

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.2639 OF 2011

ORDER:

In this criminal petition filed under Section 482 of Code of Criminal Procedure (CrPC), the petitioners/A.1 to A.7 and A.9 seek to quash the proceedings against them in C.C.No.21 of 2011 on the file of the Judicial Magistrate of First Class, Nuzvid (since transferred to II Additional Judicial First Class Magistrate Court, Nuzvid and re-numbered as C.C.No.972 of 2015, as per the information obtained by learned Additional Public Prosecutor).

One Madala Venkata Gopala Rao filed complaint in the Court of the Judicial Magistrate of First Class, Nuzvid, against A.1 to A.16. The allegations, briefly, are that he is a resident of Agiripalli Village in Krishna District. His only daughter, Sunitha, was given in marriage with A.1 on 24.05.2001 at Agiripalli Village. A.2 and A.3 are parents of A.1; A.4 and A.6 are elder sisters of A.1 and A.5 and A.7 are their husbands; A.8 is paternal grandmother of A.1. Soon after the marriage, Sunitha joined the society of A.1 to lead matrimonial life. Complainant presented Rs.5,00,000/- as dowry and 200 grams of gold biscuits. It is alleged that A.1 and his parents used to harass Sunitha by beating and scolding her; that they insisted her to get huge amount from her parents to enable A.2 to contest in the local elections. They had taken the jewellery of Sunitha and they further insisted to bring Rs.2,00,000/- from her parents. Due to the pressure, the complainant had to oblige all the demands made by A.1 to A.3 keeping in view the welfare of his daughter. They also insisted Sunitha to bring additional dowry of Rs.10,00,000/- from her parents. In that manner, they harassed her. In the meanwhile, she gave birth to a male child. Even after the birth of the son, there was no change in the attitude of A.1 to A.3 and they used to harass her continuously. Ultimately,

A.2 and A.3 bet her and necked her out of the house along with her child. Thereafter, Sunitha took shelter in the house of her parents. The efforts made by the complainant for re-union of Sunitha and A.1 became in vain. While matters stood thus, A.1 filed H.M.O.P.No.109 of 2005 against Sunitha on the file of the Principal Senior Civil Judge, Eluru, seeking decree of divorce with all false allegations and Sunitha has been contesting the said H.M.O.P. While so, on 13.05.2007, at about 5.00 p.m., A.1 came to Agiripalli and demanded his mother-in-law to call Sunitha and when she came, he took out a typed paper from his pocket and asked Sunitha to sign on the said document, which was supposed to be a Memo containing an averment as if Sunitha was withdrawing her claim in the divorce petition. When she refused to do so, A.1 scolded her in filthy language and caught hold of her hair and slapped on her left cheek and also bet her with his hands indiscriminately and then, she raised hue and cry. The neighbours came and intervened and on their advice, Sunitha lodged a complaint before the Station House Officer, Agiripalli Police Station, on 13.05.2007, but the police did not take any action.

It is further alleged that on 22.05.2007, A.1 married A.10 in the Chowltry of Sri Subrahmanyam, Bageeradhi, Sowbhagya Enterprises Appaka Dharmaraju in Dwaraka Tirumala in the presence of A.2 to A.9, A.11 to A.16 and other relatives and friends. A.1 contracted second marriage through Musunuru Venkateswara Rao, a car driver. On 14.10.2008, the complainant went to Mudicherla to the house of A.1 and found A.10 in the front yard of the house of A.1 to A.3. When questioned, A.1 admitted that he married A.10 and challenged the complainant to do whatever she liked and abused him in filthy language. He further challenged that if his daughter does not withdraw her claim in H.M.O.P.No.109 of 2005, he would set fire to their house. The complainant gave a report to the Station House Officer, Agiripalli, on

15.10.2007, basing on which, crime No.104 of 2007 was registered, but the police did not conduct enquiry and file charge sheet. Hence, the complaint under Sections 498-A and 494 IPC.

Though notice is served on the second respondent/complainant, there is no representation on his behalf.

Heard learned counsel for petitioners.

