

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.11611 OF 2017

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") questioning the Order dt.26.10.2017 in CrI.M.P.No.1810 of 2017 passed by Additional Judicial First Class Magistrate, Kadiri.

Respondent No.2 herein is accused No.1 in Crime No.177 of 2017 of Kadiri Police Station registered for the offences under Sections 498-A, 307, 506 r/w 34 IPC and Sections 3 and 4 of Dowry Prohibition Act. Petitioner is the wife of respondent No.2 herein. Respondent No.2/A.1 filed a petition before this Court in Criminal Petition No.9317 of 2017 and this Court by Order dt. 05.10.2017 issued the following direction:

" Undisputedly the passport is not with the police since deposited in the Court. Once such is the case, as also held by this Court in CrI.R.C.No.3186 of 2016 vide Order Dt.08.02.2017, the remedy of the petitioner is to approach the learned Magistrate by filing petition under Section 6 (2) of the Indian Passport Act with reference to GSR-570 E, dt.25.08.1993 for permission to take passport to obtain transit permission to go to abroad subject to furnishing of any security for return and undertaking to face trial in person or by special vakalat holder if permitted, as the case may be."

As directed by this Court in Criminal Petition No.9317 of 2017, the respondent/accused filed a petition before Magistrate under Section 6 (2) of the Indian Passport Act and sought return of the Passport, which was deposited with the Court by the investigating agency. The Magistrate, strictly adhering to the direction of this Court in Criminal Petition No.9317 of 2017, passed the impugned Order dt.26.10.2017 granting permission to the accused to take passport on condition to furnish security by

3rd parties like parents or blood relatives ie., brothers, for an amount of Rs.1,50,000/- and also permitted to furnish special Vakalat Holder by way of Petition.

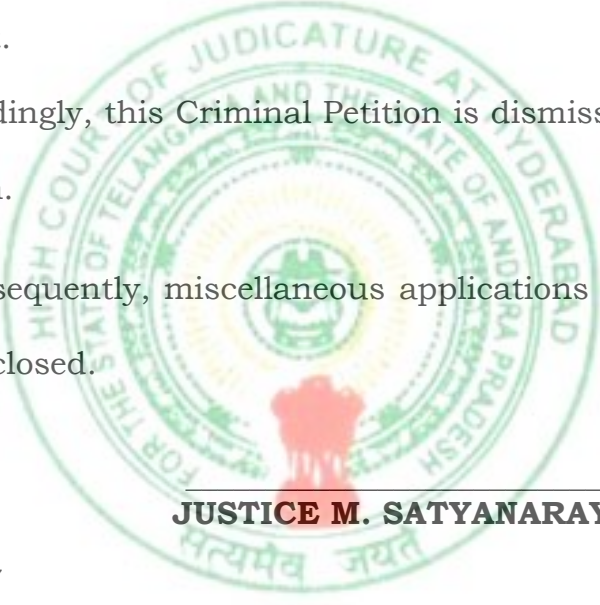
Aggrieved by the Order passed by the Magistrate, the present Criminal Petition is filed mainly on the ground that respondent/accused subjected the petitioner herein cruelty one year after the marriage and took cash of Rs.40,00,000/- as dowry and made an attempt to kill the petitioner and thereby registered a case in Cr.No.177 of 2017 of Kadiri Town Police Station for the offences punishable under Sections 498-A, 307, 506 r/w 34 IPC and Sections 3 and 4 of DP Act. Granting permission insisting to provide security for his return and face trial is illegal and the Court shall take into consideration the gravity and seriousness of the allegations made against the accused, but the trial Court passed erroneous Order directing the accused to furnish security for an amount of Rs.1,50,000/-, which is a meagre amount, and requested this Court to enhance the security amount substantially in view of the gravity of the offence.

Passing an Order by the Magistrate, strictly adhering to the directions of this Court, cannot be faulted in the present petition. But, so far as insisting to furnish security for an amount of Rs.1,50,000/- is concerned, it is the discretion of the Magistrate to secure the presence of the accused to face the trial . When the Magistrate exercises such discretion directing to furnish Rs.1,50,000/- with two sureties as security, this Court would not normally exercise its directions under Section 482 Cr.P.C. since the power of this Court is to implement the Order passed by the

trial Court or to prevent abuse of process of law or to meet the ends of justice. Unless the petitioner satisfies this Court that the Order passed by the trial Court is perverse or abuse of process of law, this Court cannot interfere with such discretionary order passed by the trial Court. Insisting the husband to execute a bond for huge amount is nothing but denial of permission to take passport to go to any other country. Therefore, the description exercised by the trial Court cannot be interfered by this Court while exercising power under Section 482 Cr.P.C. and consequently, the present petition is liable to be dismissed as it lack of merit.

Accordingly, this Criminal Petition is dismissed at the stage of admission.

Consequently, miscellaneous applications pending if any, shall stand closed.



JUSTICE M. SATYANARAYANA MURTHY

Dt. 24.11.2017
eha

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



eha