

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.2433 of 2013

ORDER :

This Criminal Petition is filed by the petitioners 1 & 2/ accused Nos.4 and 5 under Section 482 Cr.P.C to quash the proceedings in C.C. No.272 of 2011 on the file of XIII Additional Chief Metropolitan Magistrate, Hyderabad, where the learned Magistrate has taken cognizance for the offences punishable under Sections 498-A, 506 read with 34 IPC and Sections 4 & 6 of Dowry Prohibition Act, 1961, which is outcome of private complaint of defacto complainant dated 13.04.2011 against five accused viz., A.1—Ahmed Shareef, who is no other than husband of defacto complainant, A.2 & A.3—Mohd. Shareef and Khasiser Begum, who are no other than parents-in-law of defacto complainant, A-4—Ayesha Sultana, who is no other than sister of A.1, A.5—A.Sabiha Sultana, who is no other than sister-in-law of A.1; that was referred by the learned Magistrate supra under Section 156 (3) Cr.P.C (the endorsement dated 15.04.2011 of the learned Magistrate reads from the office note of private complaint to refer the matter to SHO, WPS, CCS, Hyderabad for investigation and report under Section 156 (3) Cr.P.C) and complaint is forwarded to Station House Officer, W.P.S, C.C.S. for investigation and report. The S.H.O, W.P.S, C.C.S, Hyderabad, registered the crime No.150 of 2011 for the offences supra and taken up investigation and filed final report in the form of charge sheet against all the accused persons and the learned Magistrate has taken cognizance for the offences supra against all the accused persons by ordering summons against accused Nos.3 to 5, who obtained anticipatory bail, and non-bailable warrants against accused Nos.1 & 4. The cognizance order of the learned Magistrate shows from the office note, as to the case is taken on file for the offence supra against the accused supra to issue summons/ NBW and nothing beyond.

2) In the private complaint, five witnesses were cited including defacto complainant by name Smt.Rabia Anjum, Md.Nazimuddin, father of defacto complainant, Mohd. Safiuddin, brother of defacto complainant,

Mohd.Idris, who is an independent witness and Syed Shahabuddin, referred as Baquer. There are no documents filed including as to earlier any report given to police or any exchange of notices between the couple apart from any other proceedings *inter se*.

3) The said private complaint reads that the marriage of defacto complainant was performed with A.1 on 22.04.2016 at Meridian Function Hall, Malakpet, Hyderabad according to Sunni Muslim rites and customs for a deffer dower of Rs.25,000/-; that all the accused persons are residing in one house and it was an arranged marriage and the accused persons approached the elders of complainant through sister-in-law of A.2, who is working in Income Tax Department and represented that A.1 is an Engineer in AL-HOKAIR, by earning salary of Rs.1,50,000/- with own house at Tappachaputra, Hyderabad with no responsibilities and is having family status visa and can arrange visa to defacto complainant. By believing the same and after due enquiry, the marriage was arranged. It is further averred that the accused demanded Rs.1,00,000/- cash, a Maurthi car, 20 tulas of gold ornaments, and a huge jahaz articles. On demand of accused Nos.1 to 5, the parents of defacto complainant gave Rs.50,000/- cash, Maruthi car, 10 tulas of gold ornaments, furniture, fridge, T.V., Washing Machine, Cooler and other jahaz articles and her parents spent Rs.3,25,000/- towards marriage expenses.

4) It is further averred that defacto complainant joined her husband—A.1 at her in-laws house with jahaz articles supra and the couple lead happy marital life for ten days. Later, A.1 to A.5 started harassing her and passed sneering remarks over jahaz articles and not giving sufficient dowry and A.2 to A.5 snatched away her gold ornaments and kept in locker by A.2 with the consent of A.1 and not allowed her to wear them in any function. After 12 days of the marriage, A.1 went to Riyadh to join his duty leaving the defacto complainant at her in laws-house with A.2 to A.5, who used to pick up quarrels including on petty issues and were harassing and torturing her and with disregard to factum

that she was carrying they demanded additional dowry by not considering her parents inability and without even A.1's arranging visa for her joining him till 06.10.2006 when she could join A.1 where A.1 even started harassing her for additional dowry and sent her back to India on 10.11.2006 and after her reaching India, she went to her in-law's house where they did not look after her and by continuing harassment, they and sent her to her parents' house, where the defacto complainant gave birth to a female child on 31.01.2007 at the expenses of Rs.35,000/- incurred by her father for the delivery. A.2 to A.5 did not even turned to hospital to see the child but for later visited her parents' house and picked up quarrel on the ground that they wanted a male child but she blessed with a female child and A.1 also abused her over telephonic calls in that regard.

