

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Revision Case No.2577 OF 2016

ORDER:

The revision petitioners are the accused Nos. 1 to 4 of C.C.No.223 of 2010 on the file of the learned Judl. Magistrate of First Class, Mydukur. It is outcome of report of the defacto-complainant dated 14.10.2008 in registering the Cr.No.254 of 2008 for the offences punishable under Sections 498-A and 506 of IPC. Pursuant to the report, the police after investigation by recording the statement of defacto – complainant-L.W.1 wife of A.1, L.w.2 their daughter, L.W.3 mother of L.W.1 and the L.W.4 so called independent witness, L.Ws. 5 and 6 investigating officers, filed final report for the offence under Section 498-A of IPC only saying the accused physically and mentally harassed and abused the defacto-complainant-L.W.1 making unbearable to live from which she went to her parent's house at Papannapalli village along with her child-L.W.2 and they used to threaten her with dire consequences and abused and beat her, the accused persons availed anticipatory bail of whom A.1 is husband of L.W.1 and father of L.W.2 supra, the A.2 is sister of A.1 and A.4 is so called second wife of A.1, leave about the A.3. The learned Magistrate taken the case on file for the offences supra on 21.08.2010. It is thereafter after securing appearance of accused and on supply of copies and hearing before the charges, the petitioners/ A.1 to A.4 moved this Court under Section 482 of CrPC seeking to quash the proceedings and went unsuccessful vide order in CrI.P.No.11801 of 2010 on 30.10.2014 and also went unsuccessful in impugning the same before the Apex Court in petition in SLP(Crl.) No.122 of 2015 dated 16.01.2015 in which it is observed that the chargesheet already filed and remedy is left open to the petitioner and to make a request to discharge before framing of charges before the

trial Court to consider by the learned trial Judge and to pass appropriate orders in accordance with law expeditiously. It is by that concession the accused filed an application in CrI.M.P.No.1618 of 2015 seeking discharge u/ sec. 239 of CrPC in which the order impugned herein dated 31.08.2016 is passed saying there are no grounds to frame the charge. On perusal of the cause title of A.1 and A.2, it shows residents of same street of Proddutur of Kadapa district so also the A.4 the second wife of A.1 and so far as the A.3 is concerned shown as watchman of Venkateshwara college is also a resident of same street of Proddutur town. From the very defacto-complainant's report setting the law into motion supra shows that her marriage with A.1 was performed on 24.03.1985 at Modampalli street of Proddutur and they lived happily for three years and blessed with a male child initially since died with no lapse of time after birth, later a female child as she is now major and after that he deserted them and developed illegal intimacy with other ladies and started harassing her saying to bring more money from her parents and his sister also joined him so also A.3 M.Subbarayudu @ Sanodu, no other than the maternal uncle's son of A.1 and A.2 and A.4 the Keep of A.1 of they started ill-treating and unable to bear with torture, she went to her parents house along with her child and she filed against her husband a private complaint case in the Court of Badwel and it was ended in compromise on assurance by him to treat her well and to pay Rs.300/- p.m. as maintenance however after withdrawal of the case he failed to pay and threatened her for joining back along with female child and he was now and then coming to her parents place and used to beat her and even his daughter and she also reported to the Superintendent of Police and as she is poor, she is unable to maintain herself and her daughter. Hence, to take action.

2. From the very report, the female child was born in their wedlock is more than 20 years ago as on the date of report 14.01.2008 and the allegation was she was necked out immediately after birth of the female child by his developing illegal intimacy and it is the case that all the A.1 to A.4 were ill-treating them of whom A.4 is the kept mistress of A.1. the offence u/ Sec. 498-A of IPC is three years with fine. So far as the offence under section 506 of I.P.C. not a case of threat or cause death or upto 7 years otherwise two years.

3. Apart from this even from her statement before police there is nothing new. So also from their daughter but for almost with same song of L.W.1 of the accused threatened their mother to do away with her and her father even coming in the nights and beating her mother L.W.1. Even the L.W.3 aged about 80 years no other than mother of L.W.1, stated the same and coming to the so called independent witness-L.W.4 is also the same in tune with others. Even taken from that, for not a case even of A.1 living in adultery with A.4 and not even outcome of any private complaint to take cognizance for that but for the offence u/ sec.498-A and 506 of matrimonial harassment and cruelty even the wife and daughter staying at in-laws house of husband, he used to go there and threatened. No such allegation is there insofar as against A.2 to A.4. Suffice to say there are no grounds to frame a charge particularly against A.2 to A.4 or to dismiss their discharge applications by the learned Magistrate but for to say even from their versions of A.1 is still coming and now and then beating to say the cruelty continued by him towards them and the limitation has no application to make for the offence u/ sec. 498-A of IPC, against A.1. if the allegations insofar as against the A.2 to A.4 for the offence u/s.498-A IPC, taken even therefrom barred by law and even coming to the offence u/ s.506 IPC,

for not the allegation of along with A.1, the others A.2 to A.4 also came and threatened but for A.1 threatened as to do away with L.Ws.1 and 2. Thus, the accusation is sustainable only against the A.1 for the offence to take cognizance and to frame charge and not against the A.2 to A.4.

4. Having regard to the above and from the concession provided by the Apex Court to decide on own merits by permitting to file discharge petition from the earlier quash petition dismissal no way a bar, the trial Court should have considered discharge of A.2 to A.4. The order dismissing the discharge application against them is unsustainable so to set aside by allowing the revision to that extent.

5. Accordingly and in the result, the revision is allowed in part while dismissing the revision insofar as against the A.1, confirming the order of the lower Court for framing charge for not entitled to discharge. So far as against the A.2 to A.4 by setting aside the dismissal order to discharge them and by allowing the same by discharge of them. The revision petitioners 2 to 4/A.2 to A.4 since discharged, their bail bonds are cancelled and they are set at liberty unless otherwise required in any other cases.

Needless to say as the discharge petition is dismissed against all the 4 accused, though the revision is maintained only by A.1, A.2 and 4 and not by A.3, equal concession against A.3 is also given herein.

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

Dr. B. SIVA SANKARA RAO, J

Date:27.01.2017
Vvr