

**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**CRIMINAL PETITION No.5664 of 2013**

**ORDER :**

This Criminal Petition is filed, under Section 482 Cr.P.C, by the petitioners/ accused nos.2 & 3 among three accused in C.C. No.1486 of 2011 on the file of the IX Metropolitan Magistrate, Cyberabad at Kukatpally, where the learned Magistrate has taken cognizance for the offences punishable under Section 498-A IPC and Sections 3 & 4 of Dowry Prohibition Act, 1961, which is outcome of report of 2<sup>nd</sup> respondent—defacto complainant, who is no other than wife of accused No.1 against five persons viz., husband, parents in law and sisters- in law of the defacto complainant. It is based on the learned Magistrate's referred private complaint for police investigation under Section 156 (3) Cr.P.C to Police Station, KPHB Colony and the crime is registered as Crime No.492 of 2010 and the police after investigation filed final report on 17.12.2010 by citing the defacto complainant besides two more witnesses, who are no other than brother and mother of the defacto complainant.

2) The sum and substance of the accusation in the private complaint forwarded for police investigation resulting in filing the final report that was taken cognizance for the offences supra by the learned Magistrate read as under:

a) The marriage of the defacto complainant and accused No.1 was performed on 10.02.2006 at Town Hall, Nellore and at the time of marriage, the defacto complainant given Rs.4,00,000/- dowry and spent Rs.1,00,000/- towards marriage expenses and the marriage was consummated. During the wedlock, they blessed with a male child on 12.12.2007 at J.J Hospital, Hyderabad by name 'P.Bhanu Rishikesh Reddy' and the complainant is youngest of four daughters and sons. The complainant's mother demised on 04.04.1985 and thereafter, they were taken care by the maternal grand father due to her father neglected

them;

b) Accused No.1 is the only son besides two daughters to his parents. At the time of marriage, his elder sister is resident of Panjagutta, Hyderabad and second sister is resident of Sriklahasthi of Chittoor District; that at the time of marriage proposal, it is informed that the qualification of accused No.1 is MCA and has been working as GE (Consumer Finance Servicing America), Cyber gateway, Madhapur, Hyderabad as a Research Analyst and stated that he already having an offer on hand in a software company for Rs.60,000/- as a monthly salary, in which he would shift immediately after the marriage and that he got 13 acres of land worth of minimum Rs.1.5 lakhs per acre and demanded for dowry of Rs.10,00,000/-cash, 50 sovereigns of gold jewellery and Rs.1,00,000/- worth diamonds and silver articles, furniture worth of Rs.4,00,000/-, gold bracelet, a plot of 20 Sq.yds in Hyderabad to the accused No.1 and Rs.50,000/- each to the sisters of accused No.1 towards adapadachu lanachanam. The maternal grand father of defacto complainant pleaded his inability and could meet by payment of Rs.5,00,000/- in cash out of their dowry demand of Rs.10,00,000/- and given gold and silver ornaments worth of Rs.1,00,000/- besides furniture worth of Rs.1.5 lakhs apart from bracelet given to accused No.1 and after marriage accused No.1 stayed for a day at Nellore and later went to his native place and on and off he was visiting the complainant's native place. Later, on 30.04.2006 he brought complainant to Hyderabad where they set up a separate family at Kukatpally and lived for three months till July, 2006 and during that period though accused No.1 was treating well in the absence of his parents whenever he was receiving phone calls from his parents and sisters, he became violent and was insisting for additional dowry including to purchase house at Hyderabad in his name by the complainant's family.

c) It is further averred that in August, 2006, the couple shifted their residence to Vengalrao Nagar Colony and lived there upto

December, 2007. Thereafter, parents and two sisters of accused No.1 were started harassing like anything including to meet additional demand for dowry, by saying they could have get more dowry, if it is another match and at the instance of other accused, the accused No.1 dragged the complainant to the nearest room by holding tuft of hair and beat her mercilessly for the reply she was given to his parents and created a scene of suicide by making her life miserable from which the complainant weeping inconsolably about her fate in the hands of accused; that the things happened at Kotapoluru Village, Sullurpet Mandal of P.S.Neloore District in January, 2007 where they stayed from 16.01.2007 to 19.01.2007. It is further averred that on 19.01.2007 again accused No.1 caught hold of her tuft and slapped and beat her mercilessly to meet additional demand for dowry even in the front of her aged grand father, 2<sup>nd</sup> elder sister and younger brother besides accused No.1 has also threatened her grand father and younger brother with dire consequences, if they interfere and support her; that her grand father arranged Rs.75,000/- in cash given to accused No.1 and sent them to Hyderabad on 20.01.2007.

