HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7977 of 2015

ORDER:

The petitioners are A4 and A5 among five accused of C.C.No.698 of 2014 on the file of the Special Judicial First Class Magistrate for Prohibition and Excise Cases, Guntur, taken cognizance for the offences punishable under Sections 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act, which is outcome of the report of the 2nd respondent/de facto complainant, who was impleaded by the Court for her presence and represented initially by one advocate, Sri P.Subba Rao, vide docket order, dated 29.09.2015, which clearly speaks Sri P.Subba Rao, advocate wants to file vakalat and appeared on behalf of the de facto complainant, from instructions of mother of the de facto complainant present and permission is accorded by directing the Registry to name the de facto complainant as 2nd respondent and from verification of record, there is no vakalat filed and there is no representation much less presence of the de facto complainant or her mother, thereby, Court held service sufficient by recording no representation for the de facto complainant and ultimately heard the learned counsel for the petitioners and learned Public Prosecutor in reserving the matter for orders on 19.12.2018.

2. The crime registered on the report of the de facto complainant supra as Crime No.266 of 2014 of Pattabhipuram Police Station against eight accused including the petitioner viz.

A1, husband of the de facto complainant, resident of U.S.A shown in abscondance; A2 and A3, parents of A1, residents of Vijayawada; A4 and A5 are the present quash petitioners, no other than sisters and sisters husbands of A1, shown in abscondance, who are residents of USA; A6 and A7 are also residents of USA shown as abscondance; and A8, one Gutta Rama Krishna of Vijayawada. After registration of the crime, from investigation, police filed final report, citing 10 witnesses including LWs.8 to 10, police officials who registered crime and investigated and filed charge sheet and out of LWs.1 to 7, LW.1 is the de facto complainant, LWs.2 and 3 are her parents, LW4 is her brother and LWs.5 to 7 are residents of Guntur town or rural area respectively.

3. In the quash petition, from the police final report, taken cognizance for the offences supra, the contentions are that the marriage of A1 with de facto complainant was performed on 13.02.2011 at Guntur; they blessed with no children; A1 is a Senior Software Engineer in 'Qual Com', Shandigo, California, U.S.A and the de facto complainant completed her B.Tech and while staying with her husband, pursued further studies on dependent visa and it is the averment that she was non-cooperative from the beginning and never provided conjugal happiness and never attended any domestic work and even he spent more than Rs.18 lakhs for her education and Rs.5.8 lakhs for purchase of gold ornaments by credit card and cash; during the stay of couple after marriage dated 13.02.2011 at Guntur left USA on 07.03.2011 till return back

to India on 29.12.2013, where she did not even went to her parents-in-laws at Vijayawada but for her parents at Guntur from Hyderabad; thereafter both the spouse went back to USA on 26.01.2014 and came back again to India on 27.03.2014 and she did not go back to USA along with A1 on 29.03.2014; if at all she stayed at the in-laws house hardly few days, after the marriage dated 13.02.2011 till the couple left to USA on 07.03.2011 and never later and the accusation is no way sustainable against any of the accused and the complaint filed is with spite and ill-will by abusing the provisions of the Act and as a counter-blast to the divorce petition filed by A1, after receipt of notice in matrimonial OP with an afterthought and with ill-will by engineering the allegations with no truth or basis. Along with quash petition, a copy of the divorce petition in O.P.No.233 of 2014, dated 27.03.2014 filed before the Judge, Family Court, Vijayawada, enclosed the Crime No.266 of 2014 referred supra in registration of the FIR from report of the de facto complainant was on 03.04.2014, which is 6 or 7 days after filing of the divorce OP by A1 against the de facto complainant in saying after marriage at Guntur, they stayed a short period at Vijayawada at his parents place and later, they left to USA, where she developed ill-will and was neglecting by harassing for further studies, even he was accommodating by joining and he suffered mental cruelty. He listened the recording conversations of her mother stating she was waiting for F1 Visa and thereafter, she will get rid of him by giving divorce with no mind to live etc. facts in saying her sole view to get a job, thereby, entitled to divorce on the ground of cruelty. There from also, it establishes that after the marriage, dated 13.02.2011, till the couple left to USA on 07.03.2011, they stayed together for a few days at her in-laws house that is of A2 and A3. From the charge sheet, the addresses shown of A1 in USA is at Sandiego of other State, A4 and A5, quash petitioners herein are at Atlanta, Georgia State, USA and A6 are at California State. It clearly shows A4 and A5 are entirely at different State, though residents of USA, to the place of residence of A1 and de facto complainant, another State at USA.

4. In the quash petition, no doubt, the petitioners did not file any statements of the witnesses but in the charge sheet saying memo of evidence referred supra. Thus, as seen there from, if at all there are any grounds to quash to consider otherwise not.

5. Now, coming to its confining in addition to what is referred supra on the factual matrix, the charge sheet speaks from the investigation supra of the offence alleged taken place at Gujjanagundla of Guntur, in the limits of Pattabhipuram Police Station, her parents place, who are LWs.2 and 3. What it speaks is on 11.12.2010, LWs. 2 and 3 performed the engagement of de facto complainant with A1 at Venkatesh Grand Hotel, Arundelpet, Guntur and at that time, there were demands of A2, from which her parents and brother (LWs.2 to 4) gave cash of Rs.5 lakhs to A4 towards adapaduchu lanchanam. On 13.02.2011, marriage

performed of A1 with LW.1 at Surya Devara Kalyana Mandapam, Ring Road, Guntur and parents of her met the demand of cash of Rs.50 lakhs to A1 and presented her 200 sovereigns of gold. After marriage, till the couple left to USA, on 07.03.2011, they stayed for some days in the house of A2 and A3 at Vijayawada, which is hardly within 20 days. It is stated that in USA after A1 taken LW1/de facto complainant to the marital life on 07.03.2011, at the instigation of A2 to A7, A1 subjected de facto complainant to physical and mental cruelty by demanding Rs.50 crores additional dowry.

