

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO
Criminal Petition No.15932 of 2014

ORDER:

In this petition filed under Section 482 Cr.P.C., the petitioners/A1 and A2 seek to quash the proceedings in C.C.No.273 of 2005 on the file of Additional Judicial Magistrate of First Class, Gudur on the ground of protraction of the case over a period of 10 years and if that relief is not granted, alternatively, to set aside the order dated 28.11.2014 in Crl.M.P.No.7029 of 2014 in C.C.No.273 of 2005 passed by the learned AJMFC, Gudur and direct the trial Court to summon PWs.1, 6 and 8 for further cross-examination.

2) Petitioners/A1 and A2 are facing trial for the offence under Sections 498A IPC and Sections 3 and 4 of Dowry Prohibition Act.

3) The main plank of defence contention is that A1 originally married Peketi Sujatha on 12.05.1993 and due to some differences they obtained divorce in O.P.No.364 of 1997 on the file of Family Court, Vijayawada on 06.01.2000. Pending the said divorce OP, as there was no hope of his wife—P.Sujatha joining him and due to collusion of son-in-law of A2 and father of *defacto* complainant and hoping that no legal risk was there, A1 tied Tali to *defacto* complainant on 13.02.1997 and thereafter *defacto* complainant became pregnant and gave birth to a male child on 30.10.1997 in a private maternity hospital at Nellore and some time later she lodged a report with all false allegations and since her marriage with A1 was void, she is not legally entitled to lodge a report against the accused for the offences under Sections 498A IPC and Sections 3 and 4 of Dowry Prohibition Act.

4) Be that it may, the trial went on and PWs.1 to 8 were examined on behalf of prosecution and DW1 was examined on behalf of defence. Then, the petitioners filed Crl.M.P.No.7029 of 2014 under Section 311 Cr.P.C. to

recall PWs.1, 6 and 8 for the purpose of further cross-examination. The reasons shown for recall as contained in para-4 of their petition are as follows:

“4. It is submitted that in this C.C.No.189 of 2004 made over to this Court suo moto and renumbered as C.C.No.273 of 2005 and in view of the evidences led by your honour predecessors and dynamic changes of law citations from 2004 till 2014 and the delivery of certified copies in C.A.No.910 of 1014, and pending C.A.No.1371 of 2014 awaiting for the delivery of the same, it is just and necessary to specifically re-cross examine PWs.1, 6 and 8 who are material witnesses on the factual allegations and ingredients of the sections charged.”

a) The trial Court by its impugned order dismissed the petition mainly on the ground that the petitioners did not aver any specific ground on which they intended to further cross-examine the witnesses. The trial Court noticed that what all the factual allegations sought to be put to the witnesses were not mentioned in the petition and when questioned the second petitioner refused to reveal the questions that have to be put to the witnesses since such disclosure alert the witnesses while giving answers. The trial Court observed that such contention of petitioners is untenable because without mentioning specific purpose recall cannot be ordered.

Hence, the instant petition.

5) Heard.

6) Sofaras first relief is concerned, I find no compelling circumstances for quashing the proceedings merely because the case is an old one. Sofaras recall of PWs.1, 6 and 8 is concerned, upon hearing counsel for petitioners, I do not find any valid reasons to recall PWs.6 and 8, but PW1 can be recalled for further cross-examination on limited aspects.

a) Firstly, according to petitioners/accused, the marriage during the life of either spouse is void and invalid under certain provisions of Hindu Marriage Act, 1955 and hence certain provisions of Hindu Marriage Act

have to be confronted to PW1.

b) Secondly, the financial capacity of parents of PW1 in order to pay the alleged 100 sovereigns of gold and Rs.4 lakhs is to be elicited.

7) A perusal of cross-examination of PW1 shows that aforesaid two aspects are not covered in the earlier cross-examination of PW1. So, in the interest of justice this Criminal Petition is partly allowed by setting aside the impugned order in CrI.M.P.No.7029 of 2014 and ordered as follows:

The trial Court is directed to recall PW1 for further cross-examination by the accused strictly on the following aspects.

- (i) Allowing the accused to confront the relevant provisions of Hindu Marriage Act, 1955 to PW1 to elicit that the second marriage during the life time of either spouse is invalid.
- (ii) Allowing the accused to question PW1 about the financial capacity of her parents to pay gold and cash as deposed by her.

The trial Court is directed to dispose of the CC in accordance with law within three months from the date of receipt of this order.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 23-03-2015

Murthy