

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2674 OF 2017

ORDER:

The petitioner, who is arraigned as accused No.2 in Calendar Case No.196 of 2015, on the file of the XIV Metropolitan Magistrate, Cyberabad at L.B. Nagar, requests to quash the proceedings in the said Calendar Case by exercising power under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code').

2. The petitioner along with accused No.1 alleged to have committed the offences punishable under Sections 498-A and 506 of Indian Penal Code, 1860 (for short 'IPC') and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

3. Heard Sri M. Rathana Singh, learned counsel for the petitioner and the learned Additional Public Prosecutor for the State of Telangana.

4. The learned counsel for the petitioner pleads innocence and false implication of the petitioner. His submission is that neither in the complaint nor in the statements of the witnesses recorded under Section 161 of the Code, the allegations to make out the offences alleged against the petitioner are conspicuously absent, and mere instigation is no ground to hold that there are *prima facie* allegations and, therefore, the trial in the aforesaid Calendar Case would amount

to the abuse of process of law, hence, sought to quash the proceedings in the aforesaid Calendar Case so far as the petitioner is concerned.

5. The learned Additional Public Prosecutor would resist the request. He has pointed out certain portions in the complaint, charge sheet and in the statements of the witnesses, and basing on the same, he would contend that these would constitute *prima facie* allegations to proceed with the trial against the petitioner for the offences alleged against him.

6. Perused the complaint and the material available on record.

7. Irrespective of going through the charge sheet as well as the statements of witnesses recorded under Section 161 of the Code, suffice it to refer to a specific averment made in the complaint by respondent No.2 - *de facto* complainant. The said averment is to the effect that the elder brother of accused No.1, who is no other than her husband, connived with her husband and attacked her brother and herself and a case under Section 323 IPC was registered with Nallakunta Police Station. In that connection, she would make the averments that the petitioner herein instigated her husband with an oblique motive of seeking divorce from her elder sister whom he (petitioner) married and he is responsible for spoiling their marital life. In the presence of such strong allegation in the complaint made by respondent No.2 - *de facto* complainant which have been stated to the police in her statement recorded under Section 161 of the Code,

certainly, it cannot be said that there are no *prima facie* allegations to continue the proceedings in Calendar Case and the prosecution would amount to the abuse of process of law as sought to be viewed by the learned counsel. The learned counsel placed reliance in **Smt. Aruna Bai @ Andalu & others v. The State of Andhra Pradesh & another¹**, rendered by a learned Single Judge of this Court following the law laid down in **Preeti Gupta and another v. State of Jharkhand & another²** rendered by the Hon'ble Supreme Court. But, on facts, certainly, the said decisions cannot be made applicable. In the present case, there is concrete allegation in the direction of making out a *prima facie* case to proceed with trial against the petitioner, as mentioned in the above. There is no merit in the present petition as it is not a case where the proceedings against the petitioner can be quashed.

Therefore, the Criminal Petition is dismissed, at the stage of admission itself. As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

A. SHANKAR NARAYANA, J

April 21, 2017.
Mgr

¹. Crl.P.No.3418 of 2011, dated 17.02.2014

². (2010) 7 SCC 667