

THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.746 OF 2013

ORDER:

The petitioners 1 to 3 are accused in C.C. No.504 of 2012 on the file of V Additional Judicial Magistrate of First Class, Kakinada, and taken cognizance by the learned Magistrate for the offences punishable under Section 498-A read with 34 of the Indian Penal Code, 1860 (for short, 'IPC') and under Sections 3 and 4 of the Dowry Prohibition Act, 1961, which is out come of the report of the 2nd respondent/ *de facto* complainant no other than the wife of A.1 and daughter-in-law of A.2 and A.3 respectively. The first respondent is the State represented by the Public Prosecutor for the Station House Officer, II Town L & O Police Station, Kakinada.

02. The petitioners are hereinafter being referred to as the accused and the second respondent as the *de facto* complainant, for the sake of convenience.

03. The marriage of the first accused (for short, 'A.1') with *de facto* complainant was performed on 03.12.2003 at Crystal Gardens, Gudimalkapur, Hyderabad, undisputedly and in their wedlock they are blessed with a male child, Yuvaraj on 03.10.2006 and the second issue. The *de facto* complainant filed F.C.O.P. No.373 of 2010 undisputedly on 17.03.2010 before the Judge, Family Court at Hyderabad, against A.1 supra by showing one Tasneem Jiddawala, D/o. Shabbir Jiddawala of Tirumalagiri, Secunderabad, for decree of divorce dissolving the marriage dated 03.12.2003 performed at Gudimalkapur supra on the ground of cruelty and adulterous behaviour attributable to the respondents 1 and 2 therein supra and sought therein interim maintenance under Section 24 of the Hindu Marriage Act, 1956 (for short, 'HM Act') application of even date claiming Rs.50,000/- per month towards legal expenses and Rs.2,00,000/- per month towards maintenance to her, to the first male child, Yuvaraj, and the second child as she was carrying by then, including for medical expenses to meet.

04. Her averments in seeking divorce under Section 13(1) (i) and (ia) of the HM Act for the reliefs supra were that since the day one of the marriage, A.1 stated to be carrying on business at the time of marriage was in fact, doing nothing and after the marriage the *de facto* complainant realized that he was a short tempered man, was

prone to repetitive volatile behaviour for no rhyme or reason with unnatural and unbecoming reactions and he never interested in normal conjugal life with her, even she was trying talk to him, he was getting angry, expressing dislike even to the performance of the marriage, but for at his parents insistence. She expressed her in-laws, A.2 and A.3 about behaviour of her husband/ A.1 and to her surprise they all aware about his behaviour and were posing to be sympathetic and considerate towards her saying to be patient and she bore with hoping for a change in him from their apologetic response in consoling, she ultimately realized of A.1 has never changed his ways of life, when the *de facto* complainant and A.1 were together, on occasions, he was used to brag about his relations with other ladies since prior to their marriage and shown E-mail messages and letters written by him and received by him from those ladies and she felt bad and questioned, he was trying to convince saying he does not have any such relation after he married her. On the other hand, he told her that he never had no intention to marry her, but for at his parents insistence and was reluctant to have normal conjugal life, that on many occasions in the dead of the night, the petitioner used to realise that A.1 speaking with somebody on his mobile, when enquired, he used to give evasive answers, but in the silence of the night, many times, the petitioner could hear female voice on the other side of the phone and on enquiries she learnt that A.1 got adulterous relationship with the said Tasneem Ziddawala of Secunderabad. The said Tasneem has been apparently ringing A.1 on his mobile and to the land line and he has openly declared in presence of *de facto* complainant that he has married Tasneem and *de facto* complainant was his second wife and when the *de facto* complainant questioned as to how he could contract a second marriage, he refused to respond to his shameless behaviour which made her to add the said Tasneem in the divorce application as she claimed to be the second wife of A.1, that even after birth of first male child in their wedlock A.1's behaviour did not change and he was coming in the late nights in an inebriated state and for her questioning, beating the *de facto* complainant mercilessly, that when she was carrying pregnancy on one occasion he lost temper for her questioning his coming late and for numerous phone calls getting from other ladies, he kicked her on her back, she could somehow regained her balance and maintained her composure. A.1's parents A.2 and A.3 besides his younger brother also aware of the fact and none came to her rescue and the in-laws used to told her expecting a change and she should bare with him by prevailing, though the situation was going from bad to worse and ultimately to worst.

