

HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL PETITION No.11317 of 2011

ORDER:

Heard counsel for the petitioners as well as the respondents.

The present criminal petition is filed by the petitioners, who are accused Nos.1 to 12, to quash the proceedings initiated against them in Crime No.36 of 2011 of Women Police Station, Kurnool, Kurnool District for the offences under Sections 494, 498-A, 506 IPC read with Section 34 IPC and Sections 3 and 4 of the Dowry Prohibition Act and Section 156(3) Cr.P.C.

The facts of the case are that on 12.05.2011 the 2nd respondent herein filed a private complaint under Section 200 Cr.P.C., before the Court of the Judicial First Class Magistrate, Kurnool, stating that she is the native of Thakkasila Village of Alampur Mandal, Kurnool District. After marriage with the 1st petitioner, they started residing at Kurnool. The 2nd petitioner is the second wife of the 1st petitioner/A1, Petitioner Nos.3 and 5 are the elder brothers, petitioner Nos.4, 6 and 7 are the sisters-in-law, petitioner Nos.8 to 10 are the close friends and relatives of the 1st petitioner, petitioner No.11 is the wife of petitioner No.9 and petitioner No.12 is the wife of petitioner No.10. The marriage between the 2nd respondent and the 1st petitioner was performed on 05.09.2002 in Sreesailam Temple. At the time

of marriage, the parents of the 2nd respondent gave a sum of Rs.1,00,000/- in cash and 10 tulas of gold to the 1st petitioner. Immediately, after marriage, the 2nd respondent joined the 1st petitioner and both of them resided in Chinna Komerlla, which is the native place of the 1st petitioner. The 2nd respondent became pregnant and at that time petitioner Nos.1 and 3 to 7 used to harass her stating that she will deliver a female child and also harassed her to get a sum of Rs.50,000/- and 3 tulas of gold towards additional dowry, otherwise, they will not allow her to live with the 1st petitioner and all of them physically and mentally harassed her. In the month of December, 2002, petitioner Nos.1 and 3 to 7 necked out the 2nd respondent from the house and demanded to get additional dowry. In the month of January, 2003, petitioner Nos.1 and 3 to 7 took the 2nd respondent to the field and forcibly made her to consume pesticides and thereafter in the month of February, 2003, they tried to kill her by pouring kerosene, but due to fear they did not set fire. On 17.04.2003, petitioner Nos.1 and 3 to 7 beat the 2nd respondent with hands and legs by which time she was 5 months pregnancy and thereafter she was admitted into Government hospital, Kurnool for treatment. After discharge, again on 14.05.2003, as the 2nd respondent could not get the additional dowry, petitioner No.1 kicked her in abdomen and she sustained bleeding injury and the child in the womb died and the doctor delivered the dead child. On 05.09.2003,

petitioner No.1 demanded and threatened the 2nd respondent that if she failed to get Rs.50,000/-, he will kill her and that her father paid the said amount in the presence of the elders. On 23.02.2005, the 2nd respondent was blessed with a male child at her mother's place in Kurnool and the same was informed to petitioner No.1 and his brothers and sisters. However, the 1st petitioner did not turn up. In the month of July, 2005, the 2nd respondent went to the house of the 1st petitioner, but petitioner Nos.1 and 3 to 7 not allowed her into their house. In the month of November, 2005, when the 2nd respondent again went to the house of the 1st petitioner, he refused to allow her into the house and informed that he married the 2nd petitioner herein. She also stated that in the year 2007 the 1st petitioner married the 2nd petitioner at Mahanandi with the help of petitioner Nos.3 to 12, who performed that marriage knowingly that the 1st petitioner was already married to her. The 2nd respondent further stated that when she went to Chinna Komerlla village, all the petitioners threatened and beat her with hands. Therefore, requested to take appropriate action for the offences mentioned in the complaint.

The said complaint was forwarded to the concerned police under Section 156(3) Cr.P.C. and the same was registered as Crime No.36 of 2011 for the offences under Sections 494, 498-A, 506 IPC read with Section 34 IPC and Sections 3 and 4 of the Dowry Prohibition Act by the Mahila

Police Station, Kurnool, on 12.05.2011. Aggrieved by the said registration of the crime, the present criminal petition is filed by the petitioners to quash the proceedings initiated against them on the ground that there is no iota of truth in the version of the prosecution and that the petitioners are not responsible for the alleged offences.

