

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1457 OF 2009
[Arising out of SLP(Crl.) No. 1253/2007]

BOPPANA SURYA PRAKASA RAO

... APPELLANT(S)

:VERSUS:

BOLIA SUBRAHMANYAM SRINIVAS AND ORS.

... RESPONDENT(S)

ORDER

1. Leave granted.
2. The appellant is the first informant who lodged the first information report before the Sub Inspector of Police, P.S. Bhimavaram on 26.3.2006 as against the respondents herein. The said first information report is based on three suicidal notes written by Sujatha – the deceased; one to the police department and public, second to the her near relatives and third to accused No.1 who was her would be husband.
3. For the purpose of disposal of this appeal, we would only take note of certain basic facts. They are as under:
4. The deceased was a student of M.B.A.. She had done her post-graduation. Accused No.1 at the relevant time was not employed. The families of

the deceased and accused No.1 negotiated for marriage and engagement ceremony was held on 18.8.2006. A sum of Rs. 2,30,000/- was paid by way of dowry. Some land was also registered by the appellant in favour of the deceased as demanded by the respondents herein. After the betrothal ceremony was over, the accused No.1 obtained an employment in a factory. The marriage was to take place on 3.2.2006. Allegedly, the demand for dowry was increased. It also appears that the deceased and accused No.1 were in constant touch with each other. In fact, they had been going to places.

5. For certain reason with which we are not concerned at this stage, the engagement was broken. A sum of Rs. 30,000/- was returned and the rest of the dowry amount was promised to be returned by the end of March, 2006. The deceased committed suicide by jumping from a running train on 26/3/2006. Relying on or on the basis of the suicide note, a first information report, as noticed hereinbefore, was lodged on 26.3.2006.

6. There are six respondents in this appeal but notice was issued to respondent Nos. 4 & 5 only. Respondent No.4 Nekkanti Ravindra Kumar is a teacher in a village Chinamallam in the West Godavari District. Respondent No.5 Chinta Suribabu is a Sub Inspector of Police of Annavaram Police Station, situate in East Godavari District. The first information report was lodged under Section 306 of the I.P.C. and Section 3/4 of the Dowry Prohibition Act.

7. All the accused filed an application before the High Court for quashing

of the said first information report on or about 8.6.2006. By reason of the impugned judgment the said application has been allowed so far as respondent Nos. 4 & 5 who were arrayed as accused Nos.4 & 5 in the said first information report, are concerned.

8. The impugned order is not a speaking one. It is a 3-paragraph order which we may notice hereat:

“This Criminal Petition is filed by A-1 to A-5 in Cr. No. 22 of 2006 on the file of Kaikalur (R) P.S. to quash the proceedings against them for the offences under Section 306 of I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act (for short 'the Act').

From the reading of the complaint, it is made out that A-1 alleged to be speaking bad about the deceased and A-1 to A-3 alleged to have demanded more dowry, if they want the alliance to continue. Otherwise, they are not willing to marry the deceased girl. A-4 and A-5, though present at the time of transaction, did not play any role, therefore, is no prima facie case against A-4 and A-5 and the prosecution is liable to be quashed against them for the said offences.

Accordingly, the Criminal Petition is allowed in part. The prosecution against A-4 and A-5 for the offence under Section 306 and Sections 3 and 4 of the Act is quashed. However, the prosecution against A-1 to A-3 shall continue.”

9. Submission of Mr. Mahabir Singh, learned senior counsel appearing on behalf of the appellant is that from a perusal of the first information report lodged before the officer incharge of the Bhimavaram Police Station as well as the three suicide notes which were annexed thereto, it would appear that not only the respondents have been named therein, specific roles have been attributed to them and in that view of the matter, the High Court committed a serious error in holding that they were only present at the time of transaction and played no role.

The first information report as also the suicide notes read in their entirety, Mr. Singh would contend, would leave no room for any doubt that the respondents herein had not only played active role in the matter of demand of dowry, they also played very crucial role in the matter of breaking the proposal for marriage, which ultimately led to the commission of suicide by the deceased. It was furthermore urged by the learned senior counsel for the appellant that it was not a fit case where the High Court should have quashed the proceedings at the initial stage. Strong reliance has been placed by him on State of Orissa and Anr. Vs. Saroj Kumar Sahoo, 2005 (13) SCC 540.

10. Mr. A.T.M. Rangaramanujam, learned senior counsel appearing on behalf of the respondents, on the other hand, submitted that:

(1) The reference to the respondents herein in the suicidal notes by the deceased is based on hearsay and thus no reliance could be placed thereupon;

(2) Respondents being residents of different villages, it is improbable that they would have played any role either in the matter of demand for dowry or breaking of engagement of the deceased with the first respondent resulting in the commission of suicide by the deceased. In any event, a charge-sheet having been filed only against accused Nos.1, 2 & 3, the remedy of the appellant, if any, is to file a protest petition.

