

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.10024 of 2017

ORDER:

This Criminal Petition, under Section 482 Cr.P.C., is filed by the petitioners/A.2 to A.5 challenging the order, dated 12.07.2017, passed in CrI.M.P.No.462 of 2015 in Crime No.17 of 2015 by the Judicial Magistrate of First Class, Sirpur.

2. The 1st respondent herein-*de facto* complainant filed protest petition under Section 190 Cr.P.C., as accused Nos.2 to 8 were deleting from the police report and the same was allowed, taken cognizance against A.2 to A.6 for the offence punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act, while dismissing the petition against A.7 and A.8. Aggrieved by the said order, the present criminal petition is filed by the petitioners/A.2 to A.5 on various grounds, mainly on the ground that when a cognizance was taken against A.1 in the absence of any new material produced before the Court, the learned Magistrate ought not to have taken cognizance against these petitioners for the offence punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act. The other ground is that the first respondent cannot file protest petition as the police after completion of investigation filed final report and same was numbered as Calendar Case No.346 of 2015, therefore, on this ground also the impugned order is liable to be set aside. It is also stated that no material is produced before the Court below *prima facie*, to establish that these petitioners committed any offence much less the offence punishable under Section 498-A and Sections 3 and 4 of the Dowry Prohibition Act, therefore, the

impugned order, taking cognizance against these petitioners is erroneous.

3. This Court, at the stage of admission, took an objection as to maintainability of the petition under Section 482 Cr.P.C., when an alternative statutory remedy is available to the petitioners under Sections 397 and 401 Cr.P.C., challenging the legality and propriety of the impugned order passed by the learned Magistrate. For which, learned counsel for the petitioners contended that this Court can exercise the power under Section 482 Cr.P.C., for quashing of such order when it is irregular, and prayed to set aside the order.

4. It is settled law that this Court can exercise the power under Section 482 Cr.P.C., in various circumstances enumerated by the Hon'ble Apex Court in **State of Hariyana v. Bajanlal**¹ and in earlier judgment the Apex Court in **Municipal Corporation of Delhi v. Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi & others**² also held that when an alternative remedy is available under the statute, this Court cannot exercise inherent power under Section 482 Cr.P.C.

5. Having regard to the judgments of the Apex Court, the Criminal Petition is not maintainable against the order passed by the Court below in taking cognizance against A.2 to A.6 and accordingly, it is liable to be dismissed.

¹ AIR 1992 SC 604

² AIR 1983 SC 67

6. Accordingly, the Criminal Petition is dismissed leaving open the remedies available to the petitioners under law. Miscellaneous petitions, if any, pending in this petition shall stand closed.

M. SATYANARAYANA MURTHY, J

NOVEMBER 01, 2017

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Date: 01.11.2017

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