05. Even she was adjusting to her fate to make the marriage work by putting in positive efforts. A.1 expressing his desire to get rid of her by giving divorce and also using filthy language against her and in general he does not deserve any respect to females and she also noticed on one occasion immediately her marriage with A.1, of A.1 raising his hands towards his mother A.3 in a discussion having went in raze for things happening against his wishes and his parents A.2 and A.3 are even scaring to him and consoling her to adjust, her father-in-law unfortunately overlooked of all this and was busy in pursuing political career, that she gave birth to the first male child on 03.10.2006 at Vevekananda Hospital, and after first delivery she was expected to be at her mother's place and instead of travelling all the way, she stayed at the guest house of his father at Lakdi-ka-pool for 10 days. Even he created a scene at the guest house by threatening to take away the male child and ultimately the Senior Uncle and Aunt as well as Junior Uncle prevailed upon him in refraining him and sooner she returned to the marital home, A.1 was not there and he came back to the home about 5 months thereafter and refused to divulge any information when questioned. He was erratic behaviour about his sudden disappearance for the days together or coming home in an inebriated not even information to her and whereabouts while leaving and was abusing in filthy and continually talking with other ladies over phone.

06. She further averred if mobile number of A.1 9885000018 and his telephone bills verified it is apparent of continues talks of 9052577743 which number belongs to the said Tasneem with whom he maintains before marital relation for the past 7 years and there are SMS messages also in proof of the relationship and in July 2008 she questioned for which he physically assailed her. In August 2008 when her father was seriously ill and was in ICU at Hyderabad, he did not even make effort to behave normally, that on 02.08.2008 her father passed away and as per custom the couple visited the native place of the petitioner and there also he was continually in touch with that Tasneem over mobile and after they reached back Hyderabad he started his abusive behaviour towards *de facto* complainant by physical and mental ill treatment with aggressiveness and when questioned by her and through elders he was given false promise that he would not maintain any such relationship, but again in routine he was continually in touch with the said Tasneem.

07. She further averred in the divorce petition on an occasion A.1 enquired her as to the meaning of 'MUNDA' and she was sad and could not give plausible answer and

even the minor child was witnessed his beating the *de facto* complainant as even beating before that boy and he was expressing as to why the child is born and saying the *de facto* complainant and minor child should die so as to make it easier for him also by saying the son was named against his wish and many a times even the relatives and guests were visited the house on occasions have seen and heard about the filthy language with loud voice including beating and he was not even providing human atmosphere and not even providing basic expenditure to meet and from their occasional conjugal joining she was carrying second child in womb, as he continuous his relation with the said Tasneem, the *de facto* complainant with her uncle met parents of the said Tasneem and came to know of A.1 flew into a rage mercilessly beat her son and dragged her out of the house and she did not have any other place to go. His younger brother intervened with any exposure to the outside, he was made all these tactics intentionally she was made him to suffer intentionally including picking up vices and abuses. Particularly on the night on 25.01.2010 where he kicked her by beating from which she rang up to her brother on mobile, however he did not allow her to speak over the phone and demanded her to leave house and drove her out of the house physically in the mid night which made her to sit at the corner of the house outside and after he opened door, she went inside, she was asking not to deliver second child otherwise not to see her face and would not continue any relationship with her and he has not concern and decency in his behaviour in his talk or action including for her disagreeing to terminate the second pregnancy and he was threatening to give divorce and the valentine day i.e. on 14.02.2009 he wanted to celebrate with Tasneem not with *de facto* complainant, as such inhuman and indecent behaviour and this conduct of him also disturbing the eldest male child from the happenings in his presence there from she was constrained to seek for divorce.

08. It is important to say from the divorce application of her allegations are against her husband and what she alleged against the in-laws is they were also feeling to her husband and for his behaviour they were only consoling her to put up by hoping change. There was nothing to say they created any situation or they were privy to any of his acts much less encouraged, much less demanded any dowry or suffered her by any acts of cruelty.

09. However coming to the FIR registered from her report dated 07.02.2011, which is

undisputedly about 11 months after the said divorce application filed in 2010, she started making allegations against the in-laws also by roping them into the alleged acts constituting the offences under Section 498-A read with 34 IPC and Sections 3 and 4 of DP Act.

10. Coming to the occurrence specifically averred in her report of February 2011, that due to the conduct of her husband and encouraging him as his parents also and from their ill treating, her father with mental sufferance therefrom lost breath, which is totally a silent version in the divorce petition, if at all there is any truth against her in-laws. She averred that the in-laws harassment also increased and they were demanding her to give divorce so that A.1 could marry with Tasneem and they also shifted the family life of A.1 and *de facto* complainant to some other plot while she was carrying second issue and her in-laws also demanded her to abort the second pregnancy and demanded to give divorce to A.1 and ill treated her and A.3 mother-in-law even encouraged A.1 for beating in demanding to give divorce by *de facto* complainant to A.1 and to perform marriage with Tasneem to A.1 and they planned in March 2010 to do away her and she heard their conversation and on 18.04.2010 through hospital management she addressed a letter to her friend and taken shelter there and she gave birth to second child on 19.04.2010 in Fernandez hospital.

