

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.8973 of 2011

ORDER:

This petition is filed, by the petitioners/A1 to A3, seeking for quash of the proceedings against them in C.C.No.377 of 2008 on the file of the court of II Additional Judicial Magistrate of First Class, East Godavari District, Rajahmundry.

2. Heard the counsel for the petitioners and the Public Prosecutor appearing for the 1st respondent. None appears for the 2nd respondent in spite of notice.

3. The complaint is filed alleging that the petitioners herein harassed the complainant with a demand of dowry and subjected to cruelty.

4. The counsel for the petitioners takes this court to the background facts of the case. He submits that the 2nd respondent filed a petition viz., O.P.No.238 of 2008 seeking for restitution of conjugal rights against the 1st petitioner on 23.07.2008 and subsequent to that, the 1st petitioner filed a divorce petition viz., O.P.No.106 of 2009 on 14.06.2009. By a common order, dated 19.04.2010, OP No.238 of 2008 was dismissed and OP No.106 of 2009 was allowed by the court of Family-cum-Additional District Judge, East Godavari at Rajahmundry.

5. A perusal of the said judgment would show that the court considered the fact that this complaint was filed with the same allegations as were made by the 2nd respondent in the above petition. The counsel submits that the 2nd respondent preferred appeals against the said common judgment viz., FCA Nos.145 of 2010 questioning the judgment in O.P.No.238 of 2008 and FCA No.175 of 2010 questioning the judgment in O.P.No.106 of 2008. and the appeal viz., FCA No.145 of 2010 was dismissed as withdrawn based on the compromise that was entered into between the parties. The order of this court in FCA MP No.305 of 2014 in FCA No.145 of 2010, is also filed, which shows that permission was accorded for the 2nd respondent, who is the petitioner therein, to withdraw FCA in view of the reasons mentioned in the affidavit filed in FCA No.175 of 2010. The reasons mentioned in the said affidavit show that the 2nd respondent stated that there is no hope of her husband joining with her and in those circumstances she wanted to withdraw the appeal. It also shows that since the date of judgment in O.P.No.106 of 2009 and O.P.No.238 of 2007, she has been living separately along with her children.

6. Hence, the fact that the 2nd respondent was not living with the 1st petitioner since the date of filing of the divorce OP is evidenced by the affidavit filed by her in FCA No.175 of 2010 and this criminal petition is filed on 22.09.2011, which is long after she started staying separately from the petitioners.

7. In view of the above, this court opines that continuation of further proceedings against the petitioners would only result in abuse of process of law.

8. With the above observations, the Criminal Petition is allowed and the proceedings against the petitioners in C.C.No.377 of 2008 on the file of the court of II Additional Judicial Magistrate of First Class, East Godavari District, Rajahmundry, are hereby quashed.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

September 18, 2018
LMV



T. RAJANI, J