

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 27534 OF 2017

ORDER:

Apprehending arrest of the petitioners, who are arrayed as Accused 2 to 4 in Crime No. 410 of 2017 on the file of Hayathnagar Police Station registered for the offences punishable under Section 498-A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, this Writ Petition is filed.

Heard learned counsel for the petitioners as well as learned Government Pleader for Home (Telangana).

This Writ Petition is filed apprehending arrest of the petitioners by the 3rd respondent Station House Officer. It is apt to note here that the Apex Court in ***Rajesh Sharma v. State of Uttar Pradesh*** (Criminal Appeal No. 1265 of 2017), while considering the question '***whether any directions are called for to prevent the misuse of Section 498A, as acknowledged in certain studies and decisions***', has issued certain guidelines, which read as under:

“ i) (a) In every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of three members. The constitution and working of such committees may be reviewed from time to time and at least once in a year by the District and Sessions Judge of the district who is also the Chairman of the District Legal Services Authority.

(b) The Committees may be constituted out of para legal volunteers/social workers/retired persons/wives of working officers/other citizens who may be found suitable and willing.

(c) The Committee members will not be called as witnesses.

(d) Every complaint Under Section 498A received by the police or the Magistrate be referred to and looked into by such committee. Such committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication.

(e) Report of such committee be given to the Authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint.

(f) The committee may give its brief report about the factual aspects and its opinion in the matter.

(g) Till report of the committee is received, no arrest should normally be effected.

(h) The report may be then considered by the Investigating Officer or the Magistrate on its own merit.

(i) Members of the committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.

(j) The Members of the committee may be given such honorarium as may be considered viable.

(k) It will be open to the District and Sessions Judge to utilize the cost fund wherever considered necessary and proper.

ii) Complaints Under Section 498A and other connected offences may be investigated only by a designated Investigating Officer of the area. Such designations may be made within one month from today. Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months from today;

iii) In cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior Judicial Officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord;

iv) If a bail application is fled with at least one clear day's notice to the Public Prosecutor/complainant, the same may be decided as far as possible on the same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of wife/minor children can otherwise be protected. Needless to say that in dealing with bail matters, individual roles, prima facie truth of the allegations, requirement of further arrest/custody and interest of justice must be carefully weighed;

v) In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine;

vi) It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties arising out of matrimonial disputes so that a holistic view is taken by the Court to whom all such cases are entrusted; and

vii) Personal appearance of all family members and particularly outstation members may not be required and the trial court ought to grant exemption from personal appearance or permit appearance by video conferencing without adversely affecting progress of the trial.

viii) These directions will not apply to the offences involving tangible physical injuries or death.

In the light of the judgment rendered in ***Rajesh Sharma's case***, the Investigating Officer shall strictly adhere to the guidelines and if it comes to light that the 3rd respondent, in the name of investigation, causes any harassment to the petitioner, he shall be liable to be prosecuted in his eo nomine capacity.

Subject to the above, the Writ Petition is disposed of. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

21st August 2017

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CHALLA KODANDA RAM, J

