co-brother, implicated the entire family of the petitioners herein.

6. Learned counsel for the petitioners would submit that though the alleged incident took place on 10.05.2014, the complaint was lodged on 19.7.2014 at 8.00 P.M with delay from the actual date of incident. Neither the parents nor relatives of the deceased bothered to lodge a complaint, but, surprisingly, on the date of death of the deceased, the *de facto* complainant, father of the deceased, has lodged a complaint. Dying declaration of the deceased was not recorded since there was no crime registered with regard to the said incident. Thus, the important and vital piece of evidence was missing in the

entire investigation. Learned counsel would further submit that the complaint was lodged with WPS Mahabubnagar Police Station, which in turn, registered a case in Cr.No.14 of 2014 for the offences under Sections 498-A, 307 of IPC and Sections 3 and 4 of the Dowry Prohibition Act. Even after adding Sections 302 and 304-B of IPC, WPS, Mahabubnagar Police Station, has not transferred the investigation to the concerned jurisdictional Police Station. Post-Mortem was conducted on 20-07-2014 from 3.00 P.M to 4.30 P.M. The said Post-Mortem report clearly shows that the approximate time of death of the deceased was about 18 to 20 hours prior to Post-Mortem, which would be on 19-7-2014 at about 7.00 PM to 9.00 P.M. Thus, the FIR was registered after the death of the deceased under Sections 307 IPC, 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act. In the charge sheet, it is mentioned that the Investigating Officer has seized the acid bottle from the scene of offence from the residential house of the *de facto* complainant after almost 70 days from the date of the alleged incident. The elder brother of A1 paid some amount towards medical expenses of the deceased and in proof of the same, he has filed his bank statement.

7. Learned counsel for the petitioners would submit that the contents of the charge sheet clearly shows that there are no allegations, much less serious allegations, levelled against the petitioners herein and that the *de facto* complainant in collusion with LW11 implicated the petitioners herein in a false case. The 2nd

petitioner-A5 is a Judicial Officer and 1st petitioner-A4 is a Homeopathy Doctor. Continuation of criminal proceedings in PRC would cause great prejudice to the petitioners herein. With the aforesaid submissions, learned counsel sought to quash the proceedings in PRC against the petitioners herein.

8. Despite of service, there is no representation on behalf of the 2nd respondent.

9. Learned Public Prosecutor, on instructions, would submit that there are allegations against A1. The date, time and place are mentioned. As per the contents of the charge sheet, the allegations with regard to the offence under Section 302 of IPC are only against A1. Since the contents of the complaint constitute a cognizable offence, the police have registered the above said crime and after conducting the investigation laid charge sheet against the petitioners. The delay in lodging the complaint has no explanation. There are several triable issues. The petitioners have to face the trial and prove their innocence, instead they have approached this Court by way of filing the present criminal petition. With the above submissions, learned Public Prosecutor sought to dismiss the present petition.

10. The above said rival submissions would reveal that the alleged incident of consumption of acid took place on 10.5.2014 at about 20.30 hours. The deceased died on the intervening night of 19/20.7.2014 at about 00.15 hours. The 2nd respondent has lodged the

present complaint on 19.7.2014 at about 20.00 hours. The second respondent, father of the deceased, lodged the present complaint after 69 days of the actual date of incident. The only explanation offered by the 2nd respondent - *de facto* complainant in the complaint is as follows:

“When LW1 was intending to report the matter to the police, A1 to A6 prevented LW1 from proceeding with the police station, assuring him that they will take care and they will bear all the medical expenses and they will not harass in future, upon which, LW1 who was influenced by A1 to A6 did not file the complaint immediately at the police station.”

11. Except the same, there is no explanation, much less plausible/satisfactory explanation, offered by the 2nd petitioner-*de facto* complainant and also by the prosecution about the said abnormal delay of 69 days in lodging the complaint. It is also relevant to note that the 2nd respondent-*de facto* complainant is working as a Lineman in BSNL Department. LW11, maternal uncle (mother sister's husband) of the deceased is a Police Constable, LW10, cousin of the deceased, is a student. Thus, the deceased family is an educated family. They are aware of the consequences of non-lodging of complaint immediately and also the delay caused in lodging the complaint.

