

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.11388 OF 2017

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in Crime No.187 of 2017 on the file of Piler Police Station, Chittoor District, for the offences punishable under Sections 498(A), 406 IPC r/w 34 IPC and Sections 3 & 4 of Dowry Prohibition Act, registered basing on the report lodged by the second respondent on 02.11.2017.

The main allegation against this petitioner/Accused No.5 is that, she developed illicit contact with one G. Siva, who is none other than the husband of the second respondent, while both were working in same college at Tirupati. Therefore, the second respondent registered a crime against the petitioner and four others for various offences stated above and issued F.I.R.

The only contention before this Court is that the petitioner is not the relative of the husband of the second respondent to attract the offences mentioned supra and also that the complaint is silent as to the criminal intimidation for the offence punishable under Section 506 and defined under Section 503 IPC and requested this Court to quash the proceedings.

The petitioner is not a relative of husband of the second respondent admittedly. But, alleged that she developed illicit relationship with the husband of the second respondent.

Section 498-A IPC prescribes the punishment for a husband or relative of husband of a woman subjecting her to cruelty and whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Therefore, to constitute an offence, harassment must be by husband or relative of husband. Here, the petitioner is not related to the husband of the second respondent, but he is only a co-employee in a college at Tirupati.

Learned counsel for the petitioner relied on the judgment of the Supreme Court in **Sunita Jha v. State of Jharkhand and another**¹, where the Supreme Court held that Section 498-A being a penal provision, deserves strict construction and neither a girlfriend nor concubine is a relative of husband within meaning of Section 498-A IPC and discharged the appellant in the said case.

Applying the above principle to the present facts of the case, even assuming for a moment that, what the second respondent narrated in the complaint is true, she may be either a woman who developed contact with the husband of the second respondent, but, she would not fall within the definition of relative of the husband and consequently, the charge against this petitioner for the offences mentioned supra is hereby quashed.

The other offences registered against the petitioner and others are punishable under Sections 3 & 4 of Dowry Prohibition

¹ (2010) 10 Supreme Court Cases 190

Act. But, in the entire complaint, there was nothing to suggest that the petitioner demanded any amount of dowry from the second respondent. Thus, Sections 3 & 4 of Dowry Prohibition Act are also not applicable to the present facts of the case. The other offence allegedly committed by the petitioner is punishable under Section 406 IPC.

Section 406 IPC deals with punishment for criminal breach of trust and Section 405 IPC defines criminal breach of trust as, whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express, or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust."

Here, in this case, there was no entrustment of property or dominion over property, thereby question of criminal misappropriation as defined under Section 405 IPC, punishable under Section 406 IPC does not arise, as the complaint is bereft of any such allegation to attract the offence punishable under Section 406 IPC. Therefore, I find absolutely no material against this petitioner to proceed further, for the offences punishable under Sections 498(A), 406 IPC r/w 34 IPC and Sections 3 & 4 of Dowry Prohibition Act. Hence, the proceedings against this petitioner in

Crime No.187 of 2017 on the file of Piler Police Station, Chittoor District, are hereby quashed.

In the result, criminal petition is allowed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:28.11.2017

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