d) The elder sister of accused No.1—Smt.Usha (accused No.4) visited Kukatpally to the place of accused No.1 and defacto complainant, picked up an unnecessary argument by raising the issue of adapadachu katnam at the time of marriage and there from accused Nos.1 and 4 together beat the complainant mercilessly besides vulgur abuses and accused No.4 also threatened saying that she got political and police influence to do away the complainant's family and show as if mentally ill and got her to be admitted at Erragadda Mental Hospital. On 13.02.2007 on receiving of phone call of accused Nos.2 and 3, he picked up a quarrel to bring additional dowry to have own house at Hyderabad and kicking the complainant on her stomach from which she went unconscious for some time and she was shocked by this incident and horrified and accused No.1 was not even allowing her to make phone calls or to visit doctor that she was subjected to physical attacks

mercilessly in his hands during April/ May, 2007 and he was declaring to do away her, else to get rid of him by giving divorce.

3) She further averred that before that in February, 2007 on information that the father of accused No.1 met with road accident. Complainant and accused No.1 left Hyderabad to the native place of accused No.1, where stayed for one week and in those days, accused No.1 and his two sisters—accused Nos.4 & 5 by picking up quarrels started abusing to meet the demand for additional dowry for purchasing house at Hyderabad and accused Nos.4 & 5 also slapped the complainant and accused No.3 also there by caught hold of her hair and slapped her and the acts of accused Nos.2 to 5 supported by accused No.1. It is further averred that on knowing about the complainant conceived, there was no happiness on the side of accused No.1 and he started commenting about the pregnancy saying as if he is not responsible for her conceiving and he deliberately in front of complainant declared to his parents that he wished to go to DNA test, by such acts of humiliation, the accused made her life miserable and unbearable and accused Nos.2 and 3 instead of counseling accused No.1 from instigating him so also sisters of accused No.1 i.e., accused Nos.4 and 5 by claiming to perform another marriage to accused No.1 by getting rid of the complainant. The accused No.5 being local either by phone calls or by frequent visits, she was instigating accused No.1 and made the life of complainant miserable. The accused No.1 has repeatedly insisted for her abortion and for her refusal, the accused were raising quarrels; On 20.05.2007 at about 9.00 pm, the accused No.1 picked up a quarrel for additional dowry and became furious and even snatched away her gold jewellery and silver articles and abused her sisters and grand father in vulgar language and slapped and beat her by not even allowing her to weep or raise alarm by threatening to finish her otherwise. Ultimately she was necked out of house on that date at about 10.30 pm by accused Nos.2 and 3 threatening not to return back, from which she approached her aged grand father at Kukatpally and therefrom a panchayat was held

on the choice of accused No.1, there he reflected wild conduct by picking up a quarrel and harassed her physically and mentally. On 16.10.2007, the accused No.1 picked up a quarrel and beat her to get out of the house saying to see her grand father's end if she was ahead to come back. She put up althrough all the ill-treatments hoping for good and from she loves accused No.1 as his wife to continue the marital life hoping for a change in him and also for the welfare of the children born in their wedlock.

4) It is further averred that her hospital expenditure for birth of the child was met by her grand father and accused No.1 did not pay any attention and never cared her during the period of carrying and delivery and hospitalization. It is averred that during the 3<sup>rd</sup> month of her delivery, she was taken to the native place of accused No.1 on 15.02.2008 and they stayed there upto 20.02.2008 and during that period she was subjected to physical cruelty by accused Nos.1 to 3 for additional dowry and also pressurized to get the assets of her grand father to transfer in her name or in favour of accused No.1 and accused Nos.1 and 2 even after birth of the child demanded for DNA test saying accused No.1 is not responsible for birth of the child. Accused No.1 used to suspect fidelity of the complainant at the instigation of his parents and his two sisters. There was a panchayat on 20.04.2008 where the complainant, her grand father and her brother made efforts to join back the accused No.1, however, it was thwarted by accused No.1, accused No.4 and husband of accused No.4, who attended the panchayat by putting the demand for meeting additional dowry for allowing her to join back else to give divorce. The complainant refused to sign the papers to give divorce. The panchayat failed on that day and even later many a time she made efforts to joint and not allowed by accused No.1, who deserted her. He cause issued notice on 07.06.2009 for which she issued reply notice dated 17.08.2009 expressing her willingness to join him and without even taking her to join, he filed O.P. No.734 of 2009 in the family Court, Ranga Reddy District for Restitution of conjugal rights. Though she expressed willingness to join with children, he did not allow her and in

playing tactics.

