

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.4285 OF 2014

ORDR:

Requesting to quash the proceedings in Calendar Case No.155 of 2014 on the file of IV-Additional Munsif Magistrate, Guntur, the present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code').

2. The petitioners 1 to 6 are arraigned as accused Nos.1 to 6 in the aforesaid calendar case. The petitioners are husband, parents-in-law and other relatives of the accused No.1. They alleged to have committed the offences punishable under Section 498-A of I.P.C. and Sections 3 & 4 of Dowry Prohibition Act on the complaint of the 2nd respondent/*de facto* complainant herein, who is no other than the wife of the 1st petitioner.

3. Heard Sri K. Srinivas, learned counsel for the petitioners and the learned Additional Public Prosecutor for the State of Andhra Pradesh.

4. The submissions of the learned counsel for the petitioners have been that the parties i.e., the 1st petitioner and the 2nd respondent/*de facto* complainant, in fact, effected compromise and the decree of divorce on mutual consent under Section 13B of the Hindu Marriage Act, 1955 was even granted by the Judge, Family Court-cum-Additional District Judge, Guntur, on 27.5.2015 in FCOP No.341 of

2014. It is also his submission, this apart, even C.C. No.469 of 2011, registered based on the complaint lodged by the *de facto* complainant herein alleging offences punishable under Section 498-A of I.P.C., also ended in acquittal in view of the *de facto* complainant turning hostile and examination of other witnesses, who are parents and relatives of the *de facto* complainant were given up by the learned Additional Public Prosecutor, and, thus, the learned IV-Additional Munsif Magistrate, Guntur pronounced the judgment on 11.9.2014 in C.C. No.469 of 2011 finding that the petitioners herein, who are arraigned as accused not guilty of the offences punishable under Section 498-A of I.P.C. and cancelled the bail bonds.

5. Learned counsel for the petitioners would submit that the present calendar case is based on charge-sheet and additional charge sheet filed on 10.3.2014 alleging the offences punishable under Sections 498-A and Sections 3 & 4 of Dowry Prohibition Act. It is, therefore, his submission that continuance of calendar case would amount to abuse of the process of Court and requests to quash the proceedings.

6. The learned Additional Public Prosecutor for the State of Andhra Pradesh would admit about the acquittal of petitioners in C.C. No.469 of 2011, which was registered on the complaint of the *de facto* complainant and grant of divorce on mutual consent by the Family Court.

7. Now, the short question is, whether the continuance of proceedings in Calendar Case No.155 of 2014 for the offences punishable under Sections 498-A of I.P.C. and Sections 3 & 4 of Dowry Prohibition Act would amount to abuse of process of Court.

8. Copy of the decree as well as the order passed by the Family Court, from the additional material papers filed by the petitioners, would show that the Judge-Family Court-cum-Additional District Judge, Guntur, in FCOP No.341 of 2014 granted decree of divorce on mutual consent under Section 13-B of Hindu Marriage Act and dissolved the marriage between the 1st petitioner and the *de facto* complainant.

9. The said order was passed on 27.5.2015, whereas the petition for divorce was filed on 9.9.2014. Thus, it appears only after the parties entered into compromise, perhaps, at the intervention of elders the said petition for divorce on mutual consent appears to have been filed. Second strong circumstance that occurs on record is the judgment rendered by IV-Additional Munsif Magistrate, Guntur, dated 11.9.2014 in C.C. No.469 of 2011. In fact, complaint filed by the *de facto* complainant was registered in Crime No.423 of 2011 of Lalapet P.S., Guntur, for the offence punishable under Section 498-A of I.P.C., and the charge-sheet was laid later. During trial, the *de facto* complainant alone was examined as P.W.1 and she did not support her case and, therefore, the learned Magistrate held that the prosecution evidence on record as to accused demanding P.W.1 for additional

dowry and harassing her were not proved and, therefore, holding that the accused are entitled for acquittal, accordingly acquitted them. Remaining witnesses were given up by the prosecution, who are L.Ws.2 to 5. In fact, P.W.1 therein has categorically admitted that herself and accused No.1 have entered into compromise and she was willing to withdraw the case against the accused and for that reason Assistant Public Prosecutor has given up L.Ws. 2 to 5, who are main witnesses and they too expressed no objection to withdraw the case and, thus, ended in acquittal.

10. The present case is based on additional charge-sheet filed by the investigating officer. Since not satisfied with the offence alleged against the accused punishable under Section 498-A of I.P.C., the *de facto* complainant in fact approached higher ups with protest application, based on which further investigation was done and additional witnesses were examined and the provisions of offences punishable under Sections 3 and 4 of Dowry Prohibition Act were added, but somehow, another calendar case number is given as C.C. No.155 of 2014.

11. These all happened prior to the parties entering into compromise. Therefore, nothing more is required to hold that when the parties have entered into compromise, even decree of divorce was granted on mutual consent and even the calendar case ended in acquittal against all the petitioners herein, who are also arraigned as accused therein, for the offence punishable under Section 498-A of

I.P.C., but for additional charge-sheet, on the protest of the *de facto* complainant, the present calendar case was registered, the present application necessitated.

12. Therefore, the petitioners are entitled to quashment of proceedings in C.C. No.155 of 2014 on the file of IV-Additional Munsif Magistrate, Guntur and, accordingly, the Criminal Petition is allowed.

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

Dt. 20.03.2017
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A. SHANKAR NARAYANA, J