5) It is further averred that the defacto complainant went to Riyadh, on 26.04.2007 with the minor child. While she was going to abroad, A.1 to A.5 demanded Rs.60,000/- for their air tickets else threatened to cancel visit to K.S.A. and her father arranged the same and given to A.2 to A.3. After receiving the said amount, they sent her through air to join her husband where A.1 did not even take proper care of her and again, she gave birth to a female child on 03.08.2008 at Riyadh and for that A.1 used to abuse her for again giving birth to a female child, so also by A.2 to A.5 over phone and instigated A.1 to harass her. Though complainant could not bear for third pregnancy including on doctor's advice, she became pregnant forcefully by A.1 for the sake of a male child. While she was carrying second month, A.1, defacto complainant and their two daughters came to India on 07.02.2009 and were staying at her-in-laws. All the accused used to quarrel on petty issues and treated the defacto complainant as a maid servant by abusing her and by demanding for additional dowry stating that her father is an officer in Income Tax Department and can arrange additional dowry of Rs.10,00,000/- for house construction. After one month, A-1 went to Riyadh by leaving the defacto complainant and two children even though she was carrying, at the mercy of A.2 to A.5 and the A.2 to A.5 did not

take care of her and harassed her on petty issues and again on the demand of A.1 to A.5, her parents arranged Rs.40,000/-.

6) On receiving the said amount, A.2 and A.3 sent the defacto complainant and two minor daughters to Riyadh on 15.06.2009 where A.1 totally neglected her and developed extra marital relationship with his friend's wife Asra Tabbassum, W/o.Nawazuddin at Riyadh and left the house in spending time with that lady. When the defacto complainant questioned him in that regard, he beat her mercilessly and threatened with dire consequences and when she informed the same to other accused, they abused her stating that A.1 is a male person and he can do anything as he likes and she has to bear with it at all to continue else A.1 would pronounce divorce to the complainant. Later, the complainant gave birth to a third daughter on 18.09.2009 at Riyadh. That on 21.02.2010, the complainant, accused No.1 and their three minor daughters came to India and while they were staying at the house of accused Nos.2 and 3, she was even tortured stating no hope for giving birth to a male child and accused persons except A.4 tried to kill her by pressing her neck but she rescued herself and they have not even allowed her to contact her parents over phone so as to not to reveal anything to her parents or anybody with a threat to pronounce divorce and saying A.1 may go for second marriage. One month later, A.1 left the complainant at his parents house and went to Riyadh. In his absence, accused persons demanded for additional dowry of Rs.10,00,000/- and even accused Nos.3 & 5 beat her mercilessly and were demanding to arrange latest model car to A.1 as her father was working in Income Tax Department.

7) A.2 opened the joint bank account and locker in S.B.I, Karwan Branch, Hyderabad and her entire gold ornaments were kept in the locker and A.2 was operating the same and A.1 to A.3 forcefully obtained the signatures of defacto complainant on white papers and non-judicial stamp papers stating that the said papers are required for her travel to abroad. On 19.07.2010, the complainant and her three minor

daughters went to abroad for which the accused demanded Rs.1,00,000/- towards additional dowry and in the interest of marital life, her father gave Rs.50,000/- to A.2 and A.3 on 10.07.2010. By receiving the said amount, accused permitted the complainant and three daughters to visit to Riyadh, K.S.A. However, they were totally neglected by A.1 at the instigation of A.2 to A.4. A.1 to A.5 conspired together and she was sent back to India with three minor daughters on 28.03.2011. That A.1 informed to complainant's father that the complainant and minor daughters were departed from Riyadh and the complainant's elder brother received the complainant and minor daughters at airport and brought them to in-laws house but A.3 did not allow her into the house unless she fulfills the demand of Rs.10,00,000/- as additional dowry and latest model car and A.3 also beat her and snatched away her belongings drove her away from their house with minor daughters by retaining the belongings and educational certificates of complainant, and even though elders made efforts, they went in vain. A.1 was not even responding to the phone calls saying if at all she wants to protect the marital tie, she has to meet the demands.

8) It is from the said private complaint averments which no way whispered even giving of any police report and not taking of any action thereon for filing private complaint that was referred to police and from the crime registered supra and from the investigation by examination of de facto complainant and her father, mother, brother and baquer, all are residents of Hyderabad, police filed final report in the form of charge sheet by Inspector of Police, W.P.S, CCS, Hyderabad and that was taken cognizance by the learned Magistrate with endorsement as on file for the offences supra.

