

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2117 OF 2017

ORDER:

The present Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed requesting to quash the proceedings in C.C.No.895 of 2012 on the file of Principal Judicial Magistrate of First Class, Nirmal.

2. The petitioners are arraigned as accused Nos.2 to 9 in the aforesaid Calendar Case. The offences alleged against them are punishable under Section 498-A read with 34 I.P.C. and Section 4 of the Dowry Prohibition Act.

3. From the contentions raised by the learned counsel for petitioners as well as from a perusal of the final result in F.I.R.No.77 of 2007, dated 08.07.2007, it is clear that the Investigating Officer - Sub-Inspector of Police, Police Station Nirmal Town, who has investigated into the allegations, has filed final report stating that the complaint was 'false' and made a request to the learned Magistrate to drop the proceedings, and later, on protest petition being filed by respondent No.2 – *de facto* complainant, the present Calendar Case was registered.

4. Learned counsel for the petitioners has read the statement of *de facto* complainant's father, by name Mohammed Nayeemuddin, which was recorded prior to filing of the final report by the police

requesting the learned Magistrate to close the case as 'false' basing on his submission also. Learned counsel would also submit that there has been compromise subsequently on 23.12.2008 and even, it is not known where the *de facto* complainant is now residing, and the information received by him would reveal that she even contracted second marriage. In that view of the matter, learned counsel seeks to quash the proceedings in the present Calendar Case. Of course, it is his submission to issue notice to respondent No.2 – *de facto* complainant even.

5. The submission made by the learned counsel for petitioners would relate to factual aspects that were transpired subsequently and even prior to filing of final report, dated 08.07.2007, referred to in the above. The compromise entered into and the Memorandum of Divorce/compromise, copy of which is filed in the material papers, are all required to be examined or confronted to the witnesses, more particularly, the *de facto* complainant, when she steps into the witness box during trial. The same cannot be examined, by holding an enquiry, in a proceeding under Section 482 Cr.P.C., more particularly, when the Calendar Case relates to the year 2012. Therefore, it would be reasonable to give a direction to the learned Magistrate to dispose of the Calendar Case by fixing time line.

6. Learned counsel for the petitioners would submit that the presence of petitioner Nos.3 to 8, who are the in-laws of *de facto*

complainant, other than parents-in-law, who are petitioner Nos.1 and 2, of course, husband of *de facto* complainant, who is accused No.1, is not a party to the present Criminal Petition, be exempted, in case any direction for disposal of the Calendar Case would be given by fixing time line.

7. Keeping in view, the earlier investigation report, certainly, the presence of petitioner Nos.3 to 8, who are accused Nos.4 to 9 in the aforesaid Calendar Case, can be exempted during trial.

8. Accordingly, the present Criminal Petition is disposed of with a direction to the learned Principal Judicial Magistrate of First Class, Nirmal, to dispose of C.C.No.895 of 2012 within a period of six (6) months from the date of receipt of a copy of this order.

9. The presence of petitioner Nos.3 to 8, who are accused Nos.4 to 9, is exempted during trial, with a direction that they shall appear before the learned Magistrate when examination under Section 239 Cr.P.C. and under Section 313 Cr.P.C. being taken up by the learned Magistrate, and also whenever the learned Magistrate directs them to appear, if necessary. Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

A. SHANKAR NARAYANA, J

March 15, 2017.
MD