HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.8653 of 2015

ORDER :

The petitioners are A.1 to A.4 among six accused of Crime No.102 of 2015 of Women Police Station, Visakhapatnam, which is an out come of report of the 2nd respondent-de facto complainant, who is no other than the wife of A.1 and among other accused, A.2 and A.3 are parents and A.4 is younger brother of A.1. Crl.P.No.8102 of 2015 is pending so far as A.5 and A.6 are concerned, who sought for quashing of proceedings and they obtained an interim stay of arrest on 19.08.2015. In this criminal petition also there was an interim stay of arrest of A.1 to A.4 vide order dated 03.09.2015 while ordering investigation shall go on.

2. The averments of the *de facto* complainant in her report addressed to the Commissioner of Police, Visakhapatnam dated 20.06.2015 in registering the crime in nutshell are that her marriage with A.1 was performed on 07.05.2006 at Visakhapatnam, where her mother and paternal relations are residing and at the time of marriage, her mother out of funds paid Rs.6,00,000/- towards dowry, adapadachu lanchanalu, besides 15 sovereigns of gold to the *de facto* complainant and Rs.7,00,000/- towards marriage expenses, which are handed over to A.2.. After marriage, the *de facto* complainant joined her husand-A.1

and they lived at ‘Vemuri Homes’ Apartment, Ramavarapadu of Vijayawada and later she secured job as teacher in St. Johns Public School, near NTR Hospital at Vijayawada and she working there till the end of academic year 2009-2010. It is further averred that at the time of marriage her husband was working in a private company and in the year 2007 he resigned the job and thereafter with no avocation which made her to maintain family from her earnings and subsequently A.1 compelled her to resign the job at the instance of his parents and unable to bear with the torture, she did not continue the job and because of unemployment, they were facing starvation and her husband used to go to Eluru and was getting money from them for his expenses and even in that period he was torturing her without providing food and made her sick and he ultimately brought her to Visakhapatnam and left in the house of her mother and again with the instructions of her husband, she secured appointment as Principal in Dr.K.K.R. Concept School, Kurmannapalem of Gajuwada Mandal and both secured a rented House No.31-56-14 and leading marital life happily and A.1 used to visit his parents at Eluru frequently and she also used to follow her husband to her in-laws for short spells of stay subject to time. However, it is further averred that during her stay at Eluru, her in-laws were shouting towards her and giving signs and by vigils without even calling her by name and started torturing her mentally. They started harassing her to bring some more amounts from her mother to satisfy them as the dowry was given at the time of marriage felt with not satisfied. It is further averred that on one day her husband having returned from Eluru informed that he was drenched with heavy debts since borrowed huge amounts during over stay at Vijayawada with no employment hence to provide some financial assistance by securing from her widowed mother and the *de facto* complainant expressed her inability by appraising about her financial status and A.1 did not satisfy her answer and that thereafter with advise of A.5-Jetti Venkata Naga Apparao @ Vamsi, Advocate of Eluru and brother-in-law of A.1, in conspiracy with A.2 to A.4 and A.6, who is the wife of A.5, subjected her to cruelty and A.1 was not even pay house rent of their abode and not sharing any domestic expenses and subjecting the *de facto* complainant to cruelty at the abatement of above persons over phone and other instigations and A.5 is also used to visit their house now and then. While so, in January, 2013 from out of conspiracy and cheating, A.5 and A.6 came to the house of A.1 and *de facto* complainant at Visakhapatnam and advised the *de facto* complainant to a surety to A.1 for Bank loan being arranged by him and she believed their words in good faith and subscribed signatures on some papers on some unprinted bank loan papers brought by A.5 and also arranged her salary certificate and later none of the bank authorities came and did not furnish any salary certificate to anybody and later propounded by A.1 that there are some technical defects for grant of loan. It is further averred in the complaint that as there was no enhancement of salary in her job, she resigned and secured present job in May, 2013 and that she and her husband were not cordial and spending nights by separate beds and by not even sharing of household burden including domestic expenses and A.1 used to visit to the house of A.5 and A.6, who are staying at Yellamachili or at his parents house at Eluru. It is further averred that in January, 2015, A.5 and A.6 demanded the *de facto* complainant to arrange loan of Rs.3,00,000/- from the widowed mother of the *de facto* complainant and they started harassing the *de facto* complainant therefrom for the inability and in March, 2015, A.5 and A.6 came to their house at Visakhapatnam and compelled to raise funds of Rs.3,00,000/- through her widowed mother, brother or other relatives to A.1's necessities and with no other go, the *de facto* complainant approached her mother and appraised the demands, upon which her mother arranged Rs.3,00,000/- from our relatives and A.1 received the said amount from his mother-in-law on 17.03.2015 and A.1 was informed about the interest at Rs.2 % and in April, 2015, A.1 was remanded by the *de facto* complainant for payment of monthly interest of Rs.6,000/- for the amount borrowed through her mother, for which he refused saying the amount arranged by her mother is for the sake of protecting *de facto* complainant's family and there were exchange of words between them and the *de facto* complainant informed the same to her junior paternal uncle Sri A.Venkateswararao on 17.04.2015 and he came to their house at Visakhapatnam and chastised both and to continue the marital life amicably and that on the next day ie., 18.04.2015 A.5 and A.1 informed her paternal uncle-A.Venkateswararao that the *de facto* complainant obtained divorce from A.1 by filing O.P.No.293 of 2013 on 31.01.2014 on the file of the Family Court, Vijayawada and immediately the junior paternal uncle of the *de facto* complainant informed the same and with no time A.1 discarded the *de facto* complainant and went to his parents house at Eluru leave all his belongings in the rent house at Kurmannapalem and subsequently in April, 2015 the de facto complainant with her paternal uncle Venkateswararao went to the house of A.1 to A.3 at Eluru to question the fraudulent proceedings, but the house of A.2 and A.3 found locked and there was no information even from surrounding enquiries of their whereabouts and finally in May, 2015, the *de facto* complainant with her paternal uncle went to Eluru to the house of A.2 and A.3 where A.1 to A.4 are present and they abused them in filthy language and did not allow to enter into the house and A.4 thrown some papers on the face of the *de facto* complainant saying there is already a divorce between the couple and the papers when verified by the junior paternal uncle of the *de facto* complainant found the Family Court in O.P.No.293 of 2013 passed decree dated 31.01.2014 and after verification through internet she came to know the decree which is obtained fraudulently though she has no occasion to visit Vijayawada never stepped into the Court premises and not presented the case and the said decree is a fraudulent one obtained by A.1 in deceitful manner in collusion and conspiracy with A.2 to A.6 and it appears the accused persons might have impersonated the de facto complainant by using some other woman and cheated the Court and she have taken all steps for restitution of conjugal rights through mediators by saying the decree is fraudulent, however unsuccessful as A.1 and his parents did not oblige for restitution of conjugal rights saying A.5 has to take a decision and even the *de facto* complainant and her mother contacted A.5, but did not properly respond, hence to take action.

