

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.922 of 2011

ORDER:

Petitioner/Accused seeks to quash the proceedings against him in C.C.No.273 of 2005 on the file of II Additional Chief Metropolitan Magistrate, Vijayawada which was taken cognizance for the offence under Section 498A IPC.

2a) The complaint allegations are that the marriage between *defacto* complainant and Accused was held on 01.03.2002 and during their wedlock, they blessed with one female child and later the complainant came to know that the accused was not having any job and he used to tell that he was going on camps; when the complainant questioned about his not having any job, accused developed grudge and beat her and went away from the house; later in March, 2004 he came and begged for excuse and requested to lead happy marital life, but she did not agree for the said proposal and filed petition for divorce before the Family Court. Thereafter, accused visited her house frequently and demanded to withdraw the divorce case filed against him and threatened to handover the baby otherwise he will commit suicide making her responsible for his suicidal death.

Hence the complaint.

b) Basing on the said complaint, the police of Law and Order Satyanrayanapuram PS registered a case in Cr.No.361 of 2004 and after investigation filed charge sheet. The learned Magistrate took cognizance of

the same and registered as C.C.No.273 of 2005 for the offence under Section 498A IPC.

Hence, the instant quash petition.

3) Heard arguments of Sri Challa Dhanamjaya, learned counsel for petitioner and learned Additional Public Prosecutor (AP) for respondent No.1 and Sri P.Prabhakar Rao, learned counsel for respondent No.2/complainant.

4) Learned counsel for petitioner would argue that the contents of charge sheet even if accepted to be true, will not attract the offence under Section 498A IPC inasmuch as threatening the wife to handover the child would not amount to cruelty and constitute an offence under Section 498A IPC. He relied upon several decisions.

5) Per contra, learned Addl. Public Prosecutor would argue that since inception of marriage the petitioner caused mental cruelty to the 2nd respondent/complainant and thus liable for the offence under Section 498A IPC. He would submit that petitioner made false statement before marriage as if he was working as IRS Officer in Director of Central Vigilance Commission, but after marriage respondent No.2 and her parents came to know that he was not having any job. When she questioned the petitioner, he bore grudge against her and started insulting her. Respondent No.2 is working as Sub-Registrar in Divisional Cooperative Office and the petitioner used to suspect her fidelity and insult her everyday when she returns from the office and he used to threaten to kill her. On one occasion when her father questioned him, the petitioner went upon him to beat but the neighbours

intervened and rescued him. Unable to bear his threats and mental cruelty, she filed a divorce petition in Family Court and since then the threats of the petitioner increased and he started harassing her in a different fashion that he demanded her to give the little daughter to him or otherwise he would commit suicide and foist a false case against her. Learned Addl. P.P. would argue that the conduct of the petitioner squarely amounts to cruelty within the ambit of Section 498A IPC and hence petition may be dismissed.

6) It is seen, in the instant case charge sheet is filed and case is taken cognizance and coming up for framing of charges and hence this Court is not inclined to quash the proceedings at this stage.

7) Therefore, while dismissing the Criminal Petition, liberty is given to the petitioner to file a petition before the trial Court seeking his discharge raising the contentions that are legally permissible to him, in which case, the trial Court shall dispose of the said petition on merits.

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

U. DURGA PRASAD RAO, J

Dated: 28.09.2018
Murthy