

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

CRIMINAL PETITION No.17048 OF 2016

ORDER:

Heard learned counsel for the petitioners/A2 to A6 of C.C.No.1275 of 2013, on the file of the Court of VII Judicial First Class Magistrate, Rajahmundry and also the learned public prosecutor, representing the 1st respondent - State and 2nd respondent – defacto complainant, even served, failed to attend and perused the impugned order dismissing the discharge application filed by these petitioners in CrI.M.P.No.70 of 2016 in C.C.No.1275 of 2013, dated 04.11.2016.

2. The learned counsel for the petitioners mainly contends that the very investigation material is mutually destructive and the statements are contradictory and the two independent witnesses of Nizamabad, LWs.8 and 9, did not even state anything regarding the ill-treatment within the four corners of application of Section 498A of IPC in so far as against the petitioners A2 to A6 and the trial Magistrate is bound to consider the material placed by accused as laid down by the Hon'ble Apex Court two judge Bench in **Satish Mehra Vs. Delhi Administration**¹ and the trial court even referred this judgment, ignored the legal notice simply with observation of it can be considered during trial and the

¹ (1996) 9 SCC 766

impugned discharge order is unsustainable and accused are liable to be discharged. It is also the contention that there are no any specific allegations individually to rope the petitioners, much less, to charge them by the trial court from the final report taken cognizance. Whereas, learned public prosecutor submits that there is nothing to interfere with the reasoned and impugned order of the lower court and the petition is liable to be dismissed.

3. In fact, the three judge bench judgment of the Hon'ble Apex Court in ***Devendra Nath Padhi Vs. State of Orissa***², categorically held that the principle laid down in ***Satish Mehra*** supra is not good law. In fact, by interpreting the wording of Section 239 Cr.P.C., the three judge bench laid down that it is only from the prosecution material if the accusation is unsustainable at the post cognizance stage accused can be discharged otherwise not. It is also the observation that a strong suspicion for the court not conducting a mini trial in framing charge is enough to charge the accused persons. No doubt, the subsequent two judge bench of the Hon'ble Apex Court in ***Rukmini Narvekar Vs. Vijaya Satardekar***³ clearly holds that in exceptional cases the High Court can consider lest the trial court in a discharge application the unimpeccable material placed on record by the accused also if shows the very conducting of trial itself is

² (2005) 1 SCC 568 = AIR 2005 SC 359

³ (2009) 1 SCC (Cri) 721

a futility ultimately. Even to consider in this quash petition impugning the dismissal of the discharge application order, the very legal notice given by the wife - the 2nd respondent to the husband demanding him to take back for the marital fold, she mentioned about the dowry harassment but did not whisper anything about the ill-treatment in the hands of the inlaws.

4. Needless to say, so far as that legal notice for restitution of conjugal rights concerned, several allegations to destroy the marital fibre, she need not make as she was interested from the very notice to persuade the husband to take back, however, by pointing out the ill-treatment even she suffered she is particular to the marital life.

5. There the non-mention howfar effects the substratum of the statements that stood back if at all during trial can be tested by cross-examination during trial with reference to the omission to name any of the petitioners in that legal notice and premature for the court in the stage of framing charge as rightly concluded by the trial court though not in so many words. In particular, so far as the fourth accused concerned, there is a specific allegation including in the mediation effected where she also threatened in spoiling the sitting for conciliation at Bommur with a demand for additional dowry else to see that how the marital tie will survive. Though not in

so many terms the allegations against A5 and A6, but there are general allegations in relation to them even.

6. Having regard to the above, for this Court while sitting against the impugned order, there is nothing to discharge any of the petitioners, however, as most of the petitioners are from Nizamabad or Hyderabad or Kurnool, other than the husband among A1 to A6, by invoking Rule 37 of the Criminal Rules of Practice, the personal attendance of A2 to A6, the trial court is directed to dispense with subject to filing application of first accused to represent them for regular adjournments, but for to answer the charges and Section 313 Cr.P.C. examination.

7. Accordingly and without prejudice to the available future defences of the accused, 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

16.08.2017
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