

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2682 OF 2017

ORDER:

The present Criminal Petition is filed under Section 482 of Code of Criminal Procedure, 1973 seeking to quash the proceedings in P.R.C. No.18 of 2015 on the file of Judicial Magistrate of First Class, Tekkali, arising out of Crime No.188 of 2014 of Tekkali Police Station, Srikakulam.

2. The petitioners viz., Basavala Rama Rao, Basavala Anjalamma, Basavala Adinarayana and Vadana Satyavathi, who are arraigned as accused Nos.1 to 4 respectively, alleged to have committed the offences punishable under Sections 498-A, 307 read with Section 34 of Indian Penal Code, 1860 (IPC), and Sections 3 and 4 of Dowry Prohibition Act, 1961. The *de facto* complainant viz., Basavala Sumathi, who is wife of petitioner No.1, is respondent No.2 herein.

3. Heard Sri P. Durga Prasad, learned counsel for the petitioners, and the learned Additional Public Prosecutor for the State of Andhra Pradesh, and perused the material on record.

4. The submission of the learned counsel for the petitioners is that the *de facto* complainant has made a categorical mention that the incident had taken place accidentally and the said statement was

recorded by the Army Officers immediately on the day when the incident did occur and, therefore, further proceedings in P.R.C. or trial in S.C. (in case, it is registered), would amount to the abuse of process of law, and, thereby, sought to quash the proceedings. He has pointed out photostat copy of such statement, where the defence personnel dealt with; it was in the form of dying declaration so as to find out cause of injury sustained by the *de facto* complainant, who is shown as witness No.3 in the proceedings.

5. The learned Additional Public Prosecutor would resist the request of the petitioners stating that there is *prima facie* material to proceed with trial against the petitioners. The statement said to have made by the *de facto* complainant has to be tested when she examines herself as PW.1.

6. Now the short point that arises for consideration is whether the *de facto* complainant did make such a statement, and, if so, what is its effect?

7. The answer to the aforesaid question relates to the disputed facts, which are to be gone into only when the trial takes place. Admittedly, such a statement can never be construed as a dying declaration as the *de facto* complainant is very well alive and its admissibility is yet another question that has to be dealt with in case she did really make such a statement and as to how such a statement

can be used in accordance with evidentiary rule. Certainly, it cannot be said that prosecution of the petitioners for the offences alleged against them would amount to the abuse of process of law.

8. Therefore, the Criminal Petition is dismissed, at the admission stage itself,.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

April 7, 2017.
PV

A. SHANKAR NARAYANA, J

