

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1984 OF 2017

ORDER:

The present criminal petition is filed to quash the proceedings in Calendar Case No.385 of 2016 on the file of IV-Additional Judicial Magistrate of First Class, Tirupati, under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code').

2. The petitioner, who is arraigned as accused No.6, alleged to have committed the offences punishable under Sections 498-A, 420, 354 of I.P.C. and Sections 3 & 4 of Dowry Prohibition Act, along with other accused. The petitioner herein is the younger brother of accused No.1, who is none other than the husband of the 2nd respondent/*de facto* complainant.

3. Heard Sri Kurra Srinivasulu, learned counsel for the petitioner, and the learned Additional Public Prosecutor for the State of Andhra Pradesh.

4. The main submission of the learned counsel for the petitioner is that the petitioner is roped in and he is absolutely innocent and at the relevant time he was employed in Delhi and working in a Multinational Company, which was actively involved in construction activities, and in fact the petitioner has taken a house on rent and drawn salary from the company through Bank account opened at Delhi and that he was not the resident of either Tirupati or Uthokottai

till today. It is also his submission that the petitioner would not derive any benefit by demanding the *de facto* complainant to get additional dowry, the family members, including distant relatives, who are not the residents of Tamil Nadu and Andhra Pradesh were also falsely implicated by mentioning the allegation of demand for additional dowry and, therefore, sought to quash the proceedings.

5. Learned counsel for the petitioner would also submit that the 1st accused filed H.M.O.P. No.11 of 2015 on the file of Subordinate Judge, Thiruvalluru seeking decree of dissolution of marriage between the 1st accused and the *de facto* complainant. The 2nd respondent/*de facto* complainant, at the instance of her father, who is working in Police Department, relegated to lodge the police complaint roping in all the family members. Learned counsel for the petitioner also filed Lease Agreement dated 20.6.2011 said to have executed by Mr. Sulekh Chand in favour of Mr. Poorna Chandra Rao, who is the present petitioner.

6. Perused the compliant averments as well as the statements recorded by the police under Section 161 of Cr.P.C.

7. The charge-sheet would show that accused No.1 went to U.S.A. leaving the *de facto* complainant and she was left under the care of accused Nos.2 to 7, and they all subjected her to both physical and mental harassment for want of additional dowry. Later, accused No.1 alleged to have admitted that he was not fit for sexual intercourse.

8. No doubt, the Lease Agreement is an unregistered one. The petitioner has submitted certain documents relating to Lanco Infratech Limited and Larsen & Toubro Construction Infrastructure, including salary drawn and paid to the petitioner, computer generated documents. The petitioner has also filed copy of decree of divorce granted in HMOP No.11 of 2015, on a petition filed by the husband of the *de facto* complainant under Section 13 (i) (ia) of Hindu Marriage Act, by the Subordinate Judge, Tiruvallur on 17.3.2016 wherein it shows the *de facto* complainant did not appear.

9. Be that as it may, the fact whether the accused No.1 was fit or otherwise for performing sexual act, which allegation levelled by the *de facto* complainant, and concealing it relates to the factual aspect calls for disputed questions of fact. The submission made by the learned counsel for the petitioner/accused No.6 has been that the husband of the *de facto* complainant has undergone the requisite test and it was proved that the present allegation is incorrect.

10. Now, the question is whether there is inherent improbability to view the abuse of the process of law in case the present petitioner is prosecuted.

11. The learned counsel for the petitioner would submit that in fact HMOP No.11 of 2015 was decreed by grating dissolution of marriage between the *de facto* complainant and the 1st accused. Though, it was *ex parte* decree passed by the learned Subordinate Judge, Tiruvallur

on 17.3.2016, the *de facto* complainant has not carried the matter further and moved any application to get *ex parte* decree set aside.

12. It is the submission of the learned counsel for the petitioner that the *de facto* complainant got married with another person by name M. Seshadri Naidu on 1.2.2017 and it is also averred in paragraph-11 of the petition in the context of continuance of the present proceedings would amount to harassment.

13. The petitioner has undergone training between 2010 and 2011 at Gurgaon and joined LANCO, which appointment for the position of Assistant Manager-Civil is filed bearing dated 31.8.2012 and the original thereof is also submitted for perusal of the Court. The learned counsel drawn attention to the photostat copies of the documents i.e., Letter of Appointment, Salary drawn therefor. The petitioner appears to have taken up a different assignment in Larsen & Toubro Limited and filed pay slips showing the relevant details therein, the last such slip was filed relates to the month of September, 2015 indicating that the petitioner was continuing his job in the said company located at New Delhi.

14. The aforesaid material, no doubt, is in the form of Photostat copies, but, however, from a perusal of the original submitted to the Court, it is difficult even at this stage to hold that the petitioner participated in the commission of the offences alleged along with other accused. Thus, looked at the documents filed by the petitioner,

certainly, it is to be held that it is inherently improbable to hold that the petitioner took part in the commission of the offences alleged against him along with other accused. Thus, it is a fit case for quashment to be ordered, and, accordingly the Criminal Petition is allowed quashing the proceedings in C.C. No.385 of 2016 on the file of IV-Additional Judicial Magistrate of First Class, Tirupati, so far as the petitioner/accused No.6 is concerned.

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

Dt. 21.04.2017
gbs

A. SHANKAR NARAYANA, J

