

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.6901 of 2015

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ORDER :

The petitioner is A.2, no other than the father of A.1, in C.C.No.18 of 2015 on the file of the XIII Additional Metropolitan Magistrate, Nampally, which is out come of Crime No.175 of 2014 of Falaknuma Police Station, registered for the offences punishable under Section 4 of the Dowry Prohibition Act, 1961 and Sections 420 and 506 read with 34 IPC.

2. The 2nd respondent is no other than the brother of the bride. The report of the 2nd respondent dated 20.06.2014 addressed to the Deputy Commissioner of Police, C.C.S., D.D. and Sit, Hyderabad, in registering the crime reads that he is resident of Falaknuma area and his sister's name is Abdul Fathima and her marriage was fixed with Mohd Kaleemuddin (A.1) without any dowry to marry as the groom seeing the bride and her beauty and fixed the alliance on 21.06.2014 after that the petitioner asked about purchase of household articles by complainant and thereafter the petitioner demanded 100 sq. yards site or house and by accepting the same, wedding cards are printed and later the petitioner demanded swift car, 200 sq. yards, house and 15 tolas of gold saying it is only thereafter his son would accept the marriage and when the same was informed two days

back and by then, he and his relative's booked Basera Function Hall, near Rythu Bazar and therefrom he himself along with his relatives went to the house of the petitioner on 19.06.2014 and informed about the purchase of gold and all the material pertaining to marriage and further stated that it is not proper to demand 100 sq. yards extra plot, for which the petitioner threatened with dire consequences stating they would not accept this marriage and to do whatever they can, thereby asked to take action saying the accused persons cheated the complainant and his family members. The police having registered the crime after investigation filed the final report by examining as many as six witnesses including the de facto complainant as LW.1, father of victim as LW.2, mother of victim as LW.3, paternal uncle of victim as LW.4, victim-bride as LW.5 and one S.Srinivas Reddy, who is the circumstantial witness, as LW.6. The investigation speaks that after registration of the crime and in the course of interrogation confessed therefrom and in the course of investigation A.1 was arrested on 20.06.2014 itself and sent to judicial custody and the petitioner-A.2 surrendered on 21.06.2014 and confessed his guilt and he was sent to judicial custody. The investigation further reveals that after having marriage talks, LWs.1 to 4 fixed the marriage of LW.5 and at that time the petitioner not demanded any dowry saying they do not want any dowry on seeing the bride pretty, however sometime later, they mentioned the

list of articles, for which LW.1 and his parents expressed willingness and 15 days later the petitioner informed over phone that the list of articles furnished is not sufficient and father of the complainant pleaded his financial difficulty and inability to meet further article sought and later again the petitioner demanded 100 yards of house site, for which father of the bride agreed and date of marriage was fixed and invitation cards printed for the wedding and they also booked Basera Function Hall to perform the wedding and about two days before the report, the petitioner informed that his son wants a Swift Car, 15 tolas of gold and 200 yards house site and even LWs.1 to 4 supra went to house of A.1 and the petitioner and pleaded that they did not agree, the petitioner and A.1 refused to marry without fulfilling the said demand and also threatened with dire consequences and their acts put the victim girl at stake and their demand for the dowry is within the prohibition of the Act, 1961 and that makes out the offence punishable under Section 4 of the Dowry Prohibition Act and Sections 420 and 506 read with 34 IPC in filing the final report and the same was perused and taken cognizance by the learned Magistrate, from which the accused appeared. It is impugning the said crime registered with final report and cognizance taken by the Magistrate, this quash petition is filed by the petitioner-A.2.

3. The contentions in the grounds of quash petition are

in nut shell that the petitioner-A.2 is falsely implicated though innocent for nothing happened the marriage of A.1 with LW.5 fixed on 21.06.2014 and A.1 is working at Jidda, Soudi Arabia and they did not demand any dowry except some customary presentations, for which the *de facto* complainant and his family members agreed, however, it is they that started demanding the petitioner to present gold ornaments to the bride and to tender marriage expenses, contrary to the custom prevailing of the bride's family has to incur the marriage expenses and thereby the petitioner refused to oblige their unjust demand and therefrom the marriage performance was stopped. It was therefrom with a malafide intention and with a concocted story, the false complaint is lodged and there is no offence made out either under Section 420 IPC or 506 IPC or Section 4 of Dowry Prohibition Act and police without proper investigation filed the final report and the cognizance taken is unsustainable for no offence is made out and thereby sought for quashing.

4. Heard learned counsel for the petitioner and also the State represented by the Public Prosecutor and perused the material on record.

5. Notice was sent to the 2nd respondent by registered post returned unclaimed and deemed it sufficient service.

6. This Court on 03.08.2015 passed interim order in Crl.P.No.6901 of 2015 of all further proceedings of C.C.No.18 of 2015 for five weeks and extended later.

Though it is the contention of learned counsel for the petitioner-A.2 of no offence made out, a perusal of the material shows the offence under Section 4 of the Dowry Prohibition Act made out, but no offence is made out under Section 420 IPC as from the very allegations, the marriage was initially fixed without any demand of dowry and even from the complaint of the *de facto* complainant, it is specifically stated demanding either household articles or 100 sq. yards site and even agreed for it with further demand of Swift car and in stead of 100 sq. yards, 200 sq. yards site with house therefrom there is no offence of cheating even any element of development subsequently and so far as the offence under Section 506 IPC is concerned, the only allegation is for the telephonic demand of A.1 of the *de facto* complainant and his father to meet the above payments when LWs.1 to 4 went to the petitioner to make a request, where the petitioner allegedly threatened to do whatever they can and not allowed to perform the marriage as stipulated. It hardly attract under Section 506 IPC unless it is shown as an alarm caused from alleged threatens with any injury to his personal occupation or property or to cause the person to do any act which he is not illegally bound to do or to omit to do any act illegally entitled to do as the means to avoid execution of such threats. Here, the same is lacking, much less any averment of that cause in alarming and actual words of threatens even to make out to constitute in

alarm or fear. Thus, so far as the petitioner-A.2 is concerned when it constitute the offence under Section 4 of the Dowry Prohibition Act to that extent there is nothing to quash, but for so far as the offence under Sections 420 and 506 read with 34 IPC.

7. Accordingly, the criminal petition is allowed in part quashing the proceedings against the petitioner-A.2 in C.C.No.18 of 2015 on the file of the XIII Additional Metropolitan Magistrate at Nampally, Hyderabad, so far as the offences under Sections 420 and 506 read with 34 IPC and retaining the offence under Section 4 of the Dowry Prohibition Act and proceedings of trial to further to continue.

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

Dr. B. SIVA SANKARA RAO, J

Dt:06.01.2016.

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