9) The police final report reiterates what was contained in the contents of the private complaint supra and the same is now impugned in the quash petition, mainly by A.4 and A.5, two married sisters of A.1 of whom, A.4 is having passport and staying with her husband at Riyadh. A.5 is a resident of Mehadipatnam, Hill Colony, Hyderabad. The

addresses filed in this regard show from the pass port of A.4 Ayesha Sulthana, is resident of Hyderabad obtained in the year 2001- 02 even married by naming her husband Mohd.Mazhar Ali, there is an endorsement in December, 2012 to that effect and again Hyderabad Immigration Endorsements in 2007 to 2011 and also exit and re-entry visa of Riyadh in the respective years 2005 to 2011 with renewal of pass ports. Further A.5—Sabiha Sulthana married Zaheeruddin Safi on 05.02.1993, who is resident of Hyderabad at Mehadipatnam, Hill Colony, Hyderabad. There is a house hold copy showing A-5 and her husband are residents of that place and also all the four daughters and sons in their wedlock. This is the material filed by the A-4 and 5 in the quash petition apart from it, there was notice cause issued by A-1 to the defacto complainant dated 06.04.2011 saying their marriage was performed on 02.04.2011 at Hyderabad according to Islamic rites and due to some unavoidable circumstances and all efforts of mediation has been failed, he pronounced divorce on 29.03.2011 at Riyadh and that the Chief Qazi of Shahalibunda, Hyderabad also registered the said Divorce and issued divorce certificate vide file No.290/ 2011 dated 02.04.2011 and deposited meher amount of Rs.25,000/- and Iddat period maintenance of Rs.20,000/- as such total amount of Rs.35,000/- at the office of Chief Qazi, Shahalibunda, Hyderabad which she can collect saying the relationship of husband and wife has been terminated.

10) Leave it as it is, the said notice dated 06.04.2011 and the private complaint filed by the defacto complainant was dated 13.04.2011 which shows the private complaint filed is immediately after divorce notice received. No doubt, the case against A-2 and A-3 is made out from the specific allegations against them referred supra in the private complaint. So far as A-4 and A.5 who are quash petitioners concerned, the averment of they are residing at their parents i.e., in-laws of complainant is not correct. In fact A-5 is married to Zaheeruddin Safi in the year 1993 itself and she is residing with her husband at Mehadipatnam and blessed with six children in their wedlock for it is not an averment of A-5 while residing with her husband at Mehadipatnam is

therefrom harassing the complainant. So far as A-4 is concerned she is resident of Riyadh with her husband right from 2002 when she obtained pass-port and her marriage was performed even prior to that but for any visits to her parents' house (A2 and A3) and it is not even the averment of A-4 during her visits to her parents house at Hyderabad from Riyadh or other country or abroad, harassing her or otherwise by phone calls.

11) A perusal of the material would show for something of harassment or cruelty in the case of A.1 in abroad and A-2 and A-3 in general if not at abroad, being the husband and in-laws to maintain the said complaint even it is after receiving of the divorce notice or after pronouncement of Talaq by husband of defacto complainant. As can be seen from the averments so far as A-4 and A-5 concerned, it shows with animosity, the two married sisters of A.1, who are also residents of some other place were unjustly and baselessly implicated in this case. Thus it is a fit case to allow the application to the extent prayed for quashing of the proceedings so far as A-4 and A-5 taken cognizance by the learned Magistrate from the police final report in pursuance to the crime investigation supra. It is also important to mention in this contest that there is no any material to show leave of the Central Government as required under Section 188 Cr.P.C, obtained to proceed against A-4 and A-5, though such a bar has no application for taking cognizance but for enquiry; even after post cognizance stage, from the cognizance order of the learned Magistrate was dated 30.09.2011 and the quash petition is filed in the year 2013 and even defacto complainant appeared through advocate and contests the matter; vide decision Cr.P.No.6390 of 2013 referred to ***Thota Venkateswarlu vs State of A.P***^[1].

12) Accordingly and in the result the Criminal Petition is allowed and all the proceedings relating to C.C. No.272 of 2011 on the file of XIII Additional Chief Metropolitan Magistrate, Hyderabad against the petitioners/ accused Nos.4 and 5 are quashed and the bail bonds of the petitioners/ accused Nos.4 & 5, if any, are cancelled.

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

Dr. B. SIVA SANKARA RAO, J

Dt.29.04.2016
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HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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Date: 29.04.2016

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