HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.8102 of 2015

ORDER :

This Criminal Petition is filed by the petitioners/ accused Nos.5 & 6 in Crime No.102 of 2015 of Women Police Station, Visakhapatnam, which is from the report of 2nd respondent—defacto complainant dated 22.06.2015 registered for the offences punishable under Sections 498-A IPC, 120-B, 420, 468 IPC and Sections 3 & 4 of D.P Act, 1961.

2) The report of defacto complainant dated 20.06.2015 addressed to Commissioner of Police, Visakhapatnam reads that she is working as Principal, Narayana Techno school, NAD Kotharoad, Visakhapatnam. Her marriage was performed with accused No.1—Karanam Sridhar of Eluru on 07.05.2006 at Visakhapatnam. The marriage was performed by her mother and paternal relations as her father is no more. At the time of marriage, her mother paid Rs.6,00,000/- towards dowry and adapadachu lanchanalu besides 15 sovereigns of gold to her and spent Rs.7,00,000/- towards marriage expenses. She joined her husband and both lived in Vemuri Homes Apartment, Ramavarapadu of Vijayawada. Subsequently, she secured a job as Teacher in St. Johns Public School near NTR hospital at Vijayawada and she worked there till the end of academic year 2009-10. At the time of marriage, her husband was employed in a private company and he resigned for his job in 2007 for the reasons best known to him and thereafter with no avocation. Thereby, she was maintaining her husband with her earnings from 2007 and subsequently being influenced by his parents, he started compelled her to resign the job and made her life unbearable, from which she could not continue the job. Thus, herself and her husband became unemployed and due to lack of income, they are facing starvation.

b) Her husband used to go to Eluru to his parents and used to get money from them for personal expenses and tortured her even without providing food as a result of which she became sick. When she became sick, her husband brought her to Visakhapatnam and left her at her mother's house.

c) Again on the instructions of her husband, she secured employment as Principal in Dr.K.K.R. Concept School, Kurmannapalem of Gajuwaka Mandal in the year 2012. Later within a span of 20 days, he came to Visakhapatnam and informed that he secured job in "Bridge Stone" Tyres Company at Auto Nagar, Gajuwaka. Then took a rented house and were staying by getting earnings of both and in that period though they were happy to some extent. Her husband used to visit his parents house at Eluru frequently and she also used to visit Eluru along with her husband. During her stay at her in laws, they never called her by her name as Radhika, but they used to call her by shouting, signs and by vigils even before her husband as if she is dumb.

d) Her further averments are that the parents of accused No.1 started harassing to bring amounts from her mother as additional dowry and as part of their plan, they spoiled the mind of her husband, who claimed of drenched in heavy debts during his stay at Vijayawada with no employment and thereby, to secure amount from her widowed mother to discharge his debts, even she expressed the inability of her mother to provide. Thereafter with the advice of Jetti Naga Apparao @ Vamsi, advocate, who is quash petitioner No.1/ accused No.5 and no other than brother-in-law of accused No.1 who made physical harassment. In March, 2015, the said Appa Rao (accused No.5) and his wife— Hemalatha (accused No.6), sister of accused No.1 came to the defacto complainant and compelled her to raise funds to a tune of Rs.3,00,000/- through her mother and brother or otherwise somewhere to safeguard the marital life with her husband and she approached her mother. Her mother secured an amount of Rs.3,00,000/- with rate of interest @ 2% per month from her relations and paid to accused No.1 on 17.03.2015. Subsequently, in the month of April, 2015 when she remanded to her husband about payment of Rs.6,000/- per month as interest due, he refused to pay stating that the interest has to be paid by her mother for the sake of family interest and thereupon exchange of words in between them. She informed the same to her junior paternal uncle Sri A.Venkateswara Rao, on 17.04.2015 on that her junior paternal uncle and aunt came to her house and chastised both of them and instructed to be of good terms and values.

e) Subsequently, on 18.04.2015 accused No.5, the brother-in-law of her husband, who is practicing as advocate at Yellamanchili informed her junior paternal uncle that she obtained divorce with her husband on 31.01.2014 in H.M.O.P. No.293 of 2013 on the file of Family Court, Vijayawada and immediately her paternal junior uncle informed the same to her, to her surprise. Thereafter four days later, her husband discarded her and went to his parents, leaving all his belongings in the rented house bearing No.31-56-4, Simon Nagar, Kurmannapalem. Subsequently, she along with her junior paternal uncle went to Eluru, her in-law's place, for questioning about the so-called divorce decree disclosed by accused No.5 and found that the house portion is under lock and key. On enquiry, no information was revealed and again in May, 2015 she along with her junior paternal uncle went to her in-law's place at Eluru, where her husband and parents-in-law conspired and expressed to allow her subject to equally sharing of domestic expenses by her and her husband to continue. Her husband even at the instigation of his parents over phone and accused Nos.5 & 6 subjecting her to cruelty, as she was living with a fond hope for good days.

