

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.3043 OF 2017

ORDR:

The present Criminal Petition is filed by accused Nos.4 and 5 in Calendar Case No.292 of 2015 on the file of the V Additional Judicial Magistrate of First Class, Nellore, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') requesting to quash the proceedings in the said Calendar Case.

2. The petitioners herein along with accused Nos.1 to 3 alleged to have committed the offences punishable under Sections 498-A read with 34 of Indian Penal Code, 1860 (for short 'IPC') and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

3. Heard Sri C. Masthan Naidu, learned counsel for the petitioners, and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

4. The learned counsel's main submission is that there was no occasion for the petitioners to ill-treat or commit any acts constituting the cruelty, and they have been separately living at Chittamur village and Mandal and not concerned with accused No.1 and other accused persons and, therefore, the allegations are all incorrect and foisted to falsely implicate the petitioners herein. He has read out, the complaint averments and stating that the statements recorded under Section 161 of the Code are also on the same lines and, therefore,

there is nothing in the complaint as well as the statements to make out a case for the offence punishable under Section 498-A of IPC, sought to quashment.

5. The learned Assistant Public Prosecutor would strongly resist the request contending that there are concrete allegations in the complaint, which would make out a *prima facie* even at this stage to proceed with trial.

6. Perused the complaint and the statements of the witnesses recorded under Section 161 of the Code.

7. At the outset, it is to be stated that it is not as though that there are no allegations making out a *prima facie* case against the petitioners herein. It is no doubt true, petitioner No.1 is elder sister of accused No.1 and petitioner No.2 is her husband, but, their participation right from the date of fixation of marriage and dowry amount to be paid and customary articles to be given is forthcoming. If, what is to be stated in the complaint is referred to in the direction of allegations constituting *prima facie* case against the petitioner, certainly, in the beginning itself, the statement of the *de facto* complainant would clearly show that both the petitioners herein along with other relations and, more particularly, petitioner No.1 while discussing the salary drawn by her brother - accused No.1 at USA, who was not present at the time of engagement ceremony, and the assets they held, demanded Rs.50.00 lakhs towards dowry, 100

sovereigns gold and Rs.5.00 lakhs towards customary presentations (*Aadapadachu Lanchanalu*) and other presentations, and her mother told them that since her father is no more and there are two girls to her parents, it was stated to them that the house at Gudur, which fetches Rs.1.00 Crore, 50% share therein would be given to them and 50 sovereigns gold and Rs.2.00 lakh towards customary presentations agreed to be given to them. Even later, she was alleged to have been subjected to harassment by her husband which acts are narrated by her in her statement and, finally, after a child was born, she was necked out by them and the petitioner No.1 herein played major role in subjecting her to leave the house, besides subjecting her to cruelty.

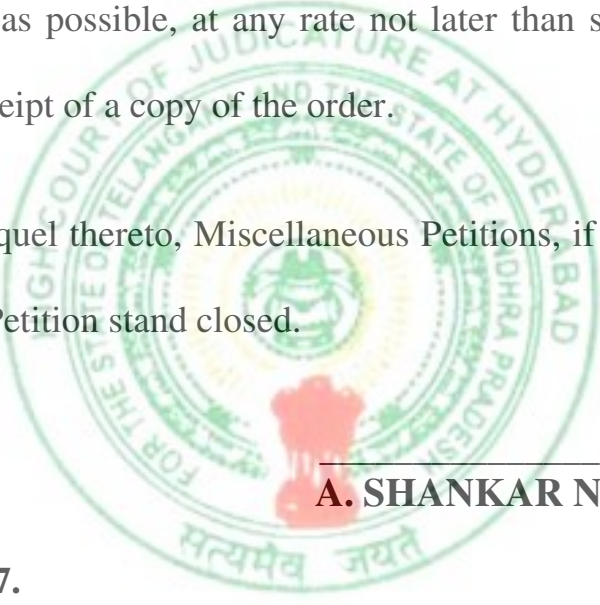
8. Thus, it is not as though that there are no allegations at all in the complaint as well as statements recorded by the police against the petitioners. There are *prima facie* allegations to proceed with trial. In fact, each allegation is not referred to herein which were spoken to by the *de facto* complainant in her statement recorded under Section 161 of the Code. Therefore, there is no merit in the present petition.

9. The learned counsel for the petitioners seeks to dispense with the appearance of the petitioners-accused Nos.4 and 5 during trial. Acceding to the request, the appearance of petitioners-accused Nos.4 and 5 is exempted during trial. However, they shall appear when the Court takes up preliminary examination under Section 239 of the Code, in case it is not done, and the examination under Section

313 of the Code and on other occasions, if the learned Magistrate opines that their presence is absolutely necessary.

10. The present Criminal Petition is, accordingly, dismissed, at the stage of admission itself. Since the Calendar Case relates to the year 2015, it is desirable to direct the learned V Additional Judicial Magistrate of First Class, Nellore, to dispose of the Calendar Case No.292 of 2015 by fixing a timeline. The learned Magistrate is, therefore, directed to dispose of the said Calendar Case, as expeditiously as possible, at any rate not later than six months from the date of receipt of a copy of the order.

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



A. SHANKAR NARAYANA, J

April 25, 2017.
Mgr/MAR