12. According to the *de facto* complainant, A1, demanded additional dowry, forcibly took the deceased to the wash room, made

her to consume acid of about 50 ml. They have shifted the deceased to the SVS Hospital and on the advice of the Doctors, they have shifted the deceased to Apollo hospital on 11.5.2014 at about 7.20 am. Thereafter, she was discharged from Apollo hospital on 22.05.2014 against medical advice and admitted in Susrutha Hospital, Mahabubnagar. Again, the deceased was shifted to Apollo hospital on 26.5.2014 on the ground that the condition of the deceased was critical. Thereafter, on 3.7.2014, the 2nd respondent-*de facto* complainant has shifted the deceased to Mahabubnagar against the medical advice on the ground that he is incurring huge amount towards medical expenses and the accused did not pay the same.

13. The said facts would reveal that the deceased was shifted to Apollo hospital on 11.5.2014 on the ground that her condition was serious. She was discharged from Apollo Hospital on 22.5.2014 and thereafter, shifted to Susrutha Hospital on 23-05-2014 and again, she was shifted to Apollo on 26.5.2014 on the ground that her condition was critical. It is trite to note that the 2nd respondent on the day of death of the deceased lodged a complaint with WPS, Mahabubnagar only on 19.7.2014. Thus, there is abnormal delay of 69 days in lodging the complaint against the petitioners.

14. Referring to the contents of the complaint, Post-Mortem examination report, and contents of the charge sheet, learned counsel for the petitioners would submit that the deceased died on 19.7.2014 in the intervening night of 19/20.7.2014 at 00.15 hours and whereas

the 2nd respondent-*de facto* complainant has lodged the complaint on 19.7.2014 at 20.30 hours. Learned counsel would further submit that the Post-Mortem examination report would clearly reveal that approximate time of death of the deceased is 18 to 20 hours prior to Post-Mortem examination, which would be on 19.7.2014 at about 7.00 to 9.00 PM, which would mean, by the said time, the deceased died. But, surprisingly, FIR was registered for the offences under Sections 307 IPC and 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act.

15. It is settled principle of law that delay in lodging the complaint *per se* is not a ground to quash the proceedings in a criminal case. At the same time, it cannot be ignored. There should be some explanation, much less, logical/satisfactory explanation by the *de facto* complainant/ prosecution with regard to the delay in lodging the complaint.

16. In **Saheb Rao v. State of Maharashtra**¹, the Hon'ble Supreme Court held that there should be satisfactory/logical explanation by the prosecution for the delay caused in lodging the complaint.

17. In **State of A.P v. M. Madhusudhana Rao**², the Apex Court while dealing with the facts of the said case, where there was delay of one month in lodging the complaint, held that the said delay is embellishment and exaggeration, creation of afterthought. In the said

¹. (2006) 9 SCC 794

². 2008 (14) SCC 118

case, FIR was lodged after one month of forcible consumption of poison. A delayed report not only gets bereft of the advantage spontaneity, the danger of the introduction of coloured version, exaggerated account of the incident or a concocted story as a result of deliberations and consultations also creeps in, casting a serious doubt on its veracity.

18. It is essential that the delay in lodging the report should be satisfactorily explained. In the said case, the incident was occurred on 19.04.1996 and FIR was lodged on 22.05.1996. While dealing with the said facts of the case, the Apex Court held that no explanation, circumstances raises considerable doubt regarding the genuineness of the complaint and the veracity of the evidence of the complainant. Therefore, it is unsafe and unreliable.

19. In view of the law laid down in the judgments referred to supra, coming to the facts on hand, it is relevant to note that in the present case, the alleged incident of forcible consumption of acid was taken place on 10.5.2014. The second respondent-*de facto* complainant has lodged the complaint on 19.7.2014 at about 20.30 hours. Thus, there is delay of 69 days. The only explanation offered by the 2nd respondent is that the accused promised that they will bear the medical expenses and they will look after the deceased and they will not harass the deceased in future. Under the said influence, he has not given the complaint immediately.