5) On 13.09.2009 she along with her child and grand father and sister, village elders gone to the place of accused Nos.2 and 3 for mediation and even through complainant visited her in law's place, she was beaten by his parents by not allowing her and by threatening her to do away, if she again return and having no option she returned back to Hyderabad and since then, living at Kukatpally on the mercy of her grand father. She filed DVC No.38 of 2009 for protection orders and maintenance of herself and her child and accused No.1 filed Criminal Petition No.9112 of 2009 against DVC case without providing anything and she was constrained to file therefrom M.C.No.255 of 2009 before the Family Court, Ranga Reddy District and the same is pending.

6) The investigation made by police referring to the above stated it all reveals the ill- treatment of the complainant in the hands of accused Nos.1 to 3. It is therefrom concluded in the police final report that accused Nos.4 & 5 need not be charged for no independent witness available to prove the allegations against them. So far as accused Nos.1 to 3, it is stated the offences made out in charging them. The contentions in the quash petition filed by accused Nos.2 and 3 are that the allegations in the complaint were reiterated in the final report without proper investigation and even though accused No.1 filed restitution of conjugal rights and she stated that she is interested to join accused No.1 to lead marital life, whereas in the restitution she sought one month time to join her husband and without joining, she filed the private compliant in order to harass and contested restitution and the same was ultimately decreed and later as she failed to join, the accused No.1 issued notice and filed O.P. No.1159 of 2012 for divorce against complainant, where she remained exparte initially and later came forward to contest by seeking to set aside the exparte order and the same is pending. She filed DVC case to harass that is stayed by High Court. In the Crime stage, the accused Nos.1, 4 & 5 filed Crl.P. Nos.9112 of 2009 and 12340 of 2010

respectively to quash and from the charge sheet filed, the same was closed as infructuous on 28.03.2013 and thereby the present quash petition is filed saying all the allegations are only to harass and that the complainant has no mind to join her husband (A1) and thereby the proceedings are liable to be quashed.

7) In fact a perusal of the detailed complaint averments referred supra that all reiterated almost in the police final report and substantiated from the investigation, there are specific allegations, which require to be decided in trial to contest for nothing to go into the complicated and disputed questions of facts as beyond the scope to decide in the quash proceedings. The mere fact that husband filed restitution O.P and got a decree is not a ground for the in law's in seeking to quash the criminal proceedings, apart from the fact that he did not file any execution petition and even in the course of efforts made for reconciliation same also failed. The record shows having obtained decree for restitution not even filed execution, he filed the divorce petition which shows his intention was not for restitution of conjugal rights but for getting the decree of restitution and make it a ground if possible, later to get divorce. Thereby, the Criminal Petition is liable to be dismissed, without prejudice to the rights and contest of the accused in the course of trial. At this stage, it is needful to mention by hoping for the good, as laid down by the Apex Court's expression in ***Preethi Guptha vs State of Jharkhand***<sup>[1]</sup> that it is a social responsibility and obligation to maintain social fiber of family life, though genuine case of dowry harassment is a matter of serious concern conversations of small incidents should not be reflected in criminal complaints. Thus, this Court hopes that good sense will prevail on the parties to give a rethinking to settle the issue amicably, if necessary, to compound the criminal case for the couple to join and live together more particularly in the larger interest and welfare of their child and the couple still have a long journey of life.

8) Accordingly and in the result the Criminal Petition is

dismissed without prejudice to the defence and contest of accused Nos.2 and 3/ petitioners in the pending Calendar Case proceedings. The accused Nos.2 and 3 are given liberty to file an application under Rule 37 of Cr.R.P for one to represent others on behalf of accused Nos.1 to 3 and in such event the trial Court, after hearing, shall permit with necessary conditions and expedite the trial.

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

**Dr. B. SIVA SANKARA RAO, J**

**Dt. .03.2016**  
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**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

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Date:18.03.2016

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