
(1997) 11 AP CK 0044
In the Andhra Pradesh High Court
Case No : Criminal P. No. 101 of 1997

Ramesh Venkat Perumal

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision : 10-11-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 188
Penal Code, 1860 (IPC) — Section 498A

Citation : (1998) 1 ALD(Cri) 122 : (1998) 1 ALT(Cri) 1 : (1998) 2 DMC 523

Hon'ble Judges : T. Ranga Rao, J

Bench : Single Bench

Advocate : Ram Narayan, for Jagadish, for the Appellant; The Public Prosecutor and C. Padmanabha Reddy, for A.I. Raju, for the Respondent

Final Decision : Dismissed

Judgement

T. Ranga Rao, J.—This petition is filed u/s 482, Cr. P.C. to quash the proceedings in CC No. 94/1996 on the file of the XXII Metropolitan Magistrate, Hyderabad.

2. The facts in giving rise to the filing of this petition are, briefly, as follows:

The petitioner is facing trial for an offence u/s 498-A of IPC on the charge-sheet filed by Inspector of Police, Women Police Station, C.I.D., Hyderabad on the complaint given by his wife, Smt. Divya Ramesh. It is alleged that her marriage with the petitioner was performed on 14.2.1994 at Sathya Sai Nigamagamam, Hyderabad, and after marriage they went to Madras and Tirupathi and thereafter left to Arlington, U.S.A. It is further alleged that she was subjected to harassment, humiliation and torture during her short stay at Madras as well as U.S.A. and when she refused to accept the request of the petitioner to terminate her pregnancy, she was dropped at Dallas Air Port penniless and she returned back to India with the assistance of her aunty and on account of the humiliation and mental agony she suffered miscarriage at Hyderabad.

3. The learned Counsel for the petitioner submitted that even according to the

allegations mentioned in the charge-sheet, she was subjected to harassment while she was in U.S.A. and as the offence was committed outside India, no such offence shall be enquired into or tried in India, except with the prior sanction of the Central Government, as provided u/s 188, Cr. P.C. and admittedly no such sanction was obtained by the Investigating Agency to prosecute the petitioner and hence, the proceedings in C.C. No. 94/96 on the file of the XXII Metropolitan Magistrate, Hyderabad are liable to be quashed, and he relied on Somasundaram Pillai & Anr. v. Kanakasabai Pillai & Anr., AIR 1935 Mad. 327; Re M.L. Varghese AIR 1947 Mad. 352, and The State Vs. Om Parkash Salig Ram, .

4. But the learned Senior Counsel appearing for the respondent, Mr. C. Padmanabha Reddy, submitted that at the time of marriage the petitioner demanded 60 sovereigns of gold and Rs. 50,000/- for purchase of furniture and father of the de facto complainant gave the said cash and jewellery and the allegations in the complaint clearly show that she was subjected to humiliation during her stay at Madras, Tirupathi and was subjected to physical and mental agony while she was in U.S.A. and ultimately she was compelled to return back to India; on account of the mental harassment she suffered miscarriage at Hyderabad and thereafter also the petitioner insisted to comply the demand of his father to transfer the house in favour of the de facto complainant as a condition precedent to join him at U.S.A. and it is a continuing offence and he relied on Smt. Sujatha Mukherjee v. Prashant Kumar Mukherjee 1997 (2) ACrl. LR 679; Bhag Singh & Ors. v. Sunitha 3 (1995) CCR 419 : Vijayratan Sharma & Ors. v. State of U.P. & Anr.: 1988 CrL. LJ 1581.

5. It is not in dispute that the marriage in between the petitioner and the de facto complainant was celebrated at Sathya Sai Nigamagamam on 14.2.1994, thereafter they stayed at Tirupathi and Madras and left to U.S.A. According to the de facto complainant she was subjected to humiliation, harassment and torture, both mentally and physically and at page 3 of her complaint, she mentioned asunder:

"..... The harassment, torture and mental agony caused to me by my husband, mother-in-law and brother-in-law ultimately lead to the miscarriage of my pregnancy and my health is totally shattered. My four months' stay in the U.S.A. was like a nightmare to me and even till now I could not recover from the shock. Subsequent to my miscarriage, I wrote several letters to my husband to call me back to the States since his wife and requirement of abortion was over. He never cared to acknowledge or to reply. On the other hand after some time thereafter my father-in-law came to Hyderabad in the middle of August, 1994 as if to enquire about my welfare but in fact to verify whether the abortion is true or not. When my parents requested him to write to his son to arrange to take me back, he insisted that the second condition of transferring the residential house in my favour is a must for me to join my husband. However, my parents could not concede for the same and requested him not to be harsh on that aspect. He left the place stating that if my parents are interested in my welfare they must

comply with the demand otherwise they should agree for a divorce and then only my jewellery will be returned..."

