

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No. 5507 OF 2017

ORDER :

The petitioners are A.1 to A.4 in Cr.No.58 of 2017 on the file of the Veldanda (M) Police Station, Nagarkurnool, Mahaboobnagar District, registered for the offences punishable u/ sec.498-A r/w 109 IPC and u/ sec.3 and 4 of the Dowry Prohibition Act(for short, 'the DP Act'), on the private complaint of the 2nd respondent/ defacto-complainant, dt. 10.03.2017 which was later referred to the SHO supra by the learned Addl.Judicial First Class Magistrate, Kalwakurthy for investigation and final report for which the crime was registered by the police on 05.05.2017. The present quash petition is filed by the above petitioners/ A.1 to A.4 to quash the FIR supra.

2. The grounds urged in the quash petition are that the complaint filed by the defacto-complainant is not maintainable. The petitioners are innocent and nothing to do with alleged allegations against them and A.1 is father-in-law, A.2 is brother-in-law, A.3 is wife of A.2 and the A.4 is sister-in-law of 17 years minor girl of the defacto-complainant. After the marriage of the defacto-complainant with the son of A.1 they lived separately and the petitioners are no way concerned with the family affairs of the defacto-complainant and her husband. In the cause of action in the private complaint it is mentioned that arose since 03.12.2016 and everyday thereafter, but the defacto-complainant left the house on 03.12.2016 itself on her wish and used to demand the petitioners/ A.1 to A.4 to distribute the immovable property in her name. It is further submitted that there is abnormal delay and after-thought to implicate the petitioners leaving her husband falsely. She also filed a case DVC No.7 of 2017 on the file of the Judl. Magistrate of First class,

Kalwakurthy against the petitioners on 10.03.2017 with same set of allegations. The 2nd respondent not followed the guidelines of the expression of the Apex Court in Priyanka Srivatsava Vs. State of UP¹ while filing a private complaint in support of it, she has to file an affidavit, but there is no such affidavit filed, the same is evident in the list of documents in the private complaint. The cause title in the complaint of defacto-complainant shows that she is living along with her husband separately, without complaining anything against her husband which clearly shows her evil desire to grab the immovable property from the petitioners.

3. The averments in the private complaint filed u/ sec.190 and 200CrPC of the defacto-complainant before the Judicial Magistrate of First Class, Kalwakurthy, are that she is the legally wedded wife of L.W.2 Nainolla Chandrakanth, and their marriage was solemnized on 23.04.2015 at Swathi Gardens, Kalwakurthy as per the rites and customs prevailing in their society. At the time of marriage, the A.1 demanded the L.W.3-K.Chandraiah-her father to give dowry of 4 lakhs which was complied. They lived happily till 3rd November, 2016. Thereafter the A.1 to A.4 (the petitioners herein) started ill-treating her saying that she is black in complexion and not blessed with children and demanded her to bring an additional dowry of 5lakhs from her father and threatened her to kill and not to allow her to stay in their house if not complied. Since her father was unable to satisfy the demand of additional dowry made by the A.1 to A.4, they insulted and tortured her physically and mentally several times for want of additional dowry and finally on 03.12.2016 to bring 5lakhs from her father and threatened her if their demand is not fulfilled they are going to kill her and therefrom the A.1 to A.4 drove her

¹ AIR 2015 SC P.1758

and her husband from the residential house. The A.1 made further construction in the residential house with the dowry of 4lakhs paid by the father of the complainant. The LWs.3 to 5(her father, brother and another) have tried to pacify the matter and requested the A.1 to A.4 to allow the defacto-complainant and her husband to stay in the residential house, but they did not. The complainant left with no other remedy except to take shelter at her parents house at Veldanda village and Mandal. The above acts of the A.1 to A.4 are illegal and they have caused physical and mental cruelty to her which is of a such a nature as is likely to drive a woman to commit suicide or to cause grave injury and danger to life, limb, or health of a woman. She further mentioned that she lodged a complaint before the SHO supra against the A.1 to A.4 in respect of the above said incident, but they did not take any action. Except no other go, the private complaint to refer the matter to the SHO of Veldanda for investigation and report.

4. Heard the learned counsel for the petitioners/ A.1 to A.4 and the learned Public Prosecutor for the 1st respondent-State. Notice served to the 2nd respondent-defacto-complainant returned unserved with an endorsement that the address insufficient. It is in fact to the same address of her mentioned in the private complaint the notice was sent. Thereby taken as sufficient service and also taken as heard to decide on merits. Perused the material on record.

