

HON'BLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.9248 of 2017

ORDER

The petitioners are A.3 to A.5 including two others in PRC No.8 of 2017 on the file of II Additional Chief Metropolitan Magistrate, Vijayawada, for offences punishable u/sec.498-A, 509, 376 r/w 511, 354, 341, 406, 420, 323 and 307IPC and Sections 3,4 and 6 of the Dowry Prohibition Act(for short, 'the DP Act') registered as Cr.No.2 of 2016 by the Mahila Police Station, Vijayawada against the petitioners and two others on the report dt.14.01.2016 of the 1st respondent.

2. The averments in the report of the defacto-complainant,dt.14.01.2016 are that her marriage with A.1 was performed on 06.03.2004 at Kanipakam, Chittoor District. After the marriage A.1 took her to A.3(elder sister of A.1)'s house to lead marital life, A.2(father of A.1) imposed a condition that the site which was presented as Sridhanam should be sold before the marriage and cash to be paid to them and also demanded to sell the house situated in Kankipadu village given to her by her grandfather, otherwise they would not allow A.1 to marry her. Out of fear, she sold the house for Rs.18,00,000/- and paid them along with 80 sovereigns of gold before the marriage. She further mentioned that they stated that they would purchase 25% of share in K.V.S.Bar and Restaurant, Ongole in her name and every month pay her Rs.30,000/- out of the income therefrom, and accordingly paid for three months and from the 4th month onwards they stopped and when she questioned A.2

about it, he stated that he would purchase a plot in her name. Two months after the marriage, A.2 to A.5 used to beat her with a demand to bring additional dowry. About one year of marriage, when her father, her grandfather (L.W.2) and others asked about the dowry harassment, A.2 scolded them and asked to take away from there. In the second year, she was blessed with triples(three male children). Then A.1 asked her to give the children to A.3 and A.4 and used to beat her without providing food and water and forced her to agree for adoption of one boy to A.4. A.2 took away 30 sovereigns of her gold and sold away and other 30 sovereigns was pledged by A.1 and used to harass her to bring additional dowry of Rs.5.00lakhs. A.2 used to behave indecently in a drunken state and used to beat her and cause scratch injuries on her body. During 2009 she was blessed with another boy. Then the A.1 demanded her to give the boy to A.5 in adoption. A.2 used to assault her and behave indecently and harassed her sexually. When she refused, he used to blame her with theft of money in their house. On 27.10.2015, A.2 attempted to kill her with the active support and instigation of A.1, A.4 and A.5 but she escaped. On 01.11.2015 at about 12.00 midnight. A.1 came to the house of her parents in a drunken state and abused and beat her and also her father and brother. On 08.11.2015 L.W.10 Vejju Subbarao Patel, called A.1 and A.2 to Vijayawada, A.2 confessed that she has not stolen any cash and apologized. A.2 also assured that they will keep A.1 and 1st respondent in a separate house but did not comply. On 24.11.2015 when she again went to Ongole, her husband tried

to kill her with knife and also tried to strangle her and confined in a room and on her cries, they freed her. Hence, the complaint.

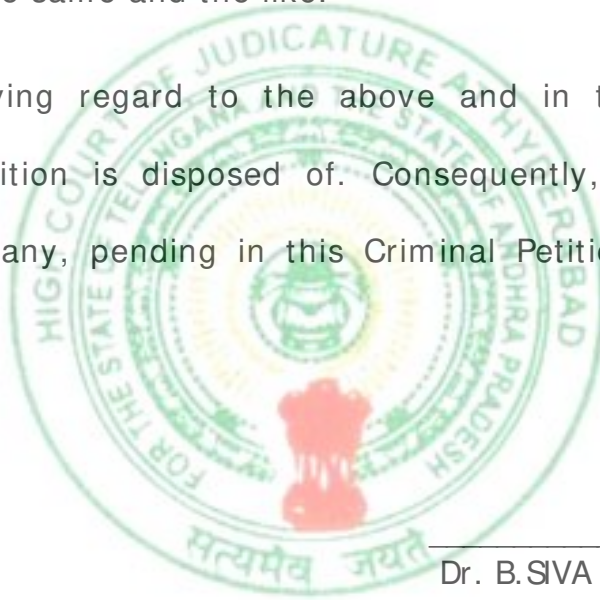
3. The contentions in the grounds of quash petition are that they are innocent of all the offences alleged against them and that they have been falsely implicated for the sin of they are the sisters of A.1, though they are all married and residing separately along with their families and are nothing to do with the family affairs of A.1 and his wife-the 1st respondent/defacto-complainant. A.1 is suffering from temporal meningitis and under the doctors' advise he is under regular medication which will be throughout his life. On coming to know about the same, the 1st respondent/defacto-complainant left A.1 and started harassing himself and his family by filing false cases. The Sections though not applicable to them the police unnecessarily included them in the chargesheet by doing table investigation. This Court and the Apex Court in several cases held that it has been tendency on the part of the wives to implicate not only husbands but also their in-laws and relatives. To attract Section 498-A IPC there must be such a conduct on the part of the husband or relatives of the husband of woman which is of such a nature as to cause the woman to commit suicide or cause grave injury or danger to life, limb or health whether mentally or physically and none of the above said ingredients are available in the present case and on this ground alone proceedings are to be quashed.

4. Heard the learned counsel for the petitioners/A.3 to 5 who reiterated the above quash petition averments and also heard the learned counsel for the 1st respondent/defacto-complainant and the learned Public Prosecutor representing 2nd respondent-State who contended that that there are allegations with basis even against the petitioners/A.3 to A.5 and it is from the police investigation substantiating the allegations which make out a case against them, therefrom the cognizance was taken on the final report and the case is to be committed to the Court of Sessions by the learned Magistrate since triable by it. Hence, the quash petition is liable to be dismissed.

5. The report of the defacto-complainant running in several pages, no doubt, makes accusation not only seriously against the A.1 and A.2 but also to some extent against these petitioners. Her statement during investigation repeats the same so also from the statements of other witnesses. So far as the petitioners/A.3 to A.5 are concerned, no doubt but for if at all the offences u/sec.498-A IPC and Sections 3,4 and 6 of the D.P.Act, none of the other offences that attract against them. On perusal of the statements of the witnesses covered by the police investigation in filing the report once makes out to that extent to attract the offence u/sec.498-A IPC and Sec.3,4 and 6 of the D.P.Act, this Court cannot quash the proceeding to that extent against them but for to say they are entitled to make out any grounds from any material in the course of hearing before the charges before the Court of Sessions by filing application for discharge, for the Court to decide on own merits uninfluenced by

the observations supra for the scope of quash petition are different from the scope of charges by fresh consideration of the material. it is also needless to say the Court of Sessions can by virtue of Rule 37 Criminal Rules of Practice by virtue of this order exempt the personal appearance of the petitioners/A.3 to A.5 if represented by A.1 or A.2 on their behalf on any such application during enquiry/trial in the Sessions Case to be numbered after committal but for whenever personal appearance is required including in the event of framing of any charges for their answering the same and the like.

6. Having regard to the above and in the result, the Criminal Petition is disposed of. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition, shall stand closed.



Dr. B.SIVA SANKARA RAO J,

Date:08.12.2017

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