

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.7290 of 2011

ORDER :

This Criminal Petition, under Section 482 Cr.P.C., is filed by the petitioner/Accused to quash the order dated 24.06.2011 in CrI.R.P.No.12 of 2010 passed by the IX Additional District and Sessions Judge (FTC), Visakhapatnam, confirming the common order dated 29.03.2010 in M.C.No.20 of 2008 and D.V.C.No.1 of 2008 passed by the Additional Junior Civil Judge, Narasipatnam, Visakhapatnam District.

Petitioner is the Accused and respondent No.1 is the complainant and respondent No.2 is the State of Andhra Pradesh, represented by its Public Prosecutor. For the sake of convenience, the petitioner and respondent No.1 herein are arrayed as the Accused and the complainant, respectively.

The complainant is the legally wedded wife of the Accused. She filed a petition against the Accused, under Section 125 Cr.P.C., in M.C.No.20 of 2008 on the file of Additional Judicial First Class Magistrate, Narasipatnam, Visakhapatnam District (trial Court), seeking maintenance of Rs.2,000/- per month and also DVC.No.1 of 2008 for return of the dowry amount of Rs.3,00,000/-. After considering the material and evidence available on record, vide common order dated 29.03.2010, the trial Court allowed the said petition in

part directing the Accused to pay a monthly maintenance of Rs.1,500/- to the complainant from the date of the said order and also directed the Accused to return the dowry amount of Rs.3,00,000/- to the complainant within three months from the date of the said order. Aggrieved by the said common order dated 29.03.2010 in M.C.No.20 of 2008 and D.V.C.No.1 of 2008, the Accused preferred Crl.R.P.No.12 of 2010 on the file of the IX Additional District and Sessions Judge (FTC), Visakhapatnam (lower appellate Court). On consideration of the evidence and the material on record, vide order dated 24.06.2011, the lower appellate Court dismissed the said revision thereby confirming the order of the trial Court in M.C.No.20 of 2008, while modifying the order in DVC.No.1 of 2008 directing the Accused to return the dowry amount of Rs.2,00,000/-, instead of Rs.3,00,000/-, to the complainant within two months from the date of the said order. Aggrieved by the said order dated 24.06.2011 in Crl.R.P.No.12 of 2010 passed by the lower appellate Court directing for return of dowry amount of Rs.2,00,000/-, the Accused has filed the present Criminal Petition.

Heard learned counsel for the petitioner/Accused as well as the learned counsel for respondent No.1/complainant and the Additional Public Prosecutor appearing for respondent No.2 – State. Perused the material and evidence available on record.

Learned counsel for the petitioner/Accused submits that basing on the Undertaking dated 27.12.2006 forcibly got executed by the Accused, both the Courts below have directed for return of the dowry amount. It is submitted that while the Accused was in police custody, he was pressurized to execute such an Undertaking dated 27.12.2006, as such, the same cannot be relied upon for return of the dowry amount.

On the other hand, learned counsel for respondent No.1 submits that on consideration of evidence on record, both the Courts below held the Accused liable and ordered for return of the dowry amount. It is submitted that the trial Court has rightly relied on the Undertaking given by the Accused and directed for return of dowry amount of Rs.3,00,000/-, which was modified by the lower appellate Court directing to return the dowry amount of Rs.2,00,000/- basing on the undertaking given by the Accused due to the presence of the police.

In this regard, the lower appellate Court in para-8 of its order dated 24.06.2011, observed as follows:

“..... In the same manner R.W.1 also gave an undertaking on 27.12.2006 to the Station House Officer, Makavarapalem Police along with his father that he would look after P.W.1 well without causing any harassment; that he will return the dowry of Rs.2,00,000/- which was given to him at the time of marriage and it will be deposited in the name of daughter of P.W.1 and R.W.1 in the form of fixed deposit. It goes to show that R.W.1 received dowry of Rs.2,00,000/- and even agreed to return the same and also to look after P.W.1 well.”

However, in the light of the evidence of RW.1, he himself had undertaken before the SHO on 27.12.2006 that he would look after PW.1 well and he would return the dowry amount of Rs.2,00,000/-. In fact, the contention of the Accused that he gave such an undertaking under the pressure of police, cannot be accepted as the Accused has not taken that fact to the notice of anybody, nor he initiated any action against the police, at any subsequent stage of the case. In view of the subsequent conduct of the Accused, the undertaking given by him before the police cannot be disbelieved. On the other hand, no other evidence is available on record to show that the Accused has given such an undertaking under the pressure of the police. Therefore, the order passed by the lower appellate Court does not require any interference.

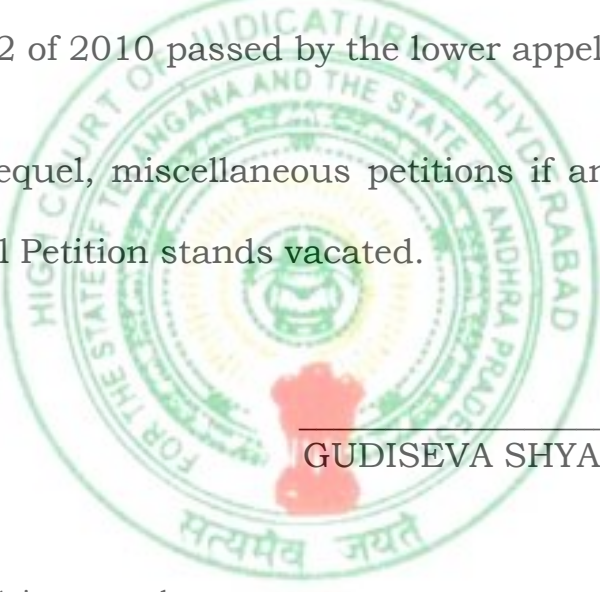
Learned counsel for the petitioner informed that pursuant to the order dated 19.08.2011 passed by this Court, interim stay was granted on condition of depositing Rs.1,00,000/- in the name of the 1st respondent within four weeks, and the petitioner had also deposited the amount within the stipulated time. Learned counsel for 1st respondent submits that he has no instructions from his client as to the deposit of the said amount by the Accused.

Therefore, pursuant to the order dated 19.08.2011 passed by this Court, if the petitioner/Accused has already deposited an amount of Rs.1,00,000/-, he shall deposit the

balance amount of Rs.1,00,000/- (Rupees one lakh only) within a period of eight weeks from the date of receipt of a copy of this order. If the amount of Rs.1,00,000/- has not been deposited, the amount of Rs.2,00,000/- to be deposited within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the respondent No.1 is permitted to withdraw the said amount.

With the above observations, this Criminal Petition is dismissed, confirming the order dated 24.06.2011 in Crl.R.P.No.12 of 2010 passed by the lower appellate Court.

As a sequel, miscellaneous petitions if any, pending in this Criminal Petition stands vacated.



GUDISEVA SHYAM PRASAD, J

19.04.2018.

NOTE: Issue C.C. in one week.
(B/O)
Msr

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19.04.2018
Msr