11. All these allegations in fact show everything happened practically at Hyderabad but for a stray sentence so far as divorce application concerned with allegations of after her father's death on 02.08.2010 she and A.1 went to her native place and even in those days A.1 was talking to said Tasneem or other ladies or he was misbehaving. It is not even the report given at the parent's place of her supra, from alleged part of cause of action there so far as A.1 concerned. The report is given to the Kakinada II town police, for that what she alleged in the FIR dated 07.02.2011 is that, the land given to her at the time of marriage by her father was sold through her father at the insistence of accused persons and through Chitti Babu and Balaiah, she has given amount to A.1 to A.3. She did not even give any date or place. Even if at all it is also at Hyderabad as part of cause of action as any alleged demand for dowry and receiving. What she further averred is, for her eldest son to join in school while she was staying at Kakinada; the accused persons were coming to Kakinada and threatening her, she did not mention any specific day or month against the in-laws; but for against A.1 that in August 2010 A.1 came to Kakinada and threatened saying even her brother won't support her and if at all she has to alive and survive

she has to hear their words else they will make her with no shelter or shed to her and she has even asked him to get rid of his relationship with said Tasneem. If so, it is mainly against A.1 as part of cause of action at Kakinada.

12. She further averred that A.1 questioned her for her giving advice to him, saying she has to give further amount of Rs.30,00,000/-, to give any suggestion or else to get rid of by giving divorce so as to survive and while he was beating, Namana Sreenu allegedly came to her rescue and at that time one Durga Bhavani servant maid and near relative Krishna Bhaskar were also there. According to her it is also an act against husband alleged at Kakinada. It is not even her case of Namana Sreenu why happened to be there by responding much less so called other relative, Krishna Bhaskar there within the four walls of the house, but for if at all servant maid Durga Bhavani. The further averment so far as A.2 and A.3 concerned that on 20.11.2010 A.2/ her father-in-law came to her house at Kakinada, for demanding money saying he wants to take away the two children and she has to be lonely and she has to die ultimately and that welfare of A.1 is prime to him and demanded her to bring money else A.1 will marry Tasneem and bring her to the company of A.1 and if she makes any issue neither police nor court can help her as he is influential and while making huge cry, one Chitti Babu questioned him and sent him out by coming to her rescue and at that time one Villa Balaiah and her relative Vasantha Laxmi there and that earlier even her mother in law A.3 thrice telephoned to A.2 to be stubborn and therefrom he so behaved at her instigation. She did not even give any date or month or year, she further averred that Tasneem frequently even telephoned to her saying she is standing in between Tasneem and A.1, hence to give divorce, else to face serious consequence. Hence, to take action.

13. From this she did not even state why Chitti Babu happened to be in her house at that time of the alleged behaviour of her father-in-law at Kakinada on 20.11.2010 and so far as role of mother-in-law as if telephoned to father-in-law at that time in instigating for his behaviour. These are the stray allegations to rope A.2 and A.3 in the report so also from her statement during investigation.

14. So far as police investigation therefrom concerned in the charge sheet the police shown L.Ws.1 to 10 of whom L.W.1 is the de facto complainant, L.W.2 is the mother of the de facto complainant, L.W.3 is the senior paternal uncle of the de facto complainant, L.W.4 is the Villa Balaiah of Mummidivaram to speak about knowing of the knowledge of the occurrence so also Kanchusthambam Surya Nageswara Rao,

Namana Srinu as L.Ws.5 and 6 and one Rupeshaw of Ahray Apartment, Banjara Hills, Hyderabad. L.W.6 Namana Srinu is shown as resident of Ambetkar Colony, Kakinada as vegetable business L.W.5 Kanchusthambam Surya Nageswara Rao resident of Dowleswaram near Rajamundry. She did not practically shown even a neighbour of her residence behind GPT, Ashok Nagar, Kakinada. Among those witnesses, L.W.1 having repeated the complaint averments stated that on 19.04.2010 she gave birth to second child at Fernandez Hospital and later from their demanding for money, she sold her land through her father and that money sent through Chitti Babu and Balaiah to her father and parents-in-law. Her Telugu report at page 2 last paragraph third line speaks her father died way back on 02.08.2008. Her further say in the statement before police that unable to bare ill treatment of the accused, she shifted to Kakinada to a near relative's house. In the report, she stated for the education of the eldest child, she shifted the residence to Kakinada. Apart from these contradictory versions from the prosecution material what she averred is in August, 2010, accused persons came to Kakinada and threatened to give divorce, if at all to survive else they will make her value less and demanded her to bring Rs.30,00,000/- and even she asked divorce to Tasneem, for such questioning A1 by saying she cannot advice him and when A.1 was beating, L.W.6 Namana Sreenu came to her rescue and protected her.