6. Therefore, it is manifest from the above averments and other material on record, the petitioner parents demanded dowry at the time of marriage and she was subjected to humiliation and harassment when she stayed at Tirupathi and Madras and she also parted with her jewellery at the behest of her mother-in-law with the insistence of her husband and on reaching U.S.A., the harassment continued and she was not even allowed to speak to her parents on phone and she was made to work like a maid-servant and when she resisted she was made to run around the tennis court late in the night as a measure of punishment. It is further alleged that when she became pregnant, the petitioner insisted for termination of pregnancy and when she refused she was dropped at Dallas Air Port penniless and she contacted her aunt and flew back to Hyderabad and thereafter on account of mental agony she suffered miscarriage; and the doctor who attended on her at the time of miscarriage opined that the miscarriage was due to mental tension and agony. Thus she suffered miscarriage at Hyderabad in consequence of physical and mental agony meted out to her by the petitioner while she was stayed at U.S.A. Subsequently, the petitioner insisted to comply with the request of his father to transfer the house her favour, as a condition precedent to join him and thus the allegations fully establish the mental harassment continued even after she returned back to India and stayed at Hyderabad with her parents. If a married woman is forced to stay at her parents house in order to meet the illegal demands of her husband or relatives of her husband, naturally she suffers mental agony even during her stay at her parents' house and hence, it is a continuing offence and continues during her stay at her parents' house. The Supreme Court in Sujatha Mukherjee's case, facts of which are that the complainant, Sujatha Mukherjee lodged complaint before the Chief Judicial Magistrate, Raipur against her husband, parents-in-law alleging harassment both at her parents-in-law house at Rajgar and at her parents' house, at Raipur, and observed in para 7 of the judgment as under:

".....We have taken into consideration the complaint filed by the appellant and it appears to us that the complaint reveals a continuing offence of maltreatment and humiliation meted out to the appellant in the hands of all the accused-respondents and in such continuing offence, on some occasions all the respondents had taken part and on other occasion, one of the respondents had taken part. Therefore, Clause (c) of Section 178 of the Code of Criminal Procedure is clearly attracted..."

7. The Madhya Pradesh High Court in similar circumstances in Bhag Singh's case, observed as under :

".....Once it is held that the harassment continues at the place of residence of her father where the complainant is residing at the time of filing of the complaint, I am firmly of the view that the offence is a continuing one and in view of Section 178(c) of the Code of Criminal Procedure which inter alia

provides that where an offence is continuing one, and continues to be committed in local areas than one, it may be inquired or tried by a Court having jurisdiction over any of such local areas."

The Allahabad High Court, in Vijai Ratan Sharma's case also took the same view.

8. The other contention of the learned Counsel for the petitioner, Mr. Ram Narayan, is that sanction of the Central Government is necessary, as the alleged offence took place in U.S.A. But the learned Senior Counsel, Mr. C. Padmanabha Reddy, submitted that as the offence is a continuing offence, sanction of the Central Government is not necessary and even otherwise, the sanction as contemplated u/s 188 of the Code of Criminal Procedure is not a condition precedent for taking cognizance of the offence and it can be produced during trial of the case and on that ground the proceedings cannot be quashed and he relied on *Ajay Agarwal v. Union of India* AIR 1993 SC 1637. The facts leading to this decision are that the appellant, Ajay Agarwal, and four others hatched a conspiracy in Chandigarh to cheat Punjab National Bank and in furtherance thereof, V.P. Anand floated three new link enterprises and opened three accounts in their respective names in Punjab National Bank and in furtherance thereof, V.P. Anand, a non-resident Indian at Dubai, running M/s. Sale International agreed and got credit facility by way of Foreign Letters of Credit Nos. 4069-P, 4070-P and 4084-P issued proforma invoices of the said concern addressed to Punjab National Bank through Nanak Industries and New Link Enterprises and Ranjit Marwa, the Manager of the Punjab National Bank, in conspiracy with the appellant issued foreign letters of credit in violation of import policy and the bills of lading were addressed to Punjab National Bank at Chandigarh and thus cheated Punjab National Bank to the tune of Rs. 40,30,320/- and the charge-sheet was filed for the offences under Sections 120-B, 420, 468 and 471, IPC before the Chief Judicial Magistrate, Chandigarh. Then a question arose that the conspiracy and the acts done were outside India and whether the prosecution is maintainable without sanction of the Central Government as provided u/s 188, Cr. P.C. The matter came up before the Supreme Court and the Apex Court held that the sanction u/s 188 of the Code is not a condition precedent to take cognizance of the offence and if need be, it can be obtained before the trial begins and further observed that the conspiracy in the said case was initially hatched in India and in confabulation with a non-resident Indian, since the offence has been committed in continuation culminating into cheating the Bank in India, the need to obtain sanction for various offences under proviso to Section 188 is obviated. Therefore, there is no need to obtain the sanction from the Central Government. The Supreme Court also considered the decision in *Somasundram Pillai's* case and *M. L. Varghese's* case, relied on by the learned Counsel for the petitioner and held that in the said cases, the offence took place outside India and hence, the Courts in British India have no jurisdiction to try the offence without prior sanction. Their Lordships declined to accept the submission that even part of the offence is committed outside India, would attract Section 188, Cr. P.C.