5. From her very complaint, she did not say her husband is causing any acts of cruelty and ill-treatment against her, much less received or demanded any dowry to attract the offence u/sec.498-A IPC and Sections 3 and 4 of the DP Act as alleged above. The question of filing of a private complaint against these accused persons for the said offences along with 109IPC does not arise in the absence of any principal

accused, for no abetment against them. Leave it as it is, both the cases of her private complaint and DVC case were filed on same day. She has shown the address of her husband as a private employee, resident of Shivaji Nagar, Uppuguda, Falaknuma, Hyderabad. He was shown as L.W.2 besides her mother, father and brother as L.Ws. 1,3 and 4 and another villager as resident of Veldanda which is her parents place as L.W.5. In her entire complaint, from the day of her marriage, dt.23.04.2015 solemnized at Kukatpally, there is nothing to show that she lived at the residence of her in-laws, the A.1 to A.4 situated at Shiva Sai Nagar, Uppuguda. As referred supra, even at Uppaguda, the residence of her husband is also situated at Shivajinagar. It is not even any specific act of cruelty, ill-treatment and additional dowry demand with any particular date and time against the accused. Even in her private complaint, at one breadth showing living with her husband and the other breadth showing she is living at her parents house of Veldanda. It shows only to create a cause to maintain a complaint to refer to the police of Veldanda, these allegations appear to be set up and engineered. The alleged giving of dowry of 4lakhs much less any cash to the accused persons was at the marriage of the defacto-complainant and L.W.2 on 23.04.2015 if not few days before if at all even taken and the alleged subsequent demand for additional dowry was allegedly after 03.11.2016 much less to say she was beaten by the accused on 03.12.2016; if true, there is no meaning in her waiting to give a complaint on 10.03.2017 that too, it is her say in the private complaint para-3 of herself and her husband were beaten by the accused persons. In this background of acts, there is a force in the submission of the learned counsel for the accused persons that it is to settle the scores between the husband of the defacto-complainant and his parents, with

regard to the civil disputes, she engineered the way of private complaint to wreck vengeance and it is nothing but abuse of process to sustain the complaint proceedings apart from mandatory requirements to refer the private complaint by the learned Magistrate to the police for investigation and filing of final report. Leave apart none of the allegations make out any prima facie case for the learned Magistrate to refer the private complaint to police and to take cognizance.

6. Coming to the decision of the Apex Court, placed reliance in Preeti Gupta Vs. State of Jharkhand², it is observed that though exaggerated version of small incident should not be reflected in the criminal complaints, there is a social responsibility with obligation to maintain social fibre of family life particularly in genuine cases of dowry harassment when same is a matter of serious concern thereby the allegations are to be scrutinized with care and circumspection especially with husband's relatives who were living in different cities and never visited or rarely visited the matrimonial home of the complainant. It is observed that the power u/ sec.482 to be exercised carefully and cannot be exercised to stifle legitimate prosecution but Court's failing to use the power for advancement of justice can also lead to grave injustice and for that conclusion referred the expressions in State of Karantaka Vs. L.Munuswamy³ saying the Court is entitled to quash the proceedings when comes to conclusion of allowing the proceedings to continue would be an abuse of process of Court and ends of justice requires that the proceedings ought to be quashed. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution and ends of justice are higher than the ends of mere law though justice

² 2010 7 SCC 667

³ (1977) 2 SCC 699

must be administered according to laws made by the legislature. Same was quoted with approval in *Madhu Limaye Vs. State of Maharashtra*⁴ by three Judge Bench and in *Madhavrao Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre*⁵. It also quoted with approval the guidelines of the Apex Court in *State of Haryana Vs. Bhajan Lal*⁶. No doubt, from these expressions, where it is an abuse of process, the proceedings can be quashed.

7. Having regard to the above and in the result, the Criminal Petition is allowed by quashing the proceedings in Cr.No.58 of 2017 on the file of the Veldanda (M) Police Station, Nagarkurnool, Mahaboobnagar District, against the petitioners/ A.1 to A.4 and they are acquitted and their bail bonds shall stand closed.

8. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:17.11.2017
vvr

⁴ (1977) 4 SCC 551

⁵ (1988) 1 SCC 692

⁶ (1992) Supp (1) SCC 335