

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.3170 OF 2017

ORDER:

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') requesting to quash the proceedings in Calendar Case No.72 of 2017 on the file of the III Metropolitan Magistrate, Cyberabad at L.B. Nagar.

2. The petitioners are arraigned as accused Nos.4 and 5 respectively and they are the sisters of accused No.1, who is husband of respondent No.2 - *de facto* complainant. They alleged to have committed the offences along with accused Nos.1 to 3 punishable under Section 498-A of the Indian Penal Code, 1860 (for short 'IPC') and Sections 3 and 4 of Dowry Prohibition Act, 1961.

3. Heard Sri M. Rathana Singh, learned counsel for the petitioners and the learned Additional Public Prosecutor for the State of Telangana.

4. The learned counsel for the petitioners would submit that the petitioners herein are married and they are living elsewhere, but not under the same roof along with accused Nos.1 to 3 and, therefore, the question of demanding dowry and harassing the *de facto* complainant does not arise as they have been leading marital life along with their husbands at Gulbarga in Karnataka State and Sainikpuri in

Secunderabad, and they are falsely roped in with a view to harass them.

i) The learned counsel placed reliance on the ruling of a learned Single Judge of this Court in **Smt. Aruna Bai @ Andalu & others v. The State of Andhra Pradesh, represented by Public Prosecutor**¹. The learned counsel also relied on the decision of the Hon'ble Supreme Court in **Madhavrao Jiwaji Rao Scindia and another v. Sambhajirao Chandrojirao Angre & others**².

5. The learned Additional Public Prosecutor would strongly resist the request contending that the allegations in the complaint are directed even against the petitioners in demanding to pay Rs.3.00 lakhs towards additional dowry and harassing the *de facto* complainant for not meeting the said demand and, in fact, the petitioners herein, earlier filed Criminal Petition to quash the First Information Report (FIR) and the same was dismissed, but, however, the Investigating Officer was directed not to arrest the petitioners and to proceed with investigation. Pursuant to the said direction given by this Court, investigation was completed and, charge sheet was laid. It is his submission that this particular fact has not been revealed in the petition.

¹. Criminal Petition No.3418 of 2011, dated 17.02.2014

². AIR 1988 709 = 1988 SCR (2) 930

6. Perused the material on record. The petitioners herein have not chosen to mention the earlier attempt made by them to get the FIR quashed. The petitioners, thus, have not come up before this Court with clean hands.

7. Whether the failure to mention the same would amount to suppression of material fact requires examination without entering into the arena of merits.

8. There are allegations in the complaint filed by the *de facto* complainant as to the demand for payment of additional dowry to the tune of Rs.3.00 lakhs made by the parents-in-law and the petitioners herein along with her husband. The complaint also contains the allegations that the petitioners herein along with the parents-in-law of the *de facto* complainant and her husband used to pressurize the *de facto* complainant to sign on blank papers to facilitate to obtain divorce and beat her and sent her out. These are the two allegations that are finding place even in the statements recorded under Section 161 of the Code.

9. It is no doubt true, in the cause title, the petitioners have shown their addresses as “Gulbarga” of Karnataka State and “Sainikpuri” of Secunderabad, describing them as wives of Sri Sashikanth and Sri Ajay respectively. But, when there has been suppression of material fact of filing criminal petition earlier

requesting to quash the FIR, can their request now made be considered? Though, the petitioners in seeking quashment even mentioned the Criminal Petition No.3418 of 2011, in which, the learned Single Judge of this Court has passed orders relating to a different matter to support their stand that the allegations are vague and relevant details are not mentioned, but still, they did not intend to disclose the earlier attempt made and becoming unsuccessful to get the FIR quashed. The material papers filed along with the criminal petition would contain the final result under Section 173 of the Code. It clearly shows that the petitioners herein filed Criminal Petition No.11757 of 2016 to quash the FIR and this Court rejected the said request directing the Investigating Agency to proceed with the investigation without arresting the petitioners herein. Therefore, there is no necessity to refer to the rulings relied on by the learned counsel for the petitioners.

10. The relief sought for by the petitioners under Section 482 of the Code is an exceptional and extraordinary relief that may be granted by exercise of inherent powers of the Court. In which case, certainly, the petitioners ought to have approached this Court with clean hands without suppressing any material fact. This one circumstance is sufficient to reject their request without entering into examination of the statements of witnesses recorded by the police under Section 161 of the Code in examining whether there are

allegations *prima facie* making out a case even against the petitioners. However, since, this Court while disposing of the Criminal Petition No.11757 of 2016, by the order, dated 10.08.2016, directed the Investigating Agency not to arrest the petitioners herein and proceed with the investigation, the appearance of the petitioners can be exempted during trial in Calendar Case No.72 of 2017 on the file of the III Metropolitan Magistrate, Cybderabad at L.B. Nagar, except on the dates when they are to be examined under Section 239 of the Code and under Section 313 of the Code.

11. Accordingly, the present Criminal Petition is dismissed by exempting the appearance of the petitioners - accused Nos.4 and 5 during trial in Calendar Case No.72 of 2017 on the file of the III Metropolitan Magistrate, Cybderabad at L.B. Nagar, as indicated in the above. The trial Court is directed to dispose of the Calendar Case on merits, uninfluenced by any of the observations made in this order.

As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand closed.

A. SHANKAR NARAYANA, J

June 5, 2017.

Mgr/gbs