

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.8122 of 2017

ORDER :

The petitioner is the accused in Cr.No.502 of 2017 on the file of the X Metropolitan Magistrate, Malkajgiri, Medchal, Malkajgiri district, registered for the offences punishable u/ sec.406, 420, 447, 379,411,385 and 506IPC, on the private complaint of the 2nd respondent, none other than the father-in-law of the quash petitioner/ accused, filed before the Magistrate supra on forwarding of the same u/ sec.156(3) CrPC to the police supra for registration and investigation.

The averments of the private complaint filed by the 2nd respondent-defacto-complainant before the learned Magistrate u/ sec.200 CrPC are that he belongs to middle class business oriented family and father of one son and three daughters and all are married and are living with their spouses at different places. He is the resident of own house bearing No.6-109/ 1,Old Malkajgiri, Medchal, Malkajgiri District, and living with his wife. The accused is the daughter-in-law of him and need to live with him but presently she is staying separately with her second husband at Hyderabad/ Manchiryala. He further submits that he got arranged marriage to his son Raj Kumar Sara swath and the accused on 13.02.2017 and at the time of marriage he is being the orthodox, borne the marriage expenditure and his family spent huge amount on the jewellery and other articles, gifts, receptions, travel and boarding of relatives and friend from Rajasthan to the city. They led a happy married life and out of wedlock were blessed with one

son and daughter namely Modith and Rakshita. For the business establishment also, he provided all the necessary help to his son, and also for the siblings. He helped in letting his son and the accused to stay at other place at GI, Anand Sai Apartments, East Anandbagh, Malkajgiri, Medchal-Malkajgiri District, Telangana State. The terms between the son of the defacto-complainant and the accused are not good, as such his son has been always under depression and problems which he used to pacify, therefrom, the son of defacto-complainant expired due to heart stroke on 02.04.2015, leaving behind the wife (accused), son and daughter, as such being the parental grandfather and grandmother, the complainant took all the responsibilities for care for the daughter-in-law and grandson and granddaughter. As such after the demise of the defacto-complainant's son, he brought them to his house and let them stay there, taking care of all the needs and necessities of them, thereby in order to secure their future, the defacto-complainant gave gold ornament i.e. one set gold consisting Ear tops, ring, necklace, anklets weighing 20.6grams, 2). Two sets gold consisting ear tops, ring, necklace, anklets weighing 150grams, 3) Gold ring with chain, bangles weighing 150grams 4) Necklace Rajasthani with holset weighing 10 grams, 5) Mangal sutra weighing 8 grams and 6) Silver items two sets along with anklets, kept under his custody. Further he spent huge amount on the study, medical care, needs and necessities of the accused and siblings. Furthermore the complainant made his wife to stand as guarantor for the Car loan of his son and after the demise of his son, the said car i.e. Maruthi Swift Car TS-08-EG-0960 on finance

with Sundaram bearing No.JO12801094 has been transferred in the name of the accused which she was using. Further the defacto-complainant gave Laptop to the accused in order to facilitate her to start any business, two Samsung Phones, and further Rs.6,00,000/- LIC amount along with interest, also made a fixed deposit. The defacto-complainant was taking proper care of them. While so, on 17.04.2017 the defacto-complainant and his family went out to attend a friend's marriage and after coming back, they are surprised and shocked to know that the accused left the residence of the defacto-complainant without any notice and permission along with her siblings and all the clothes, articles, gold ornaments, documents, keys, articles and records from his bed room by opening the safe as well as the articles from her bedroom. He got shocked and tried to contact her and grandchildren but all their cell phones were switched off. Even when he contacted father of the accused, they were also under surprise. He tried in all possible ways to contact her but in vain and then he gave complaint to police, Malkajgiri on 23.04.2017. Afterwards, he knew that the accused left Mumbai and also got married with another person at Arya Samaj, Sulthanbazar, Hyderabad on 21.04.2017 without knowledge of the defacto-complainant and his family and the same is known from parents of the accused. He got shocked and surprised to know that as the defacto-complainant and her parents when already given options to her for second marriage of her choice, she denied. The accused without permission of the defacto-complainant trespassed into his bed room and took away aforesaid articles and other documents from his legal custody

committing theft, and left the house without his knowledge and got married to another person which reflects and known that they are having love affair from the last several years. It shows the accused under the criminal intent to breach the trust of the defacto-complainant and under the ill-intention to gain wrongfully, hatched a plan to deceive them. Thereby, the acts of the accused are liable for prosecution under the offences supra.

Impugning said private complaint averments that were referred to police for registration and investigation of the crime, the contentions in the grounds of quash petition filed by the petitioner seeking to quash the above crime are that the contents of the complaint of the 2nd respondent-defacto-complainant are totally untrue, motivated and intended to harass the petitioner/ accused. The defacto-complainant is unable to digest the petitioner choosing her life partner and also undergoing marriage with him for security in life and also for providing a complete family for her children. He is showing a feudalistic mentality of disapproving the marriage of a widow and intends to retain her in their house only for serving them lifetime. The complaint averment of she taken away cloths, gold ornaments, articles, keys and records etc, is totally false. The police already summoned the petitioner to the police station by issuing a notice u/ Sec.41(A) CrPC and she attended along with her present husband. The particulars of the alleged missing articles given by the 2nd respondent in his complaint and saying that she committed trespass, breach of trust and cheating etc, are untenable. The provisions of IPC for the offences supra are not applicable at all to

the facts of the case. She further submits that she is entitled to keep her gold ornaments which were presented to her by her parents at the time of marriage and also the ornaments and articles purchased by her first husband during the ten years of living together. The crime is an abuse of legal process and to harass the petitioner only. Hence, to quash the petition.

Heard both sides and perused the material on record.

In fact, a perusal of the enclosures to the complaint as annexure-1 of 8 documents of Photostat copies show only giving of police complaint with postal receipt and there is nothing to show any filing of the affidavit as one of the requirements for the private complaint even for the learned Magistrate to refer the police for investigation u/ sec.156(3)CrPC. There is no explanation for the delay in reporting the matter having filing a private complaint on 27.06.2017 for the alleged occurrence taken place on 17.04.2017, What he stated in para-4 of the private complaint is giving of police report to Malkajgiri police mainly about her missing on 23.04.2017 having contacted including her parents and could not know anything about whereabouts of her and cell phone of her and the minor children of her were switched off. It is later he came to know of she married at Arya Samaj another person on 21.04.2017.

Having regard to the above, despite the Apex Court's expression in Priyanka Srivatsava Vs. State of UP¹ mandates filing of affidavit for the learned Magistrate to refer a complaint to police

¹ AIR 2015 SC P. 1758

apart from giving of police report and proof in regard to it and inaction of police therefrom which are lacking, therefrom the reference order of the learned Magistrate u/ sec.156(3)CrPC is not sustainable for registration of the crime and taking up investigation.

In the result, the Criminal Petition is allowed by quashing the proceedings in Cr.No.502 of 2017 on the file of the X Metropolitan Magistrate, Malkajgiri, Medchal by restoring the complaint to the file of the Magistrate if at all any affidavit filed for nothing reflects; from the complaint to take cognizance or to pass fresh reasoned order of reference to police for investigation as the case may be on compliance with the mandatory requirements of the expression of Priyanka supra, subject to offence/ s that could make out therefrom specifically out of several sections of law mentioned in the private complaint.

Consequently, miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:17.11.2017
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