

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.2649 of 2017

ORDER:

This Criminal Petition under Sections 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed to enlarge the petitioners/A.1 and A.2, in the event of their arrest, since they are apprehending arrest in connection with FIR No.351 of 2017 on the file of Police Station, Rajendranagar, Hyderabad, registered for the offences punishable under Sections 498-A, 323, 506 IPC and Sections 3 and 4 of D.P. Act.

U. Niraja, wife of petitioner No.1 herein, lodged a complaint with Rajendra Nagar Police alleging that their marriage was performed on 13.11.2015 as per Christian rites and at the time of marriage, her parents gave Rs.15 Lacks and 15 Tulas gold and 500 grams of silver worth Rs.3,00,000/- besides house hold articles and also gave Rs.1,00,000/- as *Aaadapaduchu* lanchanams and other incidental expenses, totalling Rs.26,75,000/-. After the marriage, they lived happily for three months and thereafter petitioner No.1 used to visit the house in an inebriant state and used to scorch the body of *de facto* complainant with cigarette buds and used to abuse her in filthy language and also subjected her to cruelty demanding Rs.5,00,000/- as additional dowry and the petitioner No.2 also used to harass her by extending her cooperation to petitioner No.1 and also threatened her to give divorce while agreeing to refund the dowry amount, if any paid. Petitioner No.1 used to visit the place of her working and subjected her to cruelty and sent a notice through his counsel demanding divorce and when it is informed to petitioner No.2 saying that she

used to attend duty from the resident of petitioner No.1 and petitioner, petitioner No.2 threatened her to go out from the house and with the aid of Manikonda Pastaramma, Gandhi, Devi and Kalpana, petitioner No.2 pulled her Mangalasuthram and necked out from the house and having no other alternative, she left the house and reported the same to the police.

Even prior to the incident, there were several panchayats held in the presence of caste elders and leaders of MRPS, a compromise was also entered into and as per the settlement, she went to the house of petitioners and though they did not change their attitude, she lived alone for some time and again on 7.2.2017, she received summons sent through Judge, Family Court, L.B.Nagar in a petition filed for grant of divorce and on questioning, petitioner No.2 threatened and necked her out with the help of the above said persons. Thus, the petitioners allegedly committed offences punishable under Sections 498-A, 323, 506 IPC and Section 3 and 4 of DP Act.

The contention of the learned counsel for petitioners is that there was a settlement in between them and in the settlement, the complainant, while agreeing the cruel acts committed by her including committing of suicide, she agreed to live with the petitioners and touched the feet of A.2 and that the present complaint was lodged after issuing a notice demanding divorce in a petition under Section 10 (x) of Divorce Act, 1869 and now they are demanding Rs.50,00,000/- for settlement of the issue as the brother of *de facto* complainant is constable and prayed to enlarge the petitioners on pre-arrest bail.

Learned Public Prosecutor for the State of Telangana would contend that notice under Section 41-A Cr.P.C. was issued, but the petitioners did not respond to the notice and on the other hand, the investigation is in the mid way and the prosecution has examined only three witnesses so far and therefore, there is a chance to interfere with the investigation by the petitioners if they are enlarged on pre-arrest bail and prayed for dismissal of the petition.

Undisputedly, the marriage of petitioner No.1 with *de facto* complainant was performed on 13.11.2016 and a petition was filed under Section 10 (x) of the Divorce Act, and in that petition, there was no reference about payment of amount as dowry. However, in the complaint, the specific allegation made against the petitioners are that her parents gave Rs.15,00,000/- besides presenting of gold, silver ornaments, house hold articles and Rs.1,00,000/- towards Adapaduchulanchanans. These allegations would fall within the definition of dowry. As per Section 3 of Dowry Prohibition Act, receiving and payment of dowry is an offence. The other allegations made against these petitioners are that petitioner No.1 used to visit the house in an inebriated condition and scorched the body of *de facto* complainant with cigarette buds, abused her in filthy language and subjected her to cruelty both physical and mental for failure to meet his illegal demand of Rs.5,00,000/- as additional dowry and that the petitioner No.2 also used to subject her to cruelty along with her husband/petitioner No.1. These allegations are suffice to conclude that the petitioners subjected the *de facto* complainant to cruelty for failure to meet their illegal demand and such an act would

attract the second limb of Explanation of 498-A IPC. No doubt, the conduct of both parties is blame worthy for the reason that the petitioners filed O.P.No. 103 of 2017 on the file of Judge, Family Court, Rangareddy District at L.B.Nagar, under Section 10 (x) of the Divorce Act, 1869, seeking divorce, but they entered into an agreement on 21.01.2017 and allowed her to live for some time maintaining good relations etc. It appears that this agreement was due to other reasons, which are not explained either by the petitioners or by the *de facto* complainant anywhere. However, the conduct of the petitioners, more particularly, necked out the complainant from the house of petitioner initially and again she was necked out from the house by both the petitioners with the help of the above said persons, which acts would attract an offence punishable under Section 498-A IPC, *prima facie*.

The contention of the learned counsel for petitioners is that the complainant filed a complaint with an ulterior motive to demand Rs.50,00,000/- for settlement of the issue is not based on any material and merely because her brother is happened to be a constable, this allegations cannot be accepted unless there is some evidence to substantiate such contention.

Grant of pre-arrest bail is a discretion of the Court and the Court cannot exercise such discretion when no exceptional circumstances are made out. Here, the petitioners did not show any exceptional circumstances. On the other hand, the conduct of the petitioners is blameworthy on account of agreement entered into during pendency of the petition filed under Section 10 (x) of Divorce Act seeking divorce, which is pending before the Judge,

Family Court, Rangareddy. In these circumstances, it is difficult for me to conclude that there is no material that the petitioners did commit no offence and that there is no possibility of interfering with further investigation. Apart from that, a notice under Section 41-A Cr.P.C. was issued to the petitioners to appear before police in person and to extend their cooperation for completion of investigation, but intentionally they avoided and this itself suffice to conclude that the petitioners are not cooperating with the investigating agency for completion of investigation. The investing agency so far examined 3 witnesses and recorded their 161 (3) Cr.P.C. statements. Thus, the investigation is in mid way and in such a case, the petitioners may interfere with further investigation if they are released on pre-arrest bail. Hence, cumulative effect of the above conduct led me to conclude that the petitioners did not make out any specific case to grant pre-arrest bail since grant of pre-arrest is exceptional and is negation of rule. Consequently, I find no grounds to allow the petition and therefore, this Criminal Petition is liable to be dismissed.

In the result, this Criminal Petition is dismissed.

Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:15.03.2017
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THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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Dt.15-03-2017

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