

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2017

BEFORE

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

CRIMINAL PETITION NO.7863/2016

BETWEEN:

1. SRI. SURENDRA BALEKAI
S/O VEERESHAPPA
AGED ABOUT 43 YEARS
R/AT NO.209/A, 2ND FLOOR
14TH CROSS, TANK BUND ROAD
N.R.NAGAR
BENGALURU-560 027.
2. SRI RAVINDRA BALEKAI
S/O VEERESHAPPA
AGED ABOUT 37 YEARS
R/AT NO.209(A), 14TH CROSS
SUBRAMANYANAGAR
BENGALURU-560 027.
3. SRI. VEERESHAPPA
S/O LATE MAHADEVAPPA
AGED ABOUT 68 YEARS
R/AT NO.5-2-20
PARVATI NAGAR
MASKI-584124
TQ: LINGASUGUR
DIST: RAICHUR.
4. SMT. SHARADAMMA
W/O SRI VEERESHAPPA
AGED ABOUT 68 YEARS
R/AT NO.5-2-20
PARVATI NAGAR
MASKI-584124
TQ: LINGASUGUR

DIST: RAICHUR.

... PETITIONERS

(BY SRI. SANGAMESH R.B., ADVOCATE FOR
SRI. CHANDRASHEKAR P. PATIL, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH SUB-INSPECTOR OF
POLICE, AMRUTHAHALLI
POLICE STATION, BY ITS
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560 001.
2. SMT. VIDYA BALIKAI
W/O SURENDRA BALIKAI
MAJOR, R/AT NO. C-305
3RD FLOOR, RENAISSANCE
APARTMENT, BYATARAYANAPURA
BENGALURU-560 094.

... RESPONDENTS

(BY SRI S. RACHAIAH, HCGP FOR R-1;
SRI K. DIWAKAR, ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO QUASH THE COMPLAINT AND FIR IN CR.NO.78/2015 OF AMRUTHAHALLI POLICE, BANGALORE FOR THE OFFENCE P/U/S 498(A), 109 R/W 34 OF IPC AND SEC. 3 AND 4 OF D.P. ACT AND ITS ENTIRE PROCEEDINGS, PENDING ON THE FILE OF C.M.M BANGALORE IN C.C.NO.9621/2016.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioners who are arraigned as accused Nos.1 to 4 in CC No.9621/2016 for the offences punishable under Section 498A, 109, 34 IPC read with Section 3 & 4 of the Dowry Prohibition Act, 1961 are seeking for quashing of said proceedings which is pending on the file of Chief Metropolitan Magistrate, Bengaluru.

2. Facts in brief which has led to the filing of this petition can be crystallised as under:

Marriage between first petitioner and second respondent came to be solemnized on 29.04.2004 and was also registered in the office of the jurisdictional Registrar of Marriage, Davanagere on 14.06.2004. A female child was born out of said wedlock. First petitioner and second respondent were residing at Bengaluru. According to first petitioner, certain disputes had arisen between him and second respondent which according to him was irreconcilable and as such, it led to filing of a petition for divorce before Family Court, Bengaluru in M.C.No.4619/2014

and said petition came to be filed on 03.11.2014 and same is pending. On 27.04.2015 second respondent filed a complaint before first respondent alleging dowry harassment against her husband, brother-in-law, father-in-law and mother-in-law which complaint came to be registered in Crime No.78/2015 for the offence punishable under sections 498A read with Section 34 IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961. On conclusion of investigation, jurisdictional police have filed a charge sheet in the said proceedings which is now pending in CC No.9621/2016 before Chief Metropolitan Magistrate, Bengaluru proceedings which petitioners are seeking for quashing in this petition.

3. I have heard the arguments of Sri R.B.Sangamesh, learned Advocate appearing on behalf of Sri Chandrashekar P Patil for petitioner, Sri K.Diwakar, learned Advocate appearing for respondent-2 and Sri Rachaiah, learned HCGP appearing for the State . Perused the records.

4. At the outset, learned Advocate appearing for petitioners would submit that he would not press his claim for quashing of the proceedings insofar as first petitioner – accused No.1 is concerned. His submission is placed on record.

5. learned Advocate appearing for petitioners would also contend that complaint which came to be lodged by second respondent is only after initiation of proceedings by the first petitioner for divorce and also after filing of an application for amendment of the petition to highlight the subsequent event relating to adulterous life of second respondent being allowed by the family Court and as a counter blast to the said proceedings initiated by first petitioner complaint came to be lodged by second respondent on false and frivolous grounds. He would also submit that contents of the complaint itself would clearly disclose that no offence whatsoever is made out against petitioners-2 to 4 and as such, continuation of criminal proceedings

against them would be an abuse of process of Law. Hence, he seeks for quashing of the proceedings.