The petitioners have categorically stated that the 2nd respondent suppressed the very initiation of the first complaint for the same allegations in C.C.No.536 of 2004, wherein the 1st petitioner was convicted for six months and others were acquitted by the Judicial first Class Magistrate, Kurnool. Petitioner No.1 filed an appeal in Criminal Appeal No.110 of 2005 against the said conviction and he was acquitted in the appeal by orders, dated 28.09.2006. That apart, the petitioners have also stated that, in fact, the 2nd respondent filed F.C.O.P.No.21 of 2008 on the file of the Judge, Family Court, Kurnool, for maintenance to her and to her minor son. However, the said O.P. was partly allowed on 31.12.2010 granting monthly maintenance of Rs.1,500/- to the son of the 2nd respondent and the claim of the 2nd respondent for separate monthly maintenance was dismissed. The petitioners have also stated that the 2nd respondent herself left the company of the 1st petitioner long back and therefore the question of harassing her does not arise. The petitioners have also stated that the present complaint for the offence under Section 494 IPC is also not maintainable, since

the said allegation is already made and it is the subject matter of F.I.R.No.3 of 2011 before the same police station, which fact is not mentioned in the present F.I.R. Therefore, the petitioners sought for quashing the proceedings, since the further continuation of the proceedings would amount to abuse of process of Court.

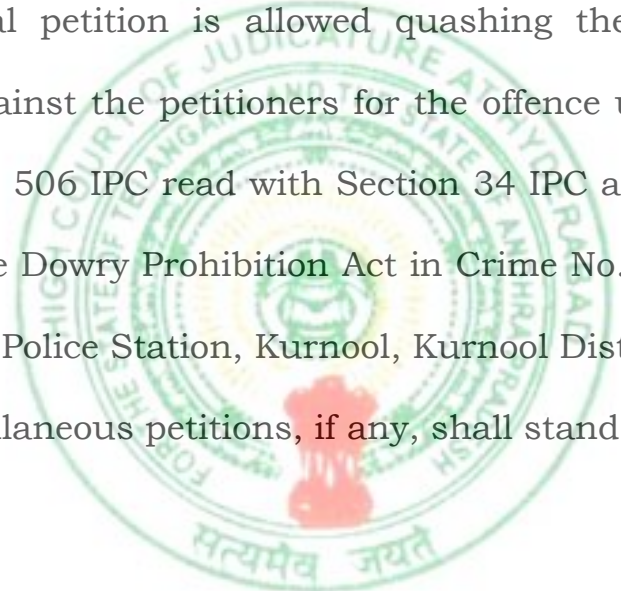
I have perused the contents of the judgment passed in C.C.No.536 of 2004, dated 11.11.2005, wherein the 1st petitioner herein was sentenced to undergo simple imprisonment for one month for the offence under Section 498-A and accused Nos.2 to 5 therein were acquitted. On appeal, the 1st petitioner was acquitted for the offence under Section 498-A IPC. A close perusal of the said order would reveal that the allegations mentioned in the present complaint are the very same allegations, which are the subject matter of C.C.No.536 of 2004.

As far as the offence under Section 494 IPC against the 1st petitioner herein is concerned, prior to filing of the present complaint, the 2nd respondent herein filed another complaint on 09.01.2011 for the offence under Section 494 IPC against the 1st petitioner herein and the same was registered as Crime No.3 of 2011. The 2nd respondent for the reasons best known to her, suppressing the above said two cases, filed the present complaint for the very same allegations. In the light of the allegations mentioned in the present complaint vis-à-vis the allegations made in C.C.No.536 of 2004 and FIR.No.3 of

2011, the petitioners cannot be made to undergo facing of criminal prosecution when these allegations are the subject matter of the earlier complaints. Further, allowing these proceedings to continue would amount to abuse of process of Court and harassing the petitioners.

In the light of the earlier complaints wherein the same relief was sought on the same set of facts, no *prima facie* case is made out against the petitioners in the present crime. As such, the proceedings are liable to be quashed. Therefore, the criminal petition is allowed quashing the proceedings initiated against the petitioners for the offence under Section 494, 498-A, 506 IPC read with Section 34 IPC and Sections 3 and 4 of the Dowry Prohibition Act in Crime No.36 of 2011 of the Women Police Station, Kurnool, Kurnool District.

Miscellaneous petitions, if any, shall stand closed.



JUSTICE P. KESHA RAO

Date: 27.10.2017.
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