

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.7158 OF 2017

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C by the petitioners/ A1 and A2, seeking to quash the proceedings in Crime No.298 of 2017 on the file of Subedari Police Station, Warangal District, registered for the offences punishable under Sections 307, 324, 506 r/ w 34 I.P.C.

2. The above crime was originally registered on 18.07.2017 for the offences punishable under Sections 307, 324, 506 r/ w 34 IPC. It is an outcome of the private complaint of the de facto complainant/ 2nd respondent, no other than wife of the deceased-Raju that A1 and A2 are the husband and wife and known persons to the de facto complainant and her husband-M.Raju mentioned as under semi-conscious stage, at the time of filing the complaint; that accused borrowed an amount of Rs.10,00,000/- from the complainant's husband on 15.03.2016 claiming for necessities and after receiving the amount, A1 issued post dated cheque bearing No.094343 dated 06.08.2016 for the said amount drawn on State Bank of Hyderabad, NGOs Colony Branch, Hanamkonda, in discharge of the debt to the husband of the complainant. Though her husband mentally and physically strong, because of the differences between the accused and the complainant's husband, after the money transaction supra regarding repayment, from that on

18.03.2016, LW.2, one Rambabu received a phone call from the complainant's husband was facing several differences with accused and expressed his suspicion as he would be killed by accused and sought protection to his life and thereby LW2 asked his location and tried to give confidence and in the meantime, he, again received a phone call from unknown persons stating husband of the complainant was lying in the car, near Waddepalli Church and immediately Rambabu rushed to the place and shifted him to Maxcare Hospital informing the said fact to the complainant and immediately from said information complainant rushed to the hospital, where her husband was admitted and by then her husband lost consciousness, that he was in the hospital till 11.04.2016, that at the time of discharge also, his stage was in coma and doctors informed of his survival chances very less, when she had taken her husband to home by rendering services, the health condition of her husband meanwhile a little bit improved and was gain consciousness occasionally and in that sequence her husband informed her as poison was administered on him with his gestures and on enquiry she able to get names of the accused, who administered the poison and this fact revealed to the complainant on 15.11.2016, to her shock though accused made attempt on her husband from which she approached Station House Officer, Subedari, on 16.11.2016 to receive the complaint, without making enquiry stating delay which made her to file the present complaint.

3. In the quash petition, same is impugned as unsustainable and none of the ingredients of the offences supra made out and thereby, the