

(2011) 11 AP CK 0040

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 8510 of 2009

Rapolu Anand and 6 others

APPELLANT

Vs

The State of A.P. and another

RESPONDENT

Date of Decision : 01-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 188, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 4, 498A

Citation : (2012) 3 ALT(Cri) 108

Hon'ble Judges : Samudrala Govindarajulu, J

Bench : Single Bench

**Advocate : C. Padmanabha Reddy for Sri A. Ravinder, for the Appellant;
Additional Public Prosecutor for the Respondent-1 and Sri P. Giri Krishna for the
Respondent-2, for the Respondent**

Final Decision : Dismissed

Judgement

Honourable Sri Justice Samudrala Govindarajulu

1. The petitioners 1 to 7/A-1 to A-7 are accused of offences punishable under Sections 498-A I.P.C and Sections 3 and 4 of the Dowry Prohibition Act in C.C. No. 734 of 2008 on the file of IV Additional Judicial Magistrate of the First Class, Warangal. A-1 is husband of the 2nd respondent/defacto-complainant. A-2 and A-3 are parents and A-4 and A-5 are sisters of A-1. A-6 and A-7 are husbands of A-4 and A-5 respectively. A-1 is residing in New Jersey of U.S.A. A-2 and A-3 are residents of Hanamkonda. A-5 and A-7 are residents of Hyderabad. A-4 and A-6 are doctors in Dharmapuri of Karimnagar District. A-2 after retiring as Principal of college is stated to be now working as Principal of a private degree college. A-1 is working as Radio Frequency Engineer in Cell Cite connections. Marriage of A-1 with the 2nd respondent took place on 13.02.2005 at Hanamkonda. Prior to marriage, engagement took place on 03.11.2004 at Hanamkonda. It is alleged that at the time of marriage talks, A-2 to A-7 participated in the house of the 2nd

respondent's father at Hanamkonda and that A-2 to A-7 demanded Rs. 10,00,000/-towards dowry apart from other articles worth about Rs. 5,00,000/-from parents of the 2nd respondent and that finally the alliance was fixed with Rs. 2,00,000/-cash towards dowry, gold worth about Rs. 3,00,000/-and other articles worth Rs. 1,00,000/-. According to the prosecution, most of the demands came from A-4 and A-5. After marriage, A-1 left for U.S.A on 23.02.2005 leaving the 2nd respondent in his parents house at Hanamkonda. It is alleged that during her stay in the house of A-2, A-2 to A-7 taunted her with abusive language for not fulfilling their demands to their expectations though her parents gave all the articles as agreed before elders and that A-2 to A-7 demanded additional dowry of Rs. 1,00,000/-to permit her to join her husband and that as per their demand, parents of the 2nd respondent gave them the said amount and also purchased ticket and sent the 2nd respondent to U.S.A and the 2nd respondent joined her husband on 11.03.2005. It is further alleged that the 2nd respondent was put to misery and harassment by A-1 in U.S.A because of constant communication by A-2 to A-7 with A-1 by way of instigating him and instructing him as well as monitoring him to carry out constant harassment of the 2nd respondent.

2. Placing reliance on Thota Venkateswarlu Vs. State of A.P. tr. Princ'l Sec. and Another, of the Supreme Court, it is contended by the senior counsel for the petitioners that in view of Section 188 Cr.P.C, the lower Court has no jurisdiction to try the case in so far as the alleged incidents of harassment which took place out of India in U.S.A without prior sanction of the Central Government. The Supreme Court observed:

10. The language of Section 188 Cr.P.C is quite clear that when an offence is committed outside India by a citizen of India, he may be dealt with in respect of such offences as if they had been committed in India. The proviso, however, indicates that such offences could be inquired into or tried only after having obtained the previous sanction of the Central Government....

11. Accordingly, up to the stage of taking cognizance, no previous sanction would be required from the Central Government in terms of the proviso to Section 188 Cr.P.C. However, the trial cannot proceed beyond the cognizance stage without the previous sanction of the Central Government. The Magistrate is, therefore, free to proceed against the accused in respect of offences having been committed in India and to complete the trial and pass judgment therein, without being inhibited by the other alleged offences for which sanction would be required.