Denying the complaint allegations, learned counsel for petitioners would submit that the daughter of the complainant, namely, Sunitha, left the society of A.1 on petty issues and ultimately, A.1 filed H.M.O.P.No.109 of 2005 for divorce and as a counter blast, the present complaint is filed. Learned counsel would further submit that even though the complaint allegations are accepted on their face value, no offence under Section 498-A IPC could be made out against A.4 to A.7 and A.9 as no overt acts touching the offence under Section 498-A IPC are made out against them. Learned counsel, thus, prayed to quash the proceedings against A.4 to A.7 and A.9 for the offence under Section 498-A IPC.

So far as the offence under Section 494 IPC is concerned, learned counsel would argue that pending the case, A.1 died on 16.08.2016 and therefore the case is liable to be dismissed as abated so far as A.1 is concerned. Since A.1 is the main accused, it cannot be maintained against the other accused. Even on facts also, the offence under Section 494 IPC is not maintainable against any of the accused for the reason that as per the Certificate issued by the Venkateswara Swami Vari Devasthanam of Dwaraka Tirumala, no marriage between A.1 and A.10 took place on 22.05.2007. Therefore, the allegation of second marriage between A.1 and A.10 is a myth and a concoction to implicate the accused. On these submissions, learned counsel sought for quashment of the proceedings. Per contra, learned Additional Public Prosecutor submits that the accused harassed Sunitha for additional dowry and therefore, the

offence under Section 498-A IPC is very much maintainable. The offence under Section 494 IPC is concerned, the Certificate, dated 31.12.2007, pressed into service by the petitioners, is a fabricated one and therefore, its veracity has to be tested only in a full fledged trial and not in this criminal petition. She, thus, prayed to dismiss the criminal petition.

The point for consideration is whether there are merits in this petition to allow?

The offence under Section 498-A IPC is concerned, a close scrutiny of the complaint allegations of the complainant would reveal that the harassment and demand of additional dowry are made by A.1 to A.3 and no allegation is made to the effect that other accused harassed Sunitha for additional dowry. There is no allegation that other accused either abused or caused mental or physical harassment to Sunitha. Therefore, as rightly argued by the learned counsel for petitioners, the offence under Section 498-A IPC is not maintainable against A.4 to A.7 and A.9. Since there is a *prima facie* allegations against A.1 to A.3, the said offence is maintainable against them. Coming to the offence under Section 494 IPC, it is the specific case of the complainant that on 22.05.2007 at about 4.00 a.m., A.1 married A.10 in the Chowltry of Sri Subrahmanyam, Bageeradhi, Sowbhagya Enterprises Appaka Dharmaraju in Dwaraka Tirumala in the presence of A.2 to A.9, A.11 to A.16 and other relatives and friends, and on knowing this fact, the complainant went to the house of A.1 and questioned his illegal act, he allegedly admitted the second marriage with A.10 and stated the complainant to do whatever he liked. The copy of the Certificate, dated 31.12.2007, produced along with the material papers shows that it was purportedly issued by Sri Venkateswaraswami Vari Devasthanam of Dwaraka Tirumala, wherein it is mentioned that as per the records, no marriage between Bala Babuji (A.1) and Vadapatla Pushpalatha (A.10)

took place on 22.05.2007 at Dwaraka Tirumala. This Certificate could have supported the version of the petitioners. However, the authenticity of the Certificate can be tested only after a full fledged trial. Therefore, this Certificate cannot be taken into consideration at this stage. The petitioners are at liberty to prove its authenticity during the trial.

In the result, the criminal petition is partly allowed and the proceedings in C.C.No.972 of 2015 on the file of the Court of the II Additional Judicial Magistrate of First Class, Nuzvid (old C.C.No.21 of 2011 on the file of the Judicial Magistrate of First Class, Nuzvid), for the offence under Section 498-A IPC are quashed in respect of petitioners 2 to 8/A.2 to A.7 and A.9. However, they have to face trial for the offence under Section 494 IPC. Regarding the factum of death of A.1 is concerned, the Investigating Officer has to intimate the trial Court for taking necessary action.

The criminal petition is accordingly partly allowed. Consequently, miscellaneous petitions pending, if any, shall stand closed. No costs.

27.06.2018
pln

U.DURGA PRASAD RAO, J