6. Per contra, Sri Diwakar, learned Advocate appearing for respondent-2 would submit that allegation made in the complaint would suggest that from the beginning, second respondent was complaining of dowry harassment and only when it became intolerable and when she unable to withstand the torture meted out by the petitioners, she was forced to file the complaint on 27.04.2015 and as such proceedings before jurisdictional Court should not be scuttled by quashing the proceedings. Hence, he prays for dismissal of the petition. However he would hasten to add that if for any reason this Court were to accept contention of the petitioners on any ground whatsoever, plea for quashing of the proceedings insofar as accused Nos.2 to 4 is concerned, then, he prays for a direction being issued to the jurisdictional Court to conclude the proceedings expeditiously within a time frame against accused No.1.

7. Having heard the learned Advocates appearing for the parties and on perusal of the records, it would disclose that there is no dispute about solemnization of marriage between petitioner and second respondent on 29.04.2004 at Davanagere and out of said wedlock, a female child having been born and both first petitioner and second respondent were living together from the date of marriage till disputes arose in the year 2014. Records would disclose that first petitioner has filed a petition for divorce against second respondent in M.C.No.4619/2014 before Family Court, Bengaluru and said petition as already noticed hereinabove came to be filed on 03.11.2014. It is thereafter, on 27.04.2015 second respondent herein lodged a complaint alleging dowry harassment. As to why she did not file the complaint at earlier point of time is an issue to be thrashed out during trial. However, when said complaint is read along with statement made by her it would clearly disclose that petitioners-3 and 4 namely, father-in-law and mother-

in-law, even from the date of marriage till date have continued to reside permanently at Maski, Lingasugur Taluk, Raichur District and she was residing at. In fact, in the complaint itself, second respondent admits that she was residing at Bengaluru along with her husband and accused No.2 i.e., her brother-in-law also was residing with them for some time. In other words, at no point of time, respondents-3 and 4 were residing at Bengaluru and allegation of harassment for demand for dowry is too omnibus against them and as such, it requires to be considered with utmost circumspection. There is no material whatsoever available on record to indicate or suggest that during the period 2004-2014 when first petitioner and second respondent were residing together, there was demand for dowry from accused Nos.3 and 4 and the fact that complaint itself originated after filing of the petition for divorce by accused No.1 speaks volumes about conduct of second respondent insofar as allegations made against respondents-3 and 4 are concerned. In fact, complainant herself also admits in the complaint that

her brother- in - law namely, accused No.2 is also residing separately at Bengaluru and was not residing with them except initially for a few months. However, averments made in the succeeding paragraphs of the complaint would suggest that though petitioners-2 to 4 were not residing at Bengaluru, they had continued to harass her along with petitioner No.1 for dowry cannot be accepted in the light of her own statement before jurisdictional police which is available on record and which clearly disclosed that petitioner Nos. 2 to 4 were not residing with accused No.1- petitioner No.1 and complainant. It is no doubt true that for quashing of the charge sheet, merits of the case and disputed question of fact cannot be gone into. However, when averments made in the complaint and statement made by the complainant itself indicating that petitioners-2 to 4 were not residing along with first petitioner and respondent No.2 it would suffice to arrive at a conclusion that proceedings being continued against them would be an abuse of Law and also abuse of process of Court. Hence, this Court is of the considered

view that proceedings against petitioners-2 to 4 – accused Nos.2 to 4 requires to be quashed.

8. Insofar as the apprehension expressed by learned Advocate appearing for second respondent with regard to proceedings getting delayed, it can be allayed if jurisdictional Court is directed to expeditiously dispose of the matter i.e., within a time frame.

9. In the light of aforestated discussion I proceed to pass the following:

ORDER

- (i) Criminal Petition is hereby allowed in part.
- (ii) Proceedings in CC.No.9621/2016 pending on the file of Chief Metropolitan Magistrate, Bengaluru against petitioner Nos.2 to 4 – accused Nos.2 to 4 is hereby quashed and it is made clear that proceedings against first petitioner – accused No.1 shall be proceeded with.

- (iii) Jurisdictional Court before whom CC No.9621/2016 is pending, shall dispose of the same expeditiously, at any rate, on or before 31.12.2017.

**SD/-
JUDGE**

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