HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.16016 of 2016

ORDER:

This Criminal Petition is filed by the petitioners/ accused Nos.2 and 3 in C.C. No.2373 of 2014 on the file of I Additional Chief Metropolitan Magistrate at Visakhapatnam, wherein the learned Magistrate has taken cognizance for the offences punishable under Sections 120-B, 406, 417, 420, 468 read with Section 34 IPC and Sections 3 &4 of Dowry Prohibition Act, 1961 which is outcome of private complaint of 2nd respondent—defacto complainant.

2) Heard learned counsel for the petitioners/ accused Nos.2 and 3 and learned public prosecutor representing the Respondent State and perused the material on record.

3) The averments made in the private complaint reads that the complainant studied B.Com. Computers at B.V.K.College, Viskhapatnam in the year 2007 and employed as Customer support in I.B.M. Daksh, Near Old Jail Road, Visakhapatnam in the month of May, 2007 and worked there till March, 2008. During the course of employment, she acquainted with the 2nd accused viz., Sri Korada Santosh Kumar, who was also working as Customer Support in I.B.M. Daksh, Visakhapatnam. At this juncture, accused No.2 expressed his proposal to marry the complainant and as such accused No.3 being the mother of the accused No.2 approached father of the complainant viz., Sri B.H.Shetty (LW.2) and other

family members in the month of October, 2008 when they were residing in a rented house at Marripalem and the parents of the complainant kept the proposal in abeyance, as the complainant was hardly aged 21 years old.

4) While so, the complainant, accused No.2 and three others working in I.B.M. Daksh, Visakhapatnam, were selected for Wipro at Kolkata of West Bengal in the month of March, 2008 and joined at Wipro. The complainant and the other two female members taken a rented house, and lived there from March, 2008 to December, 2009.

5) The accused No.2 and complainant were worked together in Wipro at Kolkata of West Bengal State and therefore, the complainant for the purpose of drawing the monthly salary opened a Salary Savings Bank Account with HDFC Bank Limited, at Salt Lake City, Kolkata and all the transactions made by her through the accused No.2. The complainant used to issue blank cheques to the accused No.2. The accused No.2 whenever necessary used to fill up the cheques and issuing the same to the third parties on behalf of the complainant. The accused No.2 and the complainant fell in love prior to working at Kolkata and therefore, the cheques signed by the complainant were kept with the accused No.2 with a belief that both will marry. Subsequently, she lost confidence.

6) While so, the cheque bearing No.866452 signed by the complainant kept with accused No.2 during the year 2009, which is the subject matter of C.C. No.1367 of 2013. A.2 with a malafide intention to implicate the complainant in a false case, by misusing one of the blank cheques i.e., cheque bearing No.866452 even the account was closed with nil balance in 2009, which is a counter blast to crime No.211 of 2012 registered by SHO, Kancharapalem Zone Police Station, Visakhapatnam City registered for the offences punishable under Sections 417 and 420 IPC, got filed C.C. No.1367 of 2013 on the file of I Additional Chief Metropolitan Magistrate at Visakhapatnam.

7) The complainant and the 2nd accused were working in Wipro at Kolkata, the accused No.2 had also acquainted with one Jyothi Gupta and thereon the said Jyothi Gupta made a report to the Ombudsman of Wipro against the accused No.2 and whereby no enquiry conducted by the Wipro, Kolkata. The accused No.2 convinced the complainant that the things happened earlier shall not be repeated and the accused No.3 knows all these including the dispute with the said Jyothi Gupta. The father of the complainant, Sri B.Hirianna Shetty, was working as Special Assistant in Vijaya Bank, Mumbai and took voluntary retirement in the year 1990 and subsequently, settled at Visakhapatnam and used to run a small restaurant in the name and style of “Shilpa Restaurant” at Marripalem, Visakhapatnam. The brother of the

complainant namely Sri B.Vittal Shetty completed HRM from Gayatri Vidyaparishad, Visakhapatnam in the year 2002 and got employment in Miracle Software, Bhogapuram, Vizianagaram District in the year 2003. During marriage of complainant's brother on 15.02.2009 with Smt.Aparajitha, who is also working in Miracle Software, accused No.3 attended the said marriage and also made a marriage proposal with parents of the complainant. Thereon, the father and other family members of the complainant accepted the proposal made by the accused No.3 to perform the marriage of complainant with accused No.2.

8) The complainant while working in Wipro came back to Visakhapatnam in January, 2010 and immediately joined as Technical Support Specialist in Sotherland Software, Rushikonda, Visakhapatnam and in the month of February, 2010, the accused No.2 was also joined in the same company. At this stage, both the families performed an engagement function on 10.04.2010 at Aashirvad Function Hall at Dolphin Hotel Ltd., Visakhapatnam, with huge expenditure made by brother of complainant and also covered by videos and photos. The brother of the complainant also purchased a car and R.T.A authority also issued Form – 24 i.e., B-Register of car bearing No.AP 31 BB 6144 under hypothecation with ICICI Bank authorities and the EMIs have been deducting from the salary of brother of complainant.

