

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.3608 of 2011

ORDER:

This criminal petition is filed, seeking for quash of the proceedings in CC.No.3 of 2011, against the petitioner, who is A5, on the file of the Additional Judicial First Class Magistrate, Gudivada, Krishna District. The offences alleged are under Sections 498-A and 506 read with Section 34 of the Indian Penal Code and Sections 447 and 506 of the Indian Penal Code.

2. Heard the counsel for the petitioner, the learned Public Prosecutor, appearing for the first respondent and the counsel for the second respondent.

3. The counsel for the petitioner submits that in the charge sheet, it is clearly mentioned that A5 is no way concerned with this case and that on 12.05.2010, he went to the house of the victim only to demand for the loan that he advanced to the complainant.

4. But the counsel for the second respondent submits that as per the complaint lodged by the complainant, A5 went to the house only on the instructions of the accused. There is no mention about the loan.

5. The counsel for the petitioner submits that even if it is considered that the petitioner went to the house, as mentioned in the complaint, in the charge sheet, the offences made out against the petitioners are different from the offences made out against the other accused. Hence, they cannot be charged together. She also draws the attention of this Court to Section 223 of the Criminal Procedure Code

to draw support to her contention that the persons, who are charged for different offences, cannot be chargesheeted and tried together.

6. But Section 223 (d) Cr.P.C. is very specific that the persons accused of different offences, committed in the course of the same transaction, can be jointly charged. The averments in the complaint would show that the petitioner herein went to the house of the complainant on the instructions of the other accused, though on a later date. Hence, it is obvious that the allegations made against the petitioner form part of the same transaction, which started with the harassment by the other accused. The complaint only spells that this petitioner went to the house of the complainant in continuation of the execution of the intention of the other accused.

7. The counsel for the petitioner relies on a decision of the Supreme Court in *STATE OF JHARKHAND V. LALU PRASAD YADAV*¹ and draws the attention of this court to the observations made therein at paragraph 30 of the judgment.

8. But in the considered opinion of this Court the observations made by the Supreme Court in the said decision does not apply to this case. That was a case where innumerable offences, spread over a long period of time and committed by a large number of persons, were tried to be taken up for joint trial. But this is not such a case.

In the light of the above, the criminal petition is dismissed. Interim stay, granted in CRLPMP.No.3843 of 2011 dated 08.06.2011,

¹ (2017) 8 SCC 1

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

September 18, 2018
DSK

T. RAJANI, J

