

THE HON'BLE SRI JUSTICE RAJA ELANGO

Criminal Petition No.4225 of 2015

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. seeking to quash proceedings initiated against the petitioners/A-2 to A-5 in C.C.No.197 of 2014 pending on the file of Judicial Magistrate of First Class, Cheepurupalli, Vizianagaram District, arising out of Crime No.94 of 2014 registered for the offences punishable under Sections 498 A and 323 read with Section 109 IPC and Sections 3 and 4 of Dowry Prohibition Act.

Heard the learned counsel for the petitioner and the learned Public Prosecutor for the State and perused the material.

The main grievance of the petitioners is that the 4th petitioner herein who was arrayed as A-5 in the charge sheet viz., Kancharapu Vijayalakshmi, wife of Bagayylu, is no way related to the husband of the de facto complainant/1st respondent herein and there was no allegation against her to attract the offences alleged. Learned counsel for the petitioners also produced the statement of LW.1, who is de facto complainant-1st respondent. He further contended that as there was no allegation against the 4th petitioner/A-5 and since she was no way related to the husband of de facto complainant, continuation of proceedings against her is nothing but an abuse of law.

Admittedly, on the report given by the 1st respondent/*de facto* complainant, the police after completion of investigation filed the charge sheet for the offences alleged. A reading of the charge sheet and the statement of LW.1, makes it clear that except the allegation that the 4th petitioner/A-5 used to visit the house of the *de facto* complainant, there was no other allegation against the 4th petitioner/A-5 about her active involvement in the alleged harassment. However, as per the provisions of Section 498 A IPC, the ingredients of the said section would attract only to the person who is a member of the family or relative of the husband of a woman subjecting to cruelty and that the persons those who are not related to the husband of a woman cannot be prosecuted. In the instant case, the 4th petitioner/A-5 is neither a relative nor the member of the family of the husband of the *de facto* complainant and the charge sheet never stated about the active involvement of the 4th petitioner/A-5. It is to be noted that the learned Magistrate has not taken any cognizance against the 4th petitioner/A-5 for the offence under Section 498 A IPC and has taken cognizance against her only for the offence under Section 323 IPC read with Section 109 IPC. In order to attract the ingredients of Section 323 read with Section 109 IPC against the 4th petitioner/A-5, there must be specific allegation regarding causing injury to attract the ingredients of alleged offence

under Section 323 IPC, but the statement of LW.1- *de facto* complainant never stated about instigation of the 4th petitioner/A-5 the other accused to beat the *de facto* complainant. Since there was no specific allegations against the 4th petitioner/A-5 about her instigation in the alleged offences and as she is no way related to the husband of the *de facto* complainant, taking of cognizance against her for the offence punishable under Section 323 read with Section 109 IPC is nothing but an abuse of law and hence, the proceedings against the 4th petitioner/A-5 are liable to be quashed. However, as there were specific allegations against the other petitioners/accused constituting the alleged offences, this Court is not inclined to quash the proceedings against them.

Accordingly, the proceedings initiated against the 4th petitioner/A-5 in C.C.No.197 of 2014 pending on the file of Judicial Magistrate of First Class, Cheepurupalli are quashed insofar as the 4th petitioner/A-5 is concerned. However, the presence of the other petitioners/accused in the said case before the trial Court is dispensed with except on the dates when their presence is specifically required for the purpose of framing of charges, examination under Section 313 Cr.P.C. and on the date of pronouncement of judgment. They shall be represented by their counsel on all dates of hearings. The Criminal Petition is disposed of accordingly. Consequently, miscellaneous petitions, if any, pending shall stand closed.

Date: 11-04-2016

-
Ksn

RAJA ELANGO, J