

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.6292 of 2017

ORDER:

The petitioners/A.1 and A.2 of crime No.90 of 2017 of Tenali Town Police Station, Guntur District, registered for the offences punishable under Sections 323, 354-B & 509 r/w 34 IPC, which is on the report of the 2nd respondent-defacto complainant which reads that the 1st accused is her daughter's husband, whose marriage was performed at Tirumala Tirupati Devasthanam, Tirumala, on 07.12.2014, that after marriage her daughter was harassed by the accused persons i.e., her son in law and mother of her son in law by names Kiran Kumar Pothini and Sujatha Pothini for additional dowry and for which her daughter Supraja filed criminal complaint against them before Vemuru Police Station, which is pending and her daughter filed maintenance case and DVC case pending before the II Additional Metropolitan Magistrate, Tenali. It is further averred that on that date of report i.e., 27.06.2017 pursuant to the hearing of the case she and her husband with their daughter were going to Mahila Mandali Office, Kothapet, Tenali, on their way, her son in law and his mother came to them and caught hold her hair, assaulted them and tore her saree by abusing in filthy language and her son in law hold her neck tight to hit her head to the wall, then her husband and her brother in law who were going that route prevented him and rescued her and they abused her and her daughter in the name of having illicit relationship, hence to take action.

Notice ordered to be served on the 2nd respondent, sent by registered post and proof of sending filed and there is no

representation, hence taken as heard the defacto complainant and also learned Public Prosecutor representing the 1st respondent-State.

The grounds urged in the quash petition are that it is a false case and the allegations are engineered on its face value and it is nothing but abuse of process with spite and to wreak vengeance that cannot be allowed and the ingredients of the offences no way attract. Whereas the learned Public Prosecutor representing the State submits that the crime registered is at nasal stage and requires investigation and the interim order staying investigation passed by another Bench of this Court on 27.07.2017 has to be vacated to enable the police to investigate the case.

In fact this Court while granting interim order referring the recent expression of the Apex Court in **The State of Telangana Vs. Habib Abdullah Jeelani & Others**¹. Even from the very expression, it is not appropriate to stay the investigation as a matter of course by entertaining application under Section 482 Cr.P.C. that too while directing not to arrest which amounts to granting anticipatory bail by encroaching another arena though such a power can be exercised in the State of Uttar Pradesh from the expressions of **Hema Mishra Vs. State of U.P.**² & **Lal Kamlendra Pratap Singh Vs. State of U.P.**³ for there is no provision for anticipatory bail. It is no doubt in the facts observed of the caution required to be exercised the inherent power sparingly.

¹ (2017) 2 SCC 779

² (2014) 4 SCC 453

³ (2009) 4 SCC 437

Here coming to the facts what are referred supra and also the contentions that the investigation is at preliminary stage there is practically nothing to interdict the investigation to sustain the order dated 27.07.2017 of staying the investigation. However the fact remains from the force in the contention of there is already pending litigation and it is to wreak vengeance against them the case filed is a matter required to investigate the truth. There is nothing to interdict the investigation however from the offences punishable are below 7 years and the interim already passed not to arrest so far as the 2nd petitioner lady concerned shall continue and so far as the 1st petitioner concerned to give protection under Section 41-A Cr.P.C. in the event of need of arrest, the police shall follow strictly Section 41-A Cr.P.C. and guidelines of the expression of the Apex Court in **Arnesh Kumar Vs. State of Bihar**⁴ and by left open all available defence of the accused for the future.

According and in the result, the Criminal Petition is disposed of. It is also made clear that the above direction of not to arrest already passed by this Court in so far as 2nd petitioner lady will not prevent the police to require her presence for the purpose of investigation.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 14.09.2017
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⁴ 2014 (8) SCC 273