15. Now coming to the statement of L.W.6 - Namana Sreenu in this regard what he stated is *de facto* complainant informed him that her husband and in-laws were coming to Kakinada and threatening her. It is not even his case of he was witness to any such occurrences earlier. He further stated in August, 2010 when he was at the house of Ramana Kumari – *de facto* complainant, her husband – Kranthi Vardhan and in-laws A.2 and A.3 came to her house saying if at all she want to alive, to give divorce to A.1, else to make her no value and she asked him to get rid of Tasneem, for which A.1 stated she cannot give advise and demanded to bring Rs.30,00,000/- else to give divorce and while they were beating he warned them saying it is not good and at that time Durga Bhavani and Krishna Bhaskar also there. In her statement she did not refer the presence of in-laws, but at that time her husband and what she stated is her father-in-law came on 20.11.2010. The said Krishna Bhaskar was not even examined much less Durga Bhavani by the police for the reasons better known and the statements of L.Ws.2 and 3 totally hearsay regarding the matrimonial relations between *de facto* complainant and A.1, so also L.Ws.4 and 5.

16. In the expressions of the Apex Court reported in **Rajiv Modi v. Sanjay Jain and others, Manish Ratan and others v. State of M.P. and another** it is observed with reference to Sections 178(c) and 177 of the Criminal Procedure Code, 1973 for the offence under Section 406 of the Indian Penal Code, 1860 that the parents place of de facto complainant is Datia (MP) and the in-laws place is Jabalpur and alleged ill treatment at Jabalpur, thereby held interest of justice can be subserved in transferring the criminal case pending at Datia Judicial First Class Magistrate Court to Jabalpur Judicial First Class Magistrate Court, from main allegations show ill treatment at in-laws house. The Apex Court further referred to the expression in **Y. Abraham Ajith v. Inspector of Police** in saying for the allegations show occurrence taken place at Nagarcoil, Court at Chennai has no jurisdiction. In fact it also referred the expression in **Sujata Mukherjee v. Prashant** wherein it was held that the scope of Section 177 and 178 of the Criminal Procedure Code, 1973 saying when the complaint reveals maltreatment and humiliation meted out by the de facto complainant in the hands of husband and other relatives, and in such continuing offence, on some occasions all the respondents had taken part and on other occasion only one or the other and the maltreatment mainly shows at Jabalpur and not at Datia and there from in transferring the case to Jabalpur from Datia Court as referred to supra. Even in **Abraham Ajith's** case referred to supra, the Apex Court observed that when main allegations of the occurrence at one place and the stray allegations even created to create cause of action at the place where report/complaint filed, any cognizance taken therein not sustainable.

17. Leave about the inconsistent versions supra, the allegations in the divorce application filed by the *de facto* complainant way back in March 2010 and the O.P. dismissed for default ultimately in March 2011. The allegations in the complaint of February 2011 show all the respondents at Hyderabad and alleged ill treatment at Hyderabad. In the divorce petition with no whisper made against the in-laws, however in the report roped even the in-laws as if they were supporting her husband and ill treating her or as if they also came to Kakinada with her husband and harassed her in August or October 2010. So far as in-laws there is no basis for no whisper against them earlier and it shows only to rope them, with vengeance she engineered the averments against in-laws though in the divorce petition it is averred that her in-laws were kind to her and were asking to put up, hoping for change and

they were fearing to A.1 even to question his conduct. The cognizance taken for the offence thus sustains only so far as against A.1 and not against A.2 and A.3 and as main cause of action but for the allegations of stray incidents at Kakinada, allegations of main acts of cruelty against A.1 taken place at the in-laws place at Hyderabad, Banjara Hills, though the complaint can be transferred from the jurisdiction of Judicial First Class Magistrate, Kakinada, to the Magistrate concerned of Banjara Hills, since part of cause of action under Section 178 Cr.P.C. even gives jurisdiction, as witnesses are at Kakinada and surroundings of this Court not inclined even, de facto complainant also resident of Banjara Hills, Hyderabad, to transfer from Kakinada to Hyderabad but for left open any further remedy in that regard without going into further merits.

18. Accordingly, and in the result, the criminal petition is allowed in part while quashing the proceedings of C.C. No.504 of 2012 insofar as A.2 and A.3 concerned and the petition is dismissed insofar as A.1 concerned. The petitioner/ A.1 is given liberty to move the trial court under Section 205 Cr.P.C. to represent through Special vakalath holder to hear and permit by the learned Magistrate to dispense with personal presence with necessary conditions including of personal presence as and when required.

19. Consequently, miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

04.02.2016

BV