11. A bare perusal of the suicide notes written by Sujatha (deceased) shows that they are credible. We, however, do not propose to deal with the statement

made therein in details as any observation made by us thereupon may prejudice the parties in one way or the other. We, however, must place on record that both the respondents Nos. 4 & 5 herein have specifically been named in the suicide notes. Specific roles have been attributed to them. The roles attributed to them not only relate to allegations of demand of dowry but also breakage of engagement. The statement made by the deceased with regard to Respondent No.4 is hearsay but then certainly she was truthful enough to tell: “I don't know how far it is true. Probably, the proposal was mooted for my marriage with second son-in-law. My family rejected that proposal for his drinking habits, for that he bore a grudge.” Therefore, it was a matter of investigation. The circumstances narrated by the deceased in her suicide notes addressed to the police department and public clearly lead to a motive on his part in respect thereof. We, therefore, have no hesitation to hold that the learned Judge of the High Court was entirely wrong in holding that no allegations have been made against the respondents in regard to any role played by the accused. A prima facie case for investigation, in our opinion, had been made out and thus it was not a fit case where the first information report should have been quashed.

12. In State of Orissa and Anr. Vs. Saroj Kumar Sahoo, (supra) this Court held as under:

“As noted above, the powers possessed by the High Court under Section 482 of the Cr.P.C. are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest

court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See: Janata Dal v. H. S. Chowdhary, [1992] 4 SCC 305, and Raghubir Saran (Dr.) v. State of Bihar, AIR (1964) SC 1). It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (See: Dhanalakshmi v. R. Prasanna Kumar, [1990] Supp SCC 686, State of Bihar v. P. P. Sharma, AIR (1996) SC 309, Rupan Deol Bajaj v. Kanwar Pal Singh Gill, [1995] 6 SCC 194, State of Kerala v. O.C. Kuttan, AIR (1999) SC 1044, State of U.P. v. O.P. Sharma, [1996] 7 SCC 705, Rashmi Kumar v. Mahesh Kumar Bhada, [1997] 2 SCC 397, Satvinder Kaur v. State (Govt. of NCT of Delhi, AIR (1996) SC 2983 and Rajesh Bajaj v. State NCT of Delhi, [1999] 3 SCC 259)."

13. The fact of filing of the charge sheet only against accused Nos. 1 to 3 may now be considered to which, as noticed hereinbefore, our attention was drawn by Shri Rangaramanujan, learned senior counsel appearing on behalf of the respondents. The High Court by an interim order dated 26th June, 2006, stayed the investigation. The impugned order was passed on 2nd August, 2006. Charge sheet against accused Nos. 1 to 3 has been filed on 1st September, 2006.

14. We have noticed hereinbefore that the first information report was

lodged on 26th March, 2006. It is possible that the investigating officer could not file the charge sheet against the respondent Nos. 4 & 5 herein not only because the investigation was stayed, but also for the reason that before the charge sheet could be filed, the High Court quashed the proceedings as against them. We, therefore, are of the opinion that this aspect of the matter should be considered by the learned Magistrate at the time of taking cognizance of the offence.

15. It is now a well settled principle of law that where a final form is filed, the complainant must be given notice thereof in writing. Even at that stage the learned Magistrate may take recourse to one of the three notes highlighted by this Court in Abhinandan Jha and Ors. vs. Dinesh Mishra, AIR 1968 SC 117, namely :

(i) The investigating officer may be asked to undertake further investigation in terms of sub-section (8) of Section 173 of Cr.P.C.

(ii) Take cognizance against the accused concerned on the basis of a protest petition filed by the complainant.

(iii) Take cognizance of the offence against the accused persons although they have not been challaned, relying on or on the basis of the materials collected during the investigation.

16. Therefore, while taking notice of the subsequent events, which have been brought to our notice by the learned senior counsel, we are of the opinion that recourse to one of the modes above-mentioned may be taken by the learned Magistrate as also by the parties as they think fit and proper. However, there

cannot be any doubt whatsoever that for the reasons mentioned hereinbefore the impugned judgment cannot be sustained. The same is set aside accordingly and the appeal is allowed with the aforementioned observations.

17. We, however, must clarify that we have not entered into the merits of the matter nor any remedies available to the parties are foreclosed.

.....J
(S.B. SINHA)

.....J
(DEEPAK VERMA)

NEW DELHI,
AUGUST 6, 2009.