20. As discussed supra, the second respondent-*de facto* complainant (LW1) is father of the deceased and is working as a Lineman in BSNL. LW11 is maternal uncle of the deceased and co-brother of the second respondent-*de facto* complainant, working as a Police Constable. LW10, cousin of the deceased, is also a student. All of them are educated people. Even then, they have not lodged the complaint at the earliest point of time i.e., immediately after the incident. Thus, there is abnormal delay of 69 days in lodging the complaint by the 2nd respondent. According to this Court, the above said explanation offered by the 2nd respondent-*de facto* complainant is not satisfactory. The said explanation is not plausible and, therefore, it creates a doubt. It is also relevant to note that there is no evidence to the effect that accused have promised the *de facto* complainant that they will bear the medical expenses, take care of the deceased welfare without any harassment.

21. It is also relevant to note that A3, mother of A1 specifically made requests/representations to the Deputy Inspector General of Police, Hyderabad Range, Hyderabad on 1.2.2017, Superintendent of Police, Mahabubnagar on 13.4.2015, Inspector General of Police, Hyderabad Region, Hyderabad, on 28.3.2016, Director General of Police, Hyderabad, on 12.09.2017 to conduct investigation by jurisdictional police in proper lines. She has specifically narrated the entire facts in the said representations. Copies of the said representations were filed in the present case. A perusal of the same

would reveal that they were served on the above said Officials. Even then, without considering the said requests/representations, according to the learned counsel for the petitioners, WPS Mahabubnagar lacks the jurisdiction and they have added the section of law i.e., Sections 302 IPC and 304-B IPC. Even then, after adding the said sections, WPS had conducted investigation instead of transferring the case to the concerned jurisdictional Police Station. Thus, the entire investigation conducted by the Investigating Officer is in violation of procedure laid down under Cr.P.C.

22. In **Ashok v. State of Maharashtra**³, the Apex Court held as under:

“Keeping the above points in mind, we are of the opinion that in the present case the prosecution has failed to discharge its initial burden itself. Therefore, the question of burden of proof shifting to the accused to explain the happening of incidents does not arise. First and foremost, the delay of one month in filing FIR at the very face of it makes the entire case of the prosecution as concocted and an afterthought. There is no explanation as to why did the parents of Shubhangi not make any complaint or FIR immediately after the recovery of her dead body. It is surprising that nowhere in the case of the prosecution this delay has been explained.”

³. (2015) 2 SCC (Cri.) 636

23. In **Ramaiah @ Ramu v. State of Karnataka**⁴, the Apex Court held that the delay in lodging FIR, *per se*, may not render prosecution case doubtful as there may be various reasons, in such, prosecution needs to offer some explanation for the delay. Thus, in the present case, there is abnormal delay of 69 days, which would be explained by the prosecution. The said fact creates a doubt about lodging of the complaint immediately after the alleged incident of forcible consumption of acid against the accused.

24. As stated above, the marriage of the deceased with A1 was performed on 25.05.2011. Even as per the complaint, they have led happy marital life for about one year. They have blessed with a son on 20.4.2012. According to the second respondent, the accused have started demanding additional dowry thereafter. The allegation in the complaint is that on the eve of Diwali, the accused demanded additional dowry of Rs.4,00,000/- for purchase of new car and the *de facto* complainant paid an amount of Rs.1,00,000/-. Again on 8.5.2014, the deceased came to the house of the *de facto* complainant to attend marriage ceremony of relatives. There was demand of additional dowry of Rs.3,00,000/-, wherein a quarrel took place and A1 forcibly made the deceased to consume acid resulting her death while undergoing treatment. There are no allegations, much less, specific allegations in the complaint with regard to demand of additional dowry at the time of marriage or at the relevant point of

⁴. (2014) 9 SCC 365

time. The allegations alleged against the petitioners herein are general and omnibus allegations. There are no specific allegations such as date, time and place of alleged demand of additional dowry by the petitioners herein. There is no dispute that the 2nd petitioner is a Judicial Officer, worked at Mancherial and thereafter, at Nizamabad at the relevant point of time. The 1st petitioner is a Homeopathy Doctor. According to her, she has accompanied the 2nd petitioner wherever he was posted.

25. Learned counsel for the petitioners would submit that the petitioners are nothing to do with the marital life of the deceased with Accused No.1.