6. It is crystal clear there from that there is no material to say A4, A5 stayed in India much less at Vijayawada much less during the stay of de facto complainant and A1, after their marriage on 13.02.2011 in their short stay within 20 days till they left USA on 07.03.2011 and nothing practically performed of any acts to create jurisdiction at Guntur of the alleged cruelty with additional dowry demand but for at USA in addition to what the pre-marriage time, any lanchanams or dowry including at the marriage time at Guntur given, for which before the complaint of de facto complainant in registration of crime in 2014, there is no whisper of what is happened prior to 2011 from 11.12.2010 that too only against A1 to A3 and mere receiving of adapaduchu lanchanam as a customary cannot be regarded as dowry much less of demand that too even nothing saying at the demand of A4 or A5, it was meted out but for if at all against A1 to A3 in that regard.

7. Coming to the further material from the charge sheet, it is stated that on 27.03.2014, A1 handed over de facto complainant to her brother at Hyderabad Airport and returned back to America after cancelling the VISA, bank accounts and all the cards (credit cards etc. of LW.1). On 31.03.2014, A8 contacted LW.2 and threatened stating that they must not make negotiations with anybody relating to the de facto complainant's marital life with A1. On 02.04.2014, LWs.2, 5 to 7 visited Vijayawada, met A8 and LW2 asked A8 to return Forms-17 and 97 to de facto complainant and must not file police report against A1 to A7 and A8 otherwise blackmailing to give divorce to A1 and LW1 to return the forms from which on 03.04.2014 at 6.00 p.m, the facto complainant filed complaint in registration of crime. None of the facts show any sustainable accusation so far as the petitioners/A4 and A5 much less within the jurisdiction of the Court leave apart if at all anything happened in USA, this Court has no jurisdiction leave apart there is a bar without permission of the Central Government under Section 188 Cr.P.C. for post cognizance enquiry/trial, without going to that stage as referred supra, there are no any sustainable allegations to register the crime or to take cognizance from the police final report against the petitioners.

8. Law is fairly settled in this regard from catena of expressions including of recent one of the Apex Court. The Apex Court in K.Subba Rao v. State of Telangana[1], observed that the couple

[1] 2018 SCC Online SC 1080

married on 08.12.2008 and mostly resided in USA with marital discord there and the allegations against the relatives of the husband, who are the maternal uncles are simple of they were supporting her husband in his torturing her physically and mentally and the further allegation of they also conspired with her husband in kidnapping the child from her custody and took away to USA. It is observed that except bald statement they supported the husband of her from which they were harassing for dowry and conspired in taking away the child by her husband from her to USA. There is nothing to sustainable accusation for any of the penal offences for which crime registered including Sections 498-A, 120B, 420 and 365 IPC. It is by referring to the expression of the Apex Court in State of Haryana v. Bhajan Lal[2] is a ground to quash proceeding otherwise abuse of process of the Court from the guidelines therein observed that the Courts should be careful in proceeding against the distant relatives of the couple in crimes pertaining to matrimonial disputes and dowry deaths and it cannot be allowed to rope the relatives of the husband on the basis of omnibus allegations unless there are specific instances saying their involvement in the crime with prima facie accusation made out as observed in Kans Raj v.State of Punjab[3] and Kailash Chandra Agrawal v. State of Uttar Pradesh[4].

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[2] 1992 Supp (1) SCC 335
[3] 2000(5) scc 207
[4] 2014(16) SCC 551

9. In Neelu Chopra v. Bharti[5], the Apex Court categorically observed in quashing the proceedings against the family members of the husband in crime registered under Sections 406, 498-A and 114 IPC that vague allegations in lodging a complaint no way survive to sustain and the instances relating to dowry demand and behaviour against husband and parents-in-law are even vague as to which accused committed what offence and with what exact role, though the allegations against the husband somewhat precise and thereby suffice in holding continuation of proceedings is an abuse of process against in-laws for no sustainable allegations.

10. Further, in Varala Bharat Kumar v. State of Telangana[6], having found fault with the High Court in quashing proceedings within its inherent power, though to be exercised casually having no limitations for quashing, to sub-serve the ends of justice or to prevent abuse of process that where the proceedings are prima facie no way sustainable or otherwise mercilessly with ulterior motive to wreck vengeance, those can be quashed to sub-serve the ends of justice.

11. In Bhaskar Lal Sharma v. Monica[7] also it is observed that the mere allegations of the mother-in-law(A2) poisoning the mind of husband of the de facto complainant(A1) in his harassing and in coercing to meet any unlawful demand for dowry, or for his willful

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[5] 2009(10) SCC 184
[6] 2017(9) SCC 413
[7] 2009(10) SCC 604

conduct against her no way suffice to rope her and suffice to quash proceedings by referring to catena of expressions in this regard.

12. Having regard to the above, even no Part-II Case Diary filed with the charge sheet, from perusal of the charge sheet with attending facts discussed supra with legal position for no sustainable accusation against the petitioners/A4 and A5, the continuation of proceedings against them for the offences taken cognizance is nothing but abuse of process.

13. Accordingly, the Criminal Petition is allowed quashing the proceedings against the petitioners/A4 and A5 in C.C.No.698 of 2014 on the file of the Special Judicial First Class Magistrate for Prohibition and Excise Cases, Guntur.

14. Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 31.12.2018
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