3. It is pursuant to which, the crime is registered for the offences punishable under Sections 498-A, 120-B, 420, 468 IPC and Sections 3 and 4 of the Dowry Prohibition Act. It is the said crime registered by the police pending investigation, sought for quashing by the petitioners/A.1 to A.4

4. The contentions in the quash petition are that the accused persons are innocent and that the 2nd respondent-*de facto* complainant filed Divorce

O.P.No.293 of 2013 on the file of the Family Court, Vijayawada on 03.04.2013 against her husband A.1 under Section 13(1)(ia)(ib) of Hindu Marriage Act on the ground of his alleged impotency by saying as if they were residing in Vijayawada though they were residing at Visakhapatnam and it is an ex parte decree obtained on 31.01.2014 by her against A.1 with wrong address and later she applied certified copy of decree vide Copy of application No.1511 of 2014 through her advocate one Janardhan Rao and it is she played fraud on her husband in obtaining ex parte decree with wrong address and now filed this false complaint suppressing the same and that the decree is valid and binding and she cannot go part having obtained the same apart from validity of the decree cannot be agitated in the present complaint but for the remedy is otherwise and that very report averment to register the crime for several offences supra there is no subsistence, much less making out the cognizable offence therefrom and the proceedings are nothing but abuse of process to wreck vengeance against A.1 and there are no merits in the allegations including as to any additional dowry demand or harassing by A.1, much less any instigation by other accused of A.1 against the complainant or any ill-treatment, thereby, liable to be quashed. It is further averred that A.1 is working as Manager in AKR Enterprises, CNR Bridgestone India Private Limited, Visakhapatnam, A.2 is a retired Deputy

Commercial Tax Officer, A.3 is the wife of A.2 with several ailments including rumatic pain, A.4 is a private employee and they are leading dignity life in the middle class family and the allegations are totally unsustainable and thereby the proceedings sought for quashing.

5. The notice sent to 2nd respondent-de facto complainant through registered post with acknowledgment due on 07.09.2015 by showing her address at Visakhapatnm address and same was shown delivered on 10.09.2015 as per India Post, online track record for the registered receipt No.1234666151N. Thus, it appears about service of notice and the *de facto* complainant failed to attend.

6. Heard learned counsel for the petitioners vis-à-vis the 1st respondent-State represented by Public Prosecutor and perused the material on record.

7. So far as A.4 is concerned, who is no other than the brother of A.1, the report referred supra contains only a stray sentence as if when de facto complainant and her junior paternal uncle went to question A.2 and A.3 wherein the de facto complainant and her uncle were abused in filthy and A.4 thrown the divorce order dated 31.01.2014 in O.P.No.293 of 2013 on the face of them and was alleged that this incident is occurred in May, 2015. As per quash petition at para 4 averments, she engaged an Advocate Janardhan Rao and obtained certified copy of ex parte divorce decree dated 31.01.2014 vide

C.A.No.1511 of 2014 to say prior to the alleged occurrence of May, 2015 she obtained certified copy and the said allegation of they went to question about the obtaining of divorce decree or A.4 at that time through the order copy on her face for the first time is hardly believable. So far as A.2 and A.3 are concerned, who are parents of A.1, the allegation is that they were instigating A.1 and further allegation is while couple were staying at Visakhapatnam in a rented house at Kurmannapalem and staying happily A.1 was visited his parents at Eluru and the de facto complainant also following him to see them for two or three days each time and the further allegation that they never called her as Radhika and they were instigating A.1 against the de facto complainant. This allegation so far as A.2 and A.3 are concerned also is as vague as anything to sustain, but for to say through the main person in commission of offence if any is A.1 (her husband) and in filing the complaint the de facto complainant made attempt to rope the family members also if possible. Thereby, the crime registered so far as A.2 to A.4 is unsustainable and liable to be quashed vide decisions of the Apex Court in **Geetha Malhotra v. State of Uttar Pradesh**[1] and **Preethi Gupta v. State of Jarkhand**[2]. So far as A.1 is concerned, there is prima facie accusation for the police to investigate and file final report.

8. Accordingly and in the result, the criminal petition is allowed in part, quashing the proceedings against A.2 to A.4 are concerned in Crime No.102 of 2015 of Women Police Station, Visakhapantam, while dismissing the criminal petition so far as A.1 is concerned.

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

Dr. B. SIVA SANKARA RAO, J

Dt:19.01.2016.

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[1] (2012) 10 SCC 741

[2] 2010 (7) SCC 667