

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.16217 of 2014

ORDER :

The petitioner is accused No.2 in Crime No.185 of 2014 of Mahabubnagar II Town Police Station, Mahabubnagar District registered on 02.09.2014 for the offences punishable under Sections 498-A, 379 and 307 IPC.

2) The de facto complainant is no other than wife of accused No.1. The quash petition against accused No.1 dismissed before admission vide order dated 19.06.2015 and admitted only so far as accused No.2 is concerned. The de facto complainant is served with notice and proof of service served on 03.10.2015 as per India Post Track Record with registered post receipt filed but de facto complainant failed to attend.

3) Heard learned counsel for the petitioner/ accused No.2 vis-v-vis learned public prosecutor representing 1st respondent—State and perused the material on record.

4) The factual back ground of the case in registration of the crime for the alleged occurrence dated 02.09.2014 is the alleged harassment and attempt to murder the de facto complainant by her husband—accused No.1, by name Md. Azhar Ali Khan. As per the written report of the de facto complainant—Smt.Saleemunnisa of even date, on that day at 23.30 hours that for the past three months her husband—accused No.1 physically, mentally and sexually harassed her and was stolen her 12 tulas gold by threatening with knife and also withdrawn Rs.2,65,000/- of the FD amounts and twice made an attempt to kill her including by pouring kerosene and kicked her out of the house and twice given the abortion pills to abort her pregnancy and her sister in law—Arshiya @ Ayesha Khanam, who is quash petitioner/ accused No.2 of police final report, is involved behind accused No.1 in all his acts and the accused No.1 planned to flew away to Saudi or USA with his mother,

hence to take action.

5) So far as the quash petitioner/ accused No.2 is concerned, there is only one allegation as if she is behind the acts of accused No.1 (husband of de facto complainant) and nothing beyond as to how she is privy to any of the acts, what role she got pursuant to the crime registered against sole accused from the police from the report supra, even no case made out against her sister-in-law or mother in law either in saying sister-in-law is behind or mother-in-law and husband are trying to flee away from the country. Even from her statement, about her husband, sister-in-law role is there, is a stray sentence and nothing beyond and even against the mother-in-law in saying husband and mother-in-law are trying to flee away to Saudi or USA, thereby there is no material to implicate her sister-in-law in the crime.

6) The statements of other witnesses LW.2 no other than sister of de facto complainant no way improves much less to say anything about the quash petitioner/ accused No.2 and sister of accused No.1 and what LW.2 stated is LW.1 stated about the role of sister of accused No.1 also in the acts of accused No.1, same is also the version of LW.3, another sister of de facto complainant, coming to LW.4—M.A.Salaam, saying the husband of de facto complainant is a neighbour to them, there also a stray sentence about the husband's sister, about the de facto complainant informed and same is also with LW.5—Smt.Khajabi. From the above, for the police to file final report, there is nothing against accused No.2. So far as the disclosure statement—panchanama dated 04.09.2014 concerned regarding husband who is accused No.1 of the crime, there is nothing even from the disclosure to implicate his sister (accused No.2) but for he and his mother are trying to flee away and those statements are even outside the purview of Section 27 being hit by Section 25 of the Evidence Act but for nothing of disclosure leading to discovery of any fact to implicate the mother or the sister of accused No.1 with others, if any, as co-accused.

7) Thereby the police final report so far as petitioner/ accused No.2 for roping her there is nothing even from the investigation much less with any averment in the FIR and from any of the statements of LWs.1 to 5 and thus it is liable to be quashed, as continuation of the proceedings against the petitioner/ accused No.2 is nothing but abuse of process and as held by the Apex Court in ***Preeti Gupta vs State of Jharkhand***^[1] that unless there are specific allegations against the relatives of husband to represent along with husband, the prosecution is unsustainable. In fact it referred the expressions to the conclusion of inherent powers are meant to do substantial justice and to prevent abuse of process and in saying the proceedings in complaint taken at their face value do not constitute offence, no way be allowed to continue as allowing it tantamounts to abuse of process or otherwise not meant to secure ends of justice and for that even referring to the ***State of Karnataka vs L.Muniswamy***^[2] and also referring to the three judge expression of Apex Court in ***Madhu Limaye vs State of Maharashtra***^[3] that the impugned order would brings out a situation which is an abuse of process of the Court, or for the purpose of securing ends of justice; interference by the High Court is absolutely necessary, then nothing against maintainability of revision will limit or affect the exercise of the inherent power of High Court. It is also referred to the expression of Apex Court in ***Zandu Pharmaceutical Works Ltd vs Mohd. Sharaful Haque***^[4] and in ***Inder Mohan Goswami vs State of Uttaranchal***^[5] saying the authority of Courts enable for the advancement of justice. If any abuse of process leading to injustice is brought to the notice of the Court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

8) Accordingly and in the result the Criminal petition is allowed and all the proceedings relating to Crime No. 185 of 2014 of Mahabubnagar II Town Police Station, Mahabubnagar District, against the petitioner/ accused No.2 are quashed and the bail bonds of the

petitioner/ accused No.2, if any, shall stand cancelled.

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

Dr. B. SIVA SANKARA RAO, J

Dt.05.01.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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[\[1\]](#) AIR 2010 SC 3363

[\[2\]](#) (1977) 2 SCC 699

[\[3\]](#) (1977) 4 SCC 551

[\[4\]](#) (2005) 1 SCC 122

[\[5\]](#) (2007) 12 SCC 1