

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P.No.5351 of 2015

ORDER :

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the Petitioners-A.5 to A.7 to quash the proceedings in C.C.No.1011 of 2015 on the file of the III Additional Chief Metropolitan Magistrate, Hyderabad taken cognizance for the offences punishable under Sections 448 427, 326 and 354 IPC in Cr.No.308 of 2015 from the final report filed by the Station House Officer, Banjara Hills based on the report of the defacto-complainant-2nd respondent no other than the wife of A.1 Aslam Ali Khan.

2. Heard both sides and perused the material on record.

3. The factual matrix of the case from the report of the defacto complainant in registering the crime and investigation from the statements of defacto-complainant-L.W.1 and L.Ws.2 to 4 the eye witnesses i.e. father, mother and brother of L.W.1 and one Rasheeda Begum as L.W.5 discloses that the marriage of A.1 with the defacto-complainant performed as per the Mahammadian law that the A.2 and A.3 are the parents of A.1, A.4 is brother of A.1, A.5 and A.6 are sisters of A.1 and A.7 is their relative, that at the time of marriage though no demand for dowry or articles made, that on the next day of marriage, the A.1 dropped the defacto-complainant at the house of her parents demanding for BMW car, 50 tulas of gold and articles, that theirs was arranged marriage and the engagement performed two years back, however made demand after the marriage to meet, else to give divorce and started harassing the defacto-complainant for her inability to meet from which the defacto complainant lodged a complaint vide Cr.No.66 of 2013 CCS DD women Police Station, Hyderabad for the offences under Section 498-A of I.P.C and Section 4 of the Dowry Prohibition Act, and the case is pending on the file of the learned Magistrate XIII Additional Chief Metropolitan Magistrate, Hyderabad; that while so, the accused persons 1 to 7 supra, on 11.02.2015 at about 2.30 P.M. trespassed into the house of the parents of defacto-complainant and damaged the furniture and A.4 thrown the chair on mother of the defacto-complainant and also beat the defacto-complainant and further caught hold of the left hand and pulled palm of the defacto-complainant and the defacto complainant and her mother sustained injuries, hence to take action.

4.The F.I.R. shows based on the report dated as if 11.02.2015 sent by post on 24.02.2015 registered on 09.03.2015. The police therefrom filed charge sheet and the learned Magistrate taken cognizance therefrom for the offences supra. The earlier complaint in Cr.No.66 of 2015 concerned, it was for the alleged incident dated 11.02.2015 and report received on 12.02.2015 and the police after investigation filed charge sheet against A.1-husband of defacto complainant by not charging A.2 to A.5. So far as the present Crime No.308 of 2015 covered by C.C.No.1011 of 2015 concerned, chargesheet filed is against 7 accused. The charge sheet maintained against the A.1 solely in Cr.No.66 of 2015 shows that the marriage of the defacto-complainant with A.1 herein took place on 09.02.2015 and while reiterating the facts of C.C.No.1011 of 2015 final report, it further speaks A1-husband of defacto complainant left India to his workplace KSA and thereby on 14.02.2015 issued L.O.C. against the A.1, that prior to the said marriage dated 09.02.2015, A.1 came to India from Soudi Arabia only on 07.02.2015 and met defacto-complainant at Chri's hotel on 09.02.2015 and both went to hotel Thabla at Road No.1, Banjara Hills, Hyderabad and on receipt of information about the same, the relatives of defacto complainant reached there and consented for the marriage, went to the Quazi office at S.R.Nagar and Quazi performed the marriage on 09.02.2015 and the defacto-complainant and A.1 spent that night in the house of parents of the defacto-complainant and after consummation of marriage on 10.02.2015, at 3.00 A.M., the A.1 left that place and on 11.02.2015, A.1 and his family members came to the house of parents of defacto-complainant and questioned how they performed the marriage of A.1 with defacto-complainant without their knowledge and consent and created scene.

5.Now coming to the present chargesheet taken cognizance by the learned Magistrate for the offences under Sections 448,427,326 and 354 of IPC concerned, the allegation is at best against A.4 and nothing against the petitioners A.5 to A.7 from any of the statements of the 5 witnesses supra including the defacto-complainant covered by part-II C.D. but for saying all the accused came there as if members of unlawful assembly except that there are no any specific overt acts but for against the A.4.

6. Having regard to the above for the self-same occurrence besides the first F.I.R. pending in Cr.No.66 of 2015 where the police filed final report only against the husband of the defacto complainant where the report no way even named the

petitioners 5 to 7 but for showing in the list of culprits, two sisters-in-law and husband of one of the sister-in-law who are A.5 to A.7-the petitioners herein but nothing of any overt acts against them specifically. Thus, 2nd F.I.R. is bar from the final report of the first F.I.R. and it is not even in the event of dissatisfaction in protest by them for not charging others than A.1-husband of defacto complainant for which a protest petition to be filed before the learned Magistrate to proceed as a private complaint case to maintain as not within the exceptions that can be carved out for its maintainability also otherwise from the 12 contingencies laid down in the expression of this Court in **Akbaruddin Owaisi Vs. Government of A.P.**. Hence, the proceedings in C.C.No.1011 of 2015 so far as the petitioners A.5 to A.7 are liable to be quashed.

7.Accordingly, the Criminal Petition is allowed by quashing the proceedings in C.C.No.1011 of 2015 on the file of the III Additional Chief Metropolitan Magistrate, Hyderabad. Consequently, miscellaneous petitions, if any pending, in this Criminal Petition shall stand closed.

-

Dr. B. SIVA SANKARA RAO, J

Date:29.10.2015

Vvr