9) After the engagement, the accused No.2 left the job in Southerland Software and developed illegal intimacy with women folk and started a business at Dondaparthi, Visakhapatnam in the name and style of 'Mama-Miaa" and for that business purpose, accused Nos.2 and 3 demanded amount from complainant and in view of the cordial relationship, the complainant and her mother gave the gold ornaments (necklace with hangings) worth of Rs.78,500/- that was purchased from Mahaveer Jewellers and accused Nos.2 and 3 taken the same. Accused No.3 mortgaged the said gold ornament with Kanaka Mahalakshmi Co-operative Bank, Akkayyapalem,Visakhapatnam for Rs.55,000/- and the fact of mortgage has been not known to complainant and her mother. Subsequently, the complainant came to know the said fact when the accused No.2 refused to marry her. The diamond ring, presented to the accused No.2 at the time of engagement, has been mortgaged with Muthoot Finance, Akkayyapalem Branch, Visakhapatnam by accused No.2. Accused No.1, being the investigation officer has not investigated the case properly and in fact, he suppressed the facts to help the accused Nos.2 and 3 for offences punishable under Sections 420 and 406 IPC before III Metropolitan Magistrate, Visakhapatnam. The complainant got issued legal notice to accused No.1 for the improper investigation against accused Nos.2 and 3 covered by Crime No.211 of 2012.

10) The accused No.1 not cited the witnesses like Dolphin Hotel Management, where the engagement was performed on 10.04.2010, Muthoot Finance, Akkayyapalem Branch, Visakhapatnam; not even friends and relatives, who attended the engagement on 10.04.2011; R.T.A authorities towards sale of car to the third persons by the accused No.2; the factum of car purchased by brother of complainant under hypothecation with ICICI Bank; accused No.2 performed the marriage with one Priya on 25.02.2012 and the said priya and her parents were not cited as witnesses; one R.Ramesh, who signed on the Non-judicial Stamp Papers, which were retained with the accused No.2; the third person purchased the car from the accused No..2; the colleagues of the complainant and accused No.2 not cited as witness, where both were worked together in one organisation have to be cited as witnesses. The documents scribed by the complainant under the criminal threat and force used by accused Nos.2 and 3 are not seized by the Investigating Officer—accused No.1 to help the accused Nos.2 and 3 and it is from the conspiracy between accused No.1 with accused Nos.2 & 3 to help them with perfunctory investigation by filing charge sheet by not citing the relevant witnesses, thereby the accused No.1—IO, is also to be prosecuted.

11) In fact, a crime No.211 of 2012 was registered for the offences originally under Section 420 and 406 IPC covered by

C.C. No.633 of 2012, from the police final report against accused Nos.2 and 3. The learned III Metropolitan Magistrate, Visakhapatnam has taken cognizance against accused Nos.2 and 3 and they filed an application in Crl.M.P. No.1231 of 2015 in C.C. No.633 of 2012 and the same was allowed discharging from the offences taken cognizance under Sections 420 and 406 IPC by the learned Magistrate on 19.06.2015 and it is practically a protest, if at all, that can be filed against the police final report in the form of charge sheet filed by accused No.1—Inspector of Police, Kancharapalem Police on 25.06.2012 against accused Nos.2 and 3 for the same offences.

12) Once for the self same facts, earlier crime was registered and from the investigation police filed charge sheet that was taken cognizance by the learned Magistrate for the offences against him and ultimately from the discharge of accused Nos.2 and 3 on application for no grounds to frame charge, the proper remedy of complainant is to file a revision or petition under Section 482 Cr.P.C against that discharge order and it is not even a case of re-investigation after police final report dated 25.06.2012 by filing any revision or petition under Section 482 Cr.P.C before the Court. The Magistrate has no such power to order re-investigation of the matter and even filing of private complaint is nearly 22 months after the charge sheet filed by police and taken cognizance for the offences by the Magistrate. Therefore, filing of private

complaint by the complainant is unsustainable. In fact, if at all any protest to be raised to the extent of consideration what is investigation material and what is protest for any direction of further investigation or to take cognizance with reference to earlier police final report to the extent taken cognizance and though pending police investigation in respect of the same offence any complaint case filed, the Magistrate has to call for the police as to the investigation progress and if at all police final report filed and taken cognizance for any offence against any person in addition to the matter in question, the Magistrate shall enquire and try together the complaint case and case arising out of criminal police report, as if objection was raised to police final report and it is only when police report does not relate to the accused in the complaint case or on the police report, police has not taken cognizance, he can proceed with the enquiry of the complaint because that was contemplated under Section 210 Cr.P.C. Here, it is not even the case.

13) Having regard to the above and from the fact that the original report covered by Section 154 Cr.P.C and the statement of defacto complainant in the course of investigation therein, no way covers all the material things referred in the private complaint and subsequent to the cognizance taken of the police report and ultimately that was on the application of the accused discharged, for no grounds to charge for the offences under Sections 406 and 420 IPC,

fresh private complaint and taking cognizance by the learned Magistrate is no way sustainable but for remedy of the complainant, if at all, is to impugn the discharge order of the Magistrate by filing revision under Section 397 Cr.P.C or petition under Section 482 Cr.P.C as the case may be, or if at all aggrieved for such remedy to decide on own merits.

14) Accordingly, the Criminal Petition is allowed and the proceedings in C.C. No.2373 of 2014 on the file of I Additional Chief Metropolitan Magistrate at Visakhapatnam are hereby quashed against petitioners/ accused No.2 and 3, which is without prejudice to pursue any other available remedies of the petitioner for nothing to show accused No.1 deliberately did not investigate even from any supply of material by defacto complainant against accused Nos.2 and 3 much less in collusion with accused Nos.2 and 3 to save them.

Miscellaneous petitions, pending if any in this Criminal Petition shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:12.12.2017
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