

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.9331 OF 2017

ORDER:

Heard learned counsel for the petitioners and also the learned public prosecutor, representing the respondent – State.

2. Impugning the order of the learned Additional Judicial First Class Magistrate, Jaggaiahpet, dated 04.09.2017, in CrI.M.P.No.2573 of 2017, filed as if in pending PRC No.01/2017, the present criminal petition has been filed.

3. The daughter-in-law of A2 – 1st petitioner herein/wife of A1 by name G.Suneeta, presented a report dated 27.06.2015 to the Station House Officer, Jaggaiahpet and the police registered Crime No.119 of 2015, for the offences punishable under section 498A IPC, section 4 of Dowry Prohibition Act and also under sections 3(1) (x)&(xi) of SC/ST POA Act, 1989. The police filed final report dated 21.02.2016, fastening the liability on A1 only and the learned Magistrate taken cognizance against A1 to A4. The complainant raised a protest. It appears the learned Magistrate no doubt can do so that within his power as laid down by the Constitution Bench of the Hon'ble Apex Court in ***Dharampal Vs. State of Haryana***¹, by differing with police opinion if at all to take cognizance against other persons referred from the charge

¹ (2014) 3 SCC 306

sheet material with part II CD if any pursuant to the report. In this case on hand, the learned Magistrate has differed with the police opinion and taken cognizance not only against A1 but also against A2 to A4, who are the petitioners herein. They impugned the said cognizance order of the learned Magistrate dated 23.02.2017 for the offence punishable under section 498A IPC and section 4 of Dowry Prohibition Act and Section 3(1)(x) of SC/ST POA Act, 1989, in ordering the issuing of summons against them. The Sessions Court, in Criminal Revision Petition No.75 of 2017, dated 18.08.2017, set aside the said cognizance order, referring to the expression of the Hon'ble Apex Court in **P.S.Meher Homji Vs. K.T.Vijaya Kumar**², of an unreasoned order to take cognizance is unsustainable. It is observed in the operative portion of the revision order that 'the revision is allowed and the cognizance order of the learned Magistrate dated 23.01.2017 in PRC.No.01/2017 is set aside and the trial court shall consider the entire record and pass appropriate orders afresh'.

4. It is there from as on date after 18.08.2017, there is no order taking cognizance against A2 to A4. However, the learned Magistrate issued NBWs against A1 to A4 on 31.01.2017 and recalled against A1 on 18.08.2017. The matter is posted to 21.09.2017. The petitioners A2 to A4 filed petition CrI.M.P.No.2573 of 2017 to recall the said warrants.

² (2015) 1 SCC 788

The learned Magistrate by the impugned order dated 04.09.2017 dismissed the warrant recall petition against A1 to A4 instead of mentioning as against A2 to A4 as the case may be. Now not concerned with A1, against whom the cognizance was taken by allotting PRC number for committal of the learned Magistrate. So far as A2 to A4 concerned, from the cognizance order, set aside by the Court of Sessions and unless a fresh cognizance order is taken by the learned Magistrate, pursuant to the Sessions Court order dated 18.08.2017, there is no order of cognizance, much less, to secure the presence of the persons arrayed as A2 to A4, much less to issue NBWs.

5. Having regard to the above, giving of NBWs and even dismissal of the recall application by the learned committal Magistrate are unsustainable. It is left open to the learned Magistrate, if at all from the material, there is nothing to take cognizance against A2 to A4 or any of them among; after taking cognizance can secure their presence by issuing summons or warrants as the case may be.

6. Accordingly and with the above direction, this criminal petition is disposed of. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

DR.B.SIVA SANKARA RAO, J

06.10.2017
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