f) She further averred that in January, 2013 accused Nos.5 and 6 came to her house and advised her to stand as surety to her husband for bank loan that is being arranged by accused No.5 and out of good faith, she subscribed three signatures of her on papers, which were brought by accused No.5 and later accused No.5 stated that bank loan was granted to her husband on some technicalities.

g) It is her further averment that she resigned the job and secured the present job in the end of May, 2013 and marital life of her with her husband was not cordial and with no sharing of bed but for sharing of expenses. In the month of January, 2015 accused Nos.5 and 6 came to her house and informed that her husband is facing financial crisis and asked her mother to arrange hand loan of Rs.3,00,000/- from her mother and failed to repay and even her husband's brother Chandra Mouli abused both of them in filthy language and said Chandra Mouli thrown some papers on her face stating that there is already divorce between her and her husband. Her junior paternal uncle verified the same through internet and came to know that passing of the fraudulent decree. She submits that there is no occasion even to visit Vijayawada much less to the Court premises and the same is fraudulent and collusive decree to deceive her by impersonating another women in place of her with fraud and the Court also and accused No.5 is mainly responsible in obtaining fraudulent decree by accused No.1, hence to take action.

3) The police registered the same for the offences supra as Crime No.102 of 2015 and taken up investigation. It is the same now sought for quashing by accused Nos.5 and 6. The contents in the quash petition are that H.M.O.P. No.293 of 2013 was filed by the complainant before the Family Court, at Vijayawada, on 03.04.2013 against her husband seeking divorce on the ground of her husband's impotency and she obtained exparte decree by taking summons to Visakhapatnam address as if he was residing at that address in Visakhapatnam and obtained exparte decree by giving wrong particulars of her husband and she also applied for certified copies vide C.A. No.1511 of 2014 and contrary to it, she is pretending as if the decree is to her surprise and it might have been obtained by impersonation or through somebody. The said contentions are contrary to the presumptions of the judicial proceedings duly performed and there is no cognizable offence made out against the quash petitioners and the averments are all false and are nothing to do with the marital life of defacto complainant and her husband

and she is already a divorced wife, who obtained exparte decree of divorce against her husband. The 1st petitioner/ accused No.5 is third generation lawyer hailed from the respective family and she falsely implicated him and his wife i.e., sister of accused No.1—accused No.6, though they are innocent by roping into the litigation and thereby the proceedings are liable to be quashed.

4) In the FIR while saying she came to know through accused No.5, who is no other than her husband's sister's husband about the so called decree saying as if she filed and obtained against her husband, which is not true and she never sought for divorce. It is not her specific case from the averments but for saying they are responsible in obtaining the said decree, accused No.5 played any role particularly to attract the offence under Section 419 IPC. So far as the offence under Section 419 IPC concerned, the allegations are against her husband and in-laws and not sister of accused No.1—accused No.6 and accused No.5 (husband of accused No.6). The only allegation against them is that accused No.5 is mainly responsible for obtaining the so- called decree as if obtained by her against accused No.1 for divorce alleging that he was impotent. But the crime registered against accused No.5 also for the offences under Sections 498-A, 120-B, 420 and 468 IPC no way susceptible and if at all, it is a decree obtained by accused No.5, it is during the course of judicial proceedings even by impersonating defacto complainant through somebody, it is a bar for giving report to the police and police registering the crime for no Magistrate can take cognizance unless the private complaint through Court because of the bar under Section 195 C.R.P. Once such is the case, there is no basis for continuing the investigation so far as accused No.5 is concerned, leave about no worth allegations against accused No.5 and his wife accused No.6.

5) Having regard to the above without prejudice to said recourse of any private complaint through Court or otherwise to comply with Section 195 Cr.P.C, the FIR proceedings are liable to be quashed.

6) Accordingly the Criminal Petition is allowed.

7) Miscellaneous petitions, if any pending in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.23.03.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

<u>CRIMINAL PETITION No.8102 of 2015</u>

Date:23.03.2016

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