12. It may also be indicated that the provisions of the Indian Penal Code have been extended to offences committed by any citizen of India in any place within and beyond India by virtue of Section 4 thereof. Accordingly, offences committed in Botswana by an Indian citizen would also be amenable to the provisions of the Indian Penal Code, subject to the limitation imposed under the proviso to Section 188 Cr.P.C.

3. In view of Section 4 I.P.C and Section 188 Cr.P.C, taking cognizance of the offences against all the accused including A-1 for the alleged harassment meted out to the 2nd respondent both in India as well as out of India, is well within the powers of the Magistrate at Warangal. In so far as the allegations of harassment of the 2nd respondent by A-1 in U.S.A are concerned, Section 188 Cr.P.C places a temporary embargo on the Magistrate not to try the case in so far as those allegations are concerned until sanction of the Central Government is obtained in that regard by the prosecuting agency. At any rate, taking cognizance of the case for the above offences against A-1 is not in any way contrary to law and legal procedure. Therefore, the question of quashing the criminal case in so far as A-1 is concerned in exercise of power u/s 482 Cr.P.C cannot be resorted to. It is for the Magistrate to chalk out method of procedure in order to postpone trial of the case against A-1 in relation to the allegations which are said to have occurred in U.S.A. It is open for the Magistrate to split up the case against A-1 who is now in U.S.A and against whom non-bailable warrant is said to have been issued as A-1 is remaining in U.S.A to avoid the process of law in India, and to proceed with the case as against other accused. Even after A-1 is apprehended in this case, the Magistrate will be at liberty to proceed with trial of the case against A-1 also with regard to the alleged events which took place in India, even prior to the prosecution obtaining sanction of the Central Government u/s 188 Cr.P.C.

4. On facts, it is further alleged that A-3 and A-5 purposefully visited house of senior paternal uncle of the 2nd respondent (4th witness in the charge sheet) while making complaints for fewer dowries and abused the 2nd respondent and her parents and that subsequently A-3 and A-5 misinformed A-1 that senior paternal uncle of the 2nd respondent misbehaved with them, with an intention to instigate A-1 to make the 2nd respondent's life miserable. It is further alleged that on the instigation of A-2 to A-7, A-1 used criminal force on the 2nd respondent stating that A-7 gave loan of Rs. 5,00,000/-and the 2nd respondent's father has to discharge the said loan to A-7.

5. It is alleged that A-1 to A-7 demanded Rs. 1,00,000/-from the 2nd respondent's father to meet expenditure for "saree function" of Snigdha who is daughter of A-4 and A-6. It is also alleged that A-2 to A-7 attended marriage of Dr. V. Sailaja who is daughter of senior paternal uncle of the 2nd respondent (4th witness in the charge sheet) where A-2 to A-7 saw gifting of luxurious car, huge property and other articles to the newly married couple and the said incident developed greediness for them and they started instigating A-1 over telephone who in turn used to harass the 2nd respondent in various methods. It is further alleged that on 09.09.2006 A-2 called parents of the 2nd respondent to his house where A-2 to A-7 were present and that A-2 to A-7 threatened parents of the 2nd respondent that they would see that the 2nd respondent is sent back to India if they did not fulfil their demand and stated that several matches offering dowry of more than Rs. 20,00,000/-are pending. The charge sheet enunciates several other incidents in which A-1 to A-7 and more particularly A-2 to A-7 have directly participated in harassing the 2nd respondent and her parents demanding

additional dowry, money and presents. The list mentioned in the charge sheet in this regard is voluminous. There are specific allegations against all the accused including A-3 to A-7. Ultimately, the 2nd respondent joined her parents at India and A-1 filed divorce petition against the 2nd respondent in U.S.A. It is stated by the senior counsel that subsequent to filing of this case, U.S.A Court granted divorce between A-1 and the 2nd respondent. Subsequent grant of divorce will not absolve A-1 and other accused from their alleged criminal activity prior to grant of divorce. The allegations against A-2 to A-7 are not omnibus in nature. Specific allegations are mentioned against A-2 to A-7 with dates and details of incidents. Therefore, I do not find any valid or legal reasons to quash the criminal case against any of the accused pending in the lower Court.

6. In the result, the Criminal Petition is dismissed with a direction to the Magistrate to follow the procedure prescribed u/s 188 Cr.P.C as enunciated by the Supreme Court in Thota Venkateswarlu and also by this Court in this order.