26. The Apex Court in **Preeti Gupta v. State of Jharkhand**⁵ categorically held that the members of the family of the husband cannot be roped in family issues and dowry harassment cases. *Prima facie*, there should be specific allegations and specific instances such as time, date and place of alleged demand of additional dowry and harassment of the women. The same are lacking in the present case.

27. As discussed supra, there are no allegations, much less specific allegations against the petitioners herein. *Prima facie*, allegations are made only against Accused No.1.

⁵. (2010) 7 SCC 667

28. In **Geeta Mehrotra v. State of UP**⁶, the Apex Court held as under:

“However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegation of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasize by highlighting is that, if the FIR as it stands does not disclose specific allegation against accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the Court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant-wife. It is the well settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the Court would be justified in quashing the proceedings preventing the abuse of the process of law. Simultaneously, the Courts are expected to adopt a cautious approach in matters of quashing specially in cases of matrimonial dispute whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of over-implication by involving the entire family of the accused at the instance of the

⁶. (2012) 10 SCC 741

complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding.”

29. In view of the said law laid down by the Apex Court, coming to the facts on hand, there are no allegations, much less specific allegations, against the petitioners.

30. It is also relevant to note that LW23-Parshiya Srinivasa Rao, Police Constable, working in Banjara Hills Police Station, has recorded the statement of the *de facto* complainant on 11.05.2014 at 7.308.A.M. In the said statement, the 2nd respondent has stated that on 8.5.2014 his daughter came to his house at Mahabubnagar to attend marriage function of her brother-in-law. On 11.5.2014, A1, who is his son-in-law, came to Ayodhya Nagar, Hanwada, Mahabubnagar, to attend the death ceremony of his grand mother. His daughter was suffering from ill-health since last three days and was upset. On 10-05-2014 at 2200 hours when he and his family members were present in the hall, meanwhile his daughter went to washroom after some time she came out and was vomited. Then they rushed to her and she has informed that she has consumed toilet cleaning acid, which was there in the washroom. Immediately, the 2nd respondent and his family members rushed her to SVS Hospital for treatment and the said fact was informed to A1, who was at his grand mother's home. Immediately, A1 rushed to the hospital and on the advice of the Doctor, they have shifted the deceased to Apollo Hospital, Film

Nagar, Hyderabad, for better treatment. The said incident took place at his residence and he has no suspect or involvement of any one. The said fact of recording of statement of LW.1, and LW.23, constable, P.S. Banjara Hills, was mentioned in the statement of LW.23. Though the said facts were referred to in the charge sheet, the same were not considered.

31. Learned Counsel has filed certified copy of the said statement of LW1. Referring to the statements of LW1 and other witnesses recorded by the Police and also by Tahsildar, Hanwada Mandal, Mahabubnagar i.e., LW.50, learned counsel would submit that the said statements would show that the Investigating Officer has not conducted the investigation properly. According to him, LW15 did not conduct any inquest.

32. A perusal of the Attendance Certificate dated 25.7.2014 issued by the I Additional Junior Civil Judge, I/c. II Additional Junior Civil Judge, Nizamabad, would reveal that the 2nd petitioner was working as II Additional Junior Civil Judge, Nizamabad, and he has worked with effect from 1.5.2014 to 11.5.2014 and availed summer vacation with effect from 12.5.2014 to 20.5.2014 and worked with effect from 21.5.2014 to 31.5.2014. He has availed public holiday on 25.5.2014. The Casual Leave Register and Attendance Register in respect of the said Court would reveal the said fact. Though it is mentioned in the charge sheet that they were collected, the Investigating Officer did not refer the same in the charge sheet. The same were not considered by

the Investigating Officer while laying the charge sheet. The Investigating Officer has not examined any official from the said Court including the Officer, who has issued the Attendance Certificate, Casual Leave Register and Attendance Register in respect of the second petitioner.

