

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.3848 of 2013

ORDER :

The criminal petition is filed by the petitioners/accused Nos.2 and 3 under Section 482 Cr.P.C seeking to quash the proceedings in C.C. No.477 of 2011 on the file of II Additional Chief Metropolitan Magistrate, Vijayawada, Krishna District in which learned Magistrate taken cognizance for the offences punishable under Sections 498-A and 323 read with 34 I.P.C. against three accused including husband of the defacto-complainant, A-1.

2) The allegations is A-2 developed illicit relationship with A-1. As per the very F.I.R from that say A-2 and A-3 are no way relatives of the husband and from the wording of Section 498-A I.P.C. the other persons to be implicated within the scope must be relatives of the husband and not others. Mere extra marital relationship is not suffice unless there are other accusations of abetment or like. The other allegation from the F.I.R is A-2, Jayamma, her brother Chenna Rao and her father Laxmi Narayana abused her and beat her with hands, when the defacto-complainant went to the house to see her husband on the pretext that he was required to be examined by doctor since earlier effected with paralysis and claimed and left the company of the defacto-complainant to the house of Jayamma. The original crime registered is only under Section 498-A I.P.C. It is pursuant to the crime, police filed the final report after investigation by citing five witnesses including the investigating officer of whom L.W-1 is the defacto-complainant, L.W-2 is the son of defacto-complainant to speak the harassment of accused persons and L.W-3 is house owner of defacto-complainant in tune to L.W-2 also and L.W-4 is brother of defacto-complainant in tune to L.W-1. Even from the very report, it is not her case that she accompanied by her brother or others to the house of Jayamma and Chenna Rao, where she allegedly beaten by them who are A-2 and A-3. That is the only accusation, for which police final report there is no investigation at all

and even from the reading of the final report vis-à-vis there is no basis apart from the fact that that accusation that applicable there in the F.I.R and in her statement with no averments or material, even taken on its face value it is non-cognizable offence by virtue of the bar under Section 155 Cr.P.C. so far as against them for no other offence against them to say if there is a cognizable and non-cognizable offence, the non-cognizable offence can be taken along with cognizable offence also as a cognizable offence.

3) Having regard to the above, petitioners/A-2 and A-3 are not relatives and the only accusation is under Section 323 I.P.C is non-cognizable offence therefrom said crime is not registered, the police filed final report and the learned Magistrate has taken cognizance are liable to be quashed.

4) In the result, the criminal petition is allowed and the proceedings in C.C. No.477 of 2011 on the file of II Additional Chief Metropolitan Magistrate in respect of the petitioners are quashed. Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

17.11.2015

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