HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.3856 of 2015

ORDER :

This Criminal Petition is filed by the Petitioners/ accused Nos.2, 3 & 5 to 7 under Section 482 Cr.P.C seeking to quash the proceedings in C.C No.132 of 2014 on the file of the Principal Junior Civil Judge, Kovvur, West Godavari District registered for the offences punishable under Section 498-A IPC and section 4 of Dowry Prohibition Act.

2) Heard learned counsel for the petitioners/ accused Nos.2, 3 and 5 to 7 and 1st respondent-State representing by learned public prosecutor, before admission and before ordering any notice to de facto complainant—2nd respondent. Perused the material on record.

3) The contention of the learned counsel for the petitioners is that the learned Magistrate has no jurisdiction under Section 170 Cr.P.C to take cognizance of the case against the accused persons from the final report filed by the police under Section 173 Cr.P.C even the police in final report stated that there is no case made out against Accused Nos. 2 to 7 but for against accused No.1.

4) A police report is not be all and end all. The Court can not be influenced by it. The police even referred as no case against any of the accused persons or all even; by perusal of the same, the learned Magistrate, invoking his jurisdiction under Section 190 of Cr.P.C, if there is material, can take cognizance, by differing with the opinion of the police. The contention that for taking such cognizance there is a remedy to the de facto complainant to file a protest application and at best there from the Magistrate to take as a private complaint by invoking the procedure under Sections 200 to 204 Cr.P.C is also untenable from the settled law in this regard by the constitutional bench expression of the Apex Court in ***Dharm Pal vs State of***

Haryana as that is one of the available remedies and not the sole remedy.

5) When such is the case, it falls short of material even for this Court to admit. If there is no prima facie accusation from the referred report material, that was taken cognizance for the offence against the petitioners herein A2 and A3 and A5 to A7 among accused Nos.2 to 7 by virtue of the impugned order of the learned Magistrate dated 17.04.2014, it is left open to file any application for discharge.

6) Hence the Criminal Petition is **disposed of** by giving liberty to the petitioners/ accused Nos.2, 4 and 5 to 7 to take recourse under Section 239 Cr.P.C for any discharge if there are no grounds to charge the accused while hearing before the charges under Section 239 Cr.P.C read with 240 Cr.P.C, from the prosecution material only as laid down by the Apex Court in ***State of Orissa vs Debendra Nath Padhi***. As the petitioners want to approach the learned Magistrate to permit one to represent all, the learned Magistrate shall consider in the event of application filed under Rule 37 of Criminal Rules of Practice to permit one of the accused instead of all to attend the Court for regular adjournment but for any personal appearance is required for any particular adjournment of all the accused so to direct.

6) Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.04.06.2015

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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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CRIMINAL PETITION No.3856 of 2015

Date: 05.06.2015

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