33. Thus, the Investigating Officer has not considered the said facts and also the fact that the both the petitioners were not there at the relevant point of time at Mahabubnagar. It is also trite to note that the Investigating Officer has recorded the statement of LW23-Parshiya Srinivasa Rao, Police Constable 4929 of Banjara Hills Police Station, who recorded the statement of the deceased under Section 161 Cr.P.C at Apollo Hospital. There is no reference with regard to the statement of LW1 recorded by LW23 under Section 161 Cr.P.C. LW1 herein did not make any allegations in any one of the accused. On the other hand, he has specifically mentioned that the incident took place at his residence, but he has no suspicion on anybody or involvement of anyone. The said statement of LW23 and statement of LW1 recorded under Section 161 Cr.P.C. were not at all referred and considered by the Investigating Officer in the charge sheet.

34. A Division Bench of Bombay High Court at Nagpur Bench in **Shabnam Sheikh vs. State of Maharashtra**⁷ held as under:

“Nowadays, it has become a tendency to make
vague and omnibus allegations, against every

⁷. Criminal Application No.114 of 2014, decided on 15.10.2020

member of the family of the husband, implicating everybody under Section 498-A of the Penal Code. It is necessary for the Courts to carefully scrutinize the allegations and to find out if the allegations made really constitute an offence and meet the requirements of the law at least *prima facie*.”

35. There should be some nexus between the demand of dowry, cruelty or harassment based upon such demand on the date of the death. The test of proximity has to be applied. Reasons for delay should come on record. There is no explanation, but the name given by the complainant as to why the complainant maintained stoic silence. The testimony of the witnesses alleging dowry demand has to be tested more stringently and with some caution. Analysis of the statement has to be made.

36. As discussed supra, there is no plausible explanation for the abnormal delay of 69 days in lodging the complaint. The prosecution failed to establish the nexus among the demand of dowry, cruelty and harassment based upon such demand on the date of the death. There are no allegations, much less specific allegations, against the petitioners herein with regard to the alleged demand of dowry and harassment.

37. As per the contents of the charge sheet, the allegation of alleged commission of offence under Section 302 IPC is only against A1. The offences alleged against the petitioners herein are Sections 304-B, 498-A, 109 read with Section 34 IPC.

38. In view of the same, it is relevant to extract Section 498-A IPC, which reads under:

“Husband or relative of husband of a woman subjecting her to cruelty-whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may tend to three years and shall also be liable to fine.

Explanation-For the purposes of this section, “cruelty” means-

(a)Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health(whether mental or physical) of the woman;
or

(b)Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

39. It is also relevant to extract Section 304-B IPC, which reads as under:

“(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation-For the purpose of this sub-section, “dowry” shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

- (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

40. It is also relevant to extract the provisions of Section 113-B of the Indian Evidence Act, which deals with presumption as to dowry death.

“Presumption as to dowry death: When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.”

41. A perusal of the above said provisions would reveal that the offence under Section 304-B of IPC requires the following ingredients:

- (1) Within 7 years of marriage, they must happen the death of a woman;
- (2) the death must be caused by any burns or bodily injury, or the death must occur otherwise than under normal circumstances;
- (3) it must be established that soon before her death, she was subjected to cruelty or harassment;

- (4) the cruelty or harassment may be by her husband or any relative of her husband; and
- (5) the cruelty or harassment by the husband or relative of the husband must be for, or in connection with, any demand for dowry.

42. It is also relevant to note that as per Section 304-B of IPC husband or any relative of the husband shall be presumed that caused her death.

43. Section 113-B of the Indian Evidence Act, 1872, provides with presumption as to dowry death. When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. It is, no doubt, a rebuttable presumption, and it is open to the husband and his relatives to show the absence of ingredients of Section 304-B of IPC.

44. It is also relevant to note that the foremost aspect to be established by the prosecution is that there was reliable evidence to show that the woman was subjected to cruelty or harassment by her husband or his relatives which must be for or in connection with any demand for dowry, soon before her death. Before the presumption is based, it must be established that woman was subjected by such person to cruelty or harassment and it is not in any cruelty that

becomes the subject matter of provision, but it is the cruelty or harassment it is mental or in connection with demand for dowry.

45. As per Section 498-A of IPC, there should be willful conduct of nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman and harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand, shall be liable to punishment.

46. It is also apt to note that there is no definition of dowry in IPC. Section 2 of the Dowry Prohibition Act defines dowry, which says “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; (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. By virtue of an Amendment *vide* Act63/84 which came into force w.e.f., 2.10.1985, the words in connection with the marriage of the said parties were inserted by the legislature. Therefore, the legislature in its wisdom, made it very clear that the dowry should be in connection with the marriage of parties.

