

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.6176 of 2011

ORDER:

In this petition filed under Section 482 Cr.P.C., petitioner/Accused No.2 seeks to quash proceedings against her in C.C.No.402 of 2007 on the file of XXII Metropolitan Magistrate, Hyderabad, which was registered against A1 and A2 for the offences under Section 498-A, 494, 323 read with 34 IPC and Sections 4 and 6 of Dowry Prohibition Act.

Heard learned counsel for petitioner.

The *de facto* complainant filed complaint petition before XIII Additional Chief Metropolitan Magistrate at Hyderabad with allegations that marriage between her and accused No.1 was held on 12.03.1981 at Amberpet, Hyderabad and immediately she joined the company of her husband and they lived happily for a short period. Accused No.1 is a Mason and he used to take the complainant to work along with him and he used to abuse her and beat her by suspecting her character. He was a habitual drunkard and by consuming liquor, he used to beat her mercilessly. Out of their wedlock, they did not beget any children and on that ground Accused No.1 left complainant at Amberpet and went away to his native place, Temurru Village and before filing complaint, the complainant came to know that A1 had a second marriage with A2, which is illegal.

The complaint was forwarded to the police under Section 156 (3) Cr.P.C. to Women Police Station, C.C.S., Hyderabad and it was registered as crime No. 131 of 2006 and after investigation, Women Police Station, CCS, Hyderabad filed charge sheet against A1 and A2. The Court took cognizance of the offences under Sections 498-A, 494, 323 read with 34 IPC and Sections 4 and 6 of Dowry Prohibition Act. Hence, the instant petition.

Argument of learned counsel for petitioner is that even if the charge sheet allegations are unrebutted the offences under Sections 498-A, 494, 323 read with 34 IPC, Sections 4 and 6 of Dowry Prohibition Act are not attracted against petitioner-A2, as she is not the relation of the husband in terms of Section 498-A and she cannot be held guilty also for offence under Section 323 IPC, as it was not the case of the complainant that accused No.2 beat the complainant. The offences under Sections 4 and 6 of Dowry Prohibition Act are also not attracted against A2 because she has nothing to do with the alleged demand of dowry by A1. So far as the offence under Section 494 is concerned, the argument of learned counsel for petitioner is that there is no cogent material to hold that A1 married A2. In fact, A2 had no knowledge that A1 was already married. On this submission, learned counsel for petitioner sought for quashing of the proceedings.

Per contra, learned Additional Public Prosecutor would argue that the police after investigation found both accused guilty of the offences enumerated in the charge sheet and there are no merits in the petition and hence, the same may be dismissed.

A perusal of the complaint and charge sheet allegations would support the arguments of learned counsel for petitioner. So far as the offences under Section 498-A read with Section 34 IPC and Sections 4 and 6 of Dowry Prohibition Act are concerned, as rightly argued by him, they do not contain any imputation against petitioner/A2. Further, petitioner/A2 is not a relation of husband/A1 in the context of 498-A to sustain a charge under Section 498-A IPC against her. The offence under Section 323 IPC is also not maintainable against petitioner/A2, because it is not the case of complainant that A2 beat her. So also, the offences under Sections 4 and 6 of Dowry Prohibition Act cannot be attributed against petitioner, as she has nothing to do with the demand of dowry or other properties from the complainant, and therefore, she cannot be held liable for such offences.

So far as the offence under Section 494 is concerned, the allegations are that on the grouse that the complainant cannot beget children, accused No.1 left her alone at Amberpet and went away to his native place Temurru village and started living there and some time thereafter the complainant came to know that A1 married A2 in spite of subsistence of the marriage with complainant. The contention of petitioner/A2 is that no cogent material is placed to believe the second marriage between A1 and A2. The said aspect has to be discussed and decided at the time of trial and not at this stage.

Therefore, criminal petition is partly allowed and the proceedings in C.C.No.402 of 2007 on the file of XXII Metropolitan

Magistrate are quashed against petitioner/A2 for the offences under Section 498-A, 323 read with 34 IPC and Sections 4 and 6 of Dowry Prohibition Act. However, she has to face trial so far as the offence under section 494 IPC is concerned.

As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

U.DURGA PRASAD RAO,J

Date:13.06.2018

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