9. As already held, the offence u/s 498-A of IPC is a continuing offence and the mental harassment has continued during the stay with her parents at Hyderabad. Therefore, I am unable to accept the contention of the learned Counsel for the petitioner that sanction of the Central Government, as contemplated u/s 188 of the Code, is required to prosecute the petitioner. Even otherwise, it is not a condition precedent to initiate criminal proceedings and the same can be obtained, if need be, during Trial of the case and hence, it cannot be said that the proceedings are liable to be quashed on that ground.

10. The learned Counsel for the petitioner also filed an order 20.2.1996 granting divorce in favour of the petitioner against the de facto complainant; but the complaint was filed on 3.12.1994 and the police investigated the case and filed charge-sheet u/s 498-A of IPC on 16.4.1996. The Supreme Court observed with regard to the validity of the foreign judgment in Smt. Satya Vs. Shri Teja Singh, and observed as under :

".....The validity of a foreign judgment rendered in a civil proceeding must be determined in India on the terms of Section 13, Civil Procedure Code. If the judgment falls under any of the clauses of Section 13 it will cease to be conclusive as to any matter thereby adjudicated upon and will be open to collateral attack on the grounds mentioned in Section 13. It is besides the point that the validity of the judgment is questioned in a Criminal Court and not in a Civil Court. Thus a foreign decree of divorce obtained by the husband from the Nevada, State Court in U.S.A. in absentum of the wife without her submitting to its jurisdiction will not be valid and binding on a Criminal Court in proceedings for maintenance u/s 488, Criminal Procedure Code when it is found from the facts on record the decree of divorce was obtained by fraud or by making a false representation as to a jurisdictional fact viz. that the husband was a bona fide resident and was domiciled in Nevada. The decree being open to collateral attack on the jurisdictional fact the recital in the judgment of the Nevada Court that the respondent was a bona fide resident of and was domiciled in Nevada is not conclusive and can be contradicted by satisfactory proof.

In para 51 of the judgment, their Lordships further observed as under :

".....Section 41 of the Evidence Act inter alia provides that a final judgment of a competent Court in the exercise of the matrimonial jurisdiction is conclusive proof that the legal character which it confers or takes away, accrued or ceased at the time declared in the judgment for that purpose. But the judgment has to be of a Competent Court, that is, a Court having jurisdiction over the parties and the subject matter. Even a judgment in rem is, therefore, open to attack on grounds specified in Section 44. Fraud, in any case bearing on jurisdictional facts, vitiates all judicial acts whether in rem or in personem....."

In view of the decision of the Apex Court in Smt. Satya's case, the validity or otherwise of the said divorce can be determined after affording opportunity to both the parties in appropriate proceedings and is not of much useful at this

stage.

11. Therefore, in a light of foregoing discussion, the petitioner is not entitled to the relief of quashing the proceedings in CC. No. 94/1996 on the file of the XXII Metropolitan Magistrate. Hyderabad. However, the petitioner is at liberty to urge all the grounds open to him before the Trial Court and the Trial Court is directed to pass appropriate orders without being influenced by any of the observations made in this order.

12. In the result, the criminal petition fails and is accordingly dismissed.