47. The Apex Court in **Satvir Singh v. State of Punjab**⁸ held that there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is at any time after the marriage. The third occasion may appear to be an unending period. But the crucial words are in connection with the marriage of the said parties. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of dowry. Hence the dowry mentioned in Section 304-B of IPC should be any property or valuable security given or agreed to be given in connection with the marriage.

48. It was further held that it is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B of IPC is to be invoked. But it should have happened soon before her death. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately or before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time

⁸. 2001 CrL.L.J. 4625

by employing the words soon before her death is to emphasis the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her. If the interval which elapsed between the infliction of such harassment or cruelty and her death is wide the Court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death.

49. The Apex Court in **Dinesh Seth v. State of N.C.T of Delhi**⁹ by referring to several other judgments rendered by it held that an offence under Section 498-A of IPC is made out if the woman is subjected to physical assault, humiliation, harassment and mental torture.

50. The ingredient of cruelty is common in Sections 304-B IPC and 498-A IPC, but the width and scope of two sections is different, inasmuch as Section 304-B deals with cases of death as a result of cruelty or harassment within seven years of marriage, Section 498-A has a wider spectrum and it covers all cases in which the wife is subjected to cruelty by her husband or relatives. A perusal of the charge sheet and statements of the witnesses would reveal that there is no mention or none of the witnesses spoke about the alleged

⁹. Crl.A.No.1239 of 2003, decided on 18.8.2008

harassment of the deceased demanding dowry at any point of time or soon before her death by the accused. Of course, though, they are triable issues, as discussed supra, the entire charge sheet and statements of the witnesses lacks the said ingredients of the offences alleged against the petitioners herein and, therefore, the facts of the present case squarely falls on the parameters laid down by the Apex Court in **State of Haryana v. Bhajan Lal**¹⁰ and the same reproduced hereunder:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) 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

¹⁰. 1992 Supp. (1) SCC 335

reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) 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."

51. In view of the law laid down by the Apex Court and also coming to the facts of the case on hand, as discussed above, there is abnormal delay in lodging the complaint. There is no explanation, much less logical/satisfactory explanation, by the second respondent in lodging the complaint with abnormal delay.

52. The Investigating Officer has not considered the deposition of LW23 and the statement of LW1-second respondent recorded by him under Section 161 Cr.P.C. wherein the second respondent-*de facto* complainant has stated that the incident took place at his residence, he is not having any suspicion for the same and he is not suspecting anybody.

53. The Investigating Officer has not considered the Attendance Certificate issued by the II Additional Junior Civil Judge and also the

Casual Leave Register and Attendance Register in respect of the second petitioner.

54. In view of the above said discussion, the present proceedings in P.R.C.No.9 of 2019 are liable to be quashed against the petitioners herein only for more than one count.

55. The Apex Court in catena of decisions categorically held that the defence of the accused cannot be considered in an application Section 482 of Cr.P.C and the criminal proceedings have to be quashed by the High Court by invoking its inherent powers under Section 482 of Cr.P.C. in rarest of rare cases with great caution and with great circumspection.

56. In view of the above said discussion, according to this Court, it is a rarest of rare case, where this Court can invoke its inherent powers under Section 482 of Cr.P.C. to quash the proceedings in P.R.C.No.9 of 2019. According to this Court, the case on hand will fall under one of the seven categories laid down by the Apex Court in **Bhajanlal**¹⁰.

57. In view of the above said discussion, the proceedings in P.R.C.No.9 of 2019 pending on the file of Principal Junior Civil Judge, Mahabubnagar, are liable to be quashed against the petitioners herein - accused Nos.4 and 5 only.

58. Accordingly, the Criminal Petition is allowed and the proceedings in P.R.C.No.9 of 2019 on the file of the Principal Junior Civil Judge, Mahabubnagar, are quashed against the petitioners-A4 and A5 only.

As a sequel, miscellaneous petitions, if any, pending in the Criminal Petition shall stand closed.

JUSTICE K. LAKSHMAN

Date: 01.06.2021

Rkk