

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No. 2092 of 2011

ORDER:

In this petition filed under Section 482 Cr.P.C, petitioners/A2 & A3 seek to quash the proceedings against them in C.C No. 340 of 2010 on the file of First Additional Judicial Magistrate of First Class, Kadapa, which was taken cognizance for the offence under Section 498-A r/w 34 IPC (Crime No. 87 of 2010 of Kadapa II Town Police Station, Kadapa).

2. The de-facto complainant is the wife of A1. Petitioners/A2 & A3 are the elder brother and sister in law of A1. On the report given by the de-facto complainant, the police of Kadapa II Town Police Station registered the case in Crime No. 87 of 2010 for the offences under Section 498-A r/w 34 IPC against all the accused and after investigation laid charge sheet which was taken cognizance and registered as CC No. 340 of 2010.

3. The charge sheet allegations are that the de-facto complainant is the widow and A1 is also widower having two children. The de-facto complainant is working as Anganwadi Teacher. They got married on 23.12.2003. It is alleged that 18 days after their marriage at the instance of A1, the complainant underwent tubectomy operation. Initially all the accused and complainant used to live under one roof at Mydukur and sometime thereafter, A1 shifted his family to Jammalamadugu. Since then, A1 under the influence of alcohol used to harass the complainant on trivial issues and abusing her as if she was not treating the children well and demanding for divorce. When she reported the matter to her parents, they

arranged panchayat through elders. In the said panchayat all the accused demanded divorce and hence, panchayat failed. Hence, the complaint.

4. Denying the charge sheet allegations, learned counsel for petitioners would submit petitioners/A2 and A3 were unnecessarily roped in the criminal case as they happened to be the elder brother and sister-in-law of A1. It is submitted that petitioners are residents of Mydukur whereas complainant and A1 are residing at Jammalamadugu and there was no occasion for petitioners to interfere into the affairs of A1 and complainant and even in the charge sheet also no specific overt acts relating to harassment or cruelty are mentioned.

5. Learned counsel further submitted that complainant filed DVC No. 14 of 2010 on the file of Judicial Magistrate of First Class, Kadapa against A1 and the petitioners with the same allegations and in Crl.P.No. 1577/2011, this Court by its order dated 7.2.2014 quashed the proceedings against petitioners in DVC No. 14 of 2010.

6. Learned Assistant Public Prosecutor opposed the petition stating that in 161 Cr.P.C statement the complainant and other witnesses have spoken about the overt-acts of the petitioners/A2 and A3.

7. In the light of the above arguments, I perused the record. In the FIR it is mentioned that after marriage, for sometime A1, complainant and petitioners/A2 and A3 lived in the same house at Mydukur. Three months thereafter, A1 shifted his family to Jammalamadugu. Thereafter, A1 started

harassing her. So far as petitioners are concerned, it is mentioned that now and then they used to visit Jammalamadugu and used to instigate A1 to harass the complainant. It is also mentioned as if the petitioners were trying to perform another marriage to A1. In 161 Cr.P.C statements also the complainant (LW-1) and her mother (LW-2) stated in similar lines. It should be noted that admittedly, the petitioners are residing at Mydukur and the complainant and A1 were staying at Jammalamadugu. In that view of the matter, the allegation that they used to go Jammalamadugu now and then to give advice to A1 to harass the complainant seems to be highly improbable. Except making omnibus allegations against petitioners, no overt act of harassment is made out against the petitioners.

8. A perusal of the copy of the order in Crl.P.No.1577/2011 would show that the complainant herein filed DVC No. 14 of 2010 against A1 and petitioners and in Crl.P.No.1577 of 2011, this Court quashed the proceedings against the present petitioners on the observation that except general allegations no specific overt acts have been attributed against the petitioners/respondents 2 & 3 in DVC. This Court further observed that it was specifically alleged in the complaint that when the first respondent squeezed her neck with a demand to resign her job, the petitioners/respondents 2 & 3 intervened and told the first respondent to leave the de-facto complainant. This Court thus observed that in view of the aforesaid facts it cannot be said that the petitioners have been instigating first respondent to harass the de-facto complainant. Except the

general and sweeping allegation nothing has been specifically alleged against them. On all those observations, this Court quashed the proceedings in DVC No. 14 of 2010.

9. In the instant case also, the allegations in the FIR are more or less similar to the allegations in DVC No. 14 of 2010. If the petitioners/A2 and A3 intervened and rescued the de-facto complainant from A1 from squeezing her neck is true, the question of their instigating A1 to harass her cannot be accepted to be true. So, continuation of proceedings against them would amount to abuse of process of Court.

10. In the result, the Criminal Petition is allowed and the proceedings in CC No. 340 of 2010 on the file of First Additional Judicial Magistrate of First Class, Kadapa, Kadapa District, against petitioners/A2 and A3 are quashed.

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

U. DURGA PRASAD RAO, J

Date: 03.07.2018
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