

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.14125 of 2014

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ORDER :

The petitioners are A.1 to A.4 among A.1 to A.11 of the crime and police final report was only against A.1 to A.4 (petitioners) that was taken cognizance. A.1 to A.3 are no other than the husband, mother-in-law and brother-in-law of the de facto complainant-2nd respondent and A.4 is a distant and remote relative to A.1's family and same is not in dispute. The petitioners are facing accusation in S.C.No.19 of 2014 on the file of the Special Sessions Judge, Visakhapatnam, for the offence punishable under Sections 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the Act'), Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961, same is out come of F.I.R. dated 11.01.2011 of Crime No.14 of 2011 of Amberpet Police Station, transferred on point of jurisdiction to the III Town Police Station, Visakhapatnam registered and investigated as Crime No.103 of 2011 and on final report taken cognizance and committed to Court of Sessions in turn taken cognizance by the learned Special Judge. So far as the A.4 concerned, from the very report of the de facto complainant there is no specific allegation against him apart from not a directly relative to A.1. Suffice to say, the petition is liable to be quashed so far as A.4 is

concerned for the offence punishable under Section 498-A IPC and also for the offence punishable under Section 3(1)(x) of the Act and Sections 3 and 4 of the Dowry Prohibition Act. Needless to say from the material on record, the de facto complainant filed O.P.No.100 of 2012 for restitution of conjugal rights against the A.1 and he filed O.P.No.294 of 2013 for divorce and further she filed M.C.No.53 of 2012 for maintenance against him and also filed another report with Saroornagar in Crime No.103 of 2012 for the offences under Sections 494 and 495 read with 34 IPC; even there is a bar under Section 198 Cr.P.C. for taking cognizance for the offences under Sections 494 and 495 IPC.

2. Now coming to the other petitioners i.e., A.1 to A.3 from the de facto complainant's written report dated 11.01.2011 in Telugu presented before the S.H.O., Amberpet Police Station, for the offence under Section 3(1)(x) of the Act is concerned, in para 2 middle, what she alleged about the additional dowry demand that her parents informed their inability to meet with further say 'since then they have been frequently abusing her in the caste name Madiga and her's is heinous caste in the society and harassing physically and mentally. They also kept her in a room and warned her to kill by pouring kerosene, if she chose to come out from the room'. No doubt, it is the submission there from that besides the allegation is false by engineered taking advantage of her

caste and accused belonging to other than the SC/ST, from the love marriage between A.1 and the de facto complainant, there is no any public view for the allegation within four walls to attract Section 3(1)(x) of the Act and there is no categorical use of the words to say any of the words reflect with intent to insult touching in caste apart from the marriage allegedly performed way back in 2004 and in the complaint for the first time after nearly more than seven years in 2011 alleged as if they insulted her showing the caste on its face unbelievable and thereby the proceedings are liable to be quashed.

3. A perusal of the F.I.R. no doubt shows, there is no public view from the statement of witnesses as to where the occurrence taken place and who others if any present, if at all anything other than within four walls of the house and in the presence of any independent persons to witness the abuses. No Part-II case diary filed with the quash petition to go through the investigation material, leave about whether there is any development and such development has to be ignored. In the absence of the complete material before the Court, the caution of the Apex Court time and again is not to quash but for leave to decide at appropriate stage by other appropriate forum having jurisdiction.

4. Having regard to the above, so far as A.1 to A.3 concerned, this Court is not in a position to stretch its hand to quash the proceedings particularly for the

offences punishable under Sections 3(1)(x) of the Act even but for that there is nothing for taking cognizance before the learned Sessions Judge under Section 193 Cr.P.C. as the other offences under Sections 498-A IPC and Sections 3 and 4 of the D.P.Act are triable before the Magistrate. Undisputedly the charges are not framed before the trial Court i.e., the Court of Session under Section 228 Cr.P.C. Thereby, it is left open to the petitioners to agitate before the learned Sessions Judge, if necessary, by filing an application under Section 227 Cr.P.C. and in such event the learned Judge with reference to the case record, hear on such application and disposed of if necessary and if no case under Section 3(1)(x) of the Act made out to remit the case to the Magistrate Court concerned. Further, petitioners are given liberty to approach the trial Court by filing application under Rule 37 of the Criminal Rules of Practice to permit one of the accused to represent the other accused subject to necessary conditions of personal appearance as and when required.

5. Accordingly and in the result, the criminal petition is allowed so far as A.4 concerned and disposed of so far as A.1 to A.3 concerned.

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

Dr. B. SIVA SANKARA RAO, J

7th December 2015.

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