

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.14956 OF 2016

ORDER:

This criminal petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed by the petitioners to quash the proceedings in C.C. No.569 of 2015 pending before the II Additional Judicial Magistrate of First Class, Tanuku, for the offence punishable under Sections 406, 498-A read with Section 34 of Indian Penal Code, 1860 (for short, 'I.P.C.').

The first petitioner herein is the husband of second respondent herein and the petitioners 2 to 4 herein are the mother and maternal uncle and his wife, of the first petitioner, who allegedly committed the offence punishable under Sections 406, 498-A IPC. It is the case of second respondent that her marriage with the first petitioner was performed on 12.11.2011 at Tanuku, West Godavari District, and it is alleged that she was subjected to cruelty by the first petitioner at the instigation of all other petitioners. There were civil disputes like filing HM OP for restitution of conjugal rights and transfer petition for transfer of those cases, including the maintenance case pending before the II Judicial Magistrate of First Class in MC No.12 of 2014, as she filed DVC No.7 of 2014 pending before the Judicial Magistrate of First Class, against the petitioners. The father of the first petitioner obtained an interim stay vide Order in Cr1.No.15487 of 2014 before this Court.

The only grievance of the petitioners is that the allegations made in the charge sheet would not attract the offence

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punishable under Sections 406, 498-A read with 34 I.P.C. As seen from the material on record, on receipt of complaint from the second respondent, the police, Tanuku town P.S., registered a crime and started investigation. During investigation, the police examined 19 witnesses, recorded statements of un-official witnesses and having satisfied that the material collected during investigation would suffice to constitute an offence *prima facie* filed charge sheet before the II Additional Judicial Magistrate of First Class, Tanuku, against all the petitioners for the offence punishable under Sections 406 and 498-A read with 34 IPC. But in the penultimate paragraph at page 11 of the charge sheet the investigating agency concluded that the material collected during investigation would *prima facie* show complicity of A.1 for the offence punishable under Sections 406 and 498-A read with 34 I.P.C., and find no evidence against petitioners 2 to 4/ A.2 to A.5

However the charge sheet was also filed against the petitioners 2 to 4, though police concluded *prima facie* that there is no material. But the trial court took cognizance of the case against all the petitioners, having found that the statements recorded under Section 161 Cr.P.C., during investigation, disclose *prima facie* that all the petitioners committed the offence, by applying its mind.

But the statements of the witnesses recorded, during the investigation, are not filed before this Court. Therefore, it is difficult for me to accept the contention of the petitioners that

the statements recorded under Section 161 Cr.P.C. does not disclose any offence.

Hence, at this stage, based on the conclusion arrived by the Magistrate for taking cognizance on 20.07.2015 cannot be interfered. When the allegations made in the charge sheet constitute the offence punishable under Sections 406 and 498-A I.P.C., *prima facie*, this Court cannot interfere with the trial, while exercising power under Section 482 Cr.P.C. Having found that there is some material by the Magistrate against the petitioners to constitute an offence under Section 406 I.P.C., it is difficult for me to come to a different conclusion, in the absence of any statement recorded by the police.

Hence, I find no ground to exercise jurisdiction under Section 482 Cr.P.C. to quash the proceedings in C.C. No.569 of 2015 pending before the II Additional Judicial Magistrate of First Class, Tanuku.

However, the counsel for the petitioners requested this Court to dispense with the appearance of the petitioners, but this Court cannot pass such Order by exercising power of Magistrate. but liberty is given to the petitioners to move appropriate application under Rule 37 of Criminal Rules of Practice or under Section 205 Cr.P.C. or under any other provision of law, for dispensing with the presence of the petitioners before the II Additional Judicial Magistrate of First Class, Tanuku, on filing such application, the learned Magistrate shall decide the same on the same day.

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In the result, the criminal petition is disposed off, at the stage of admission, with the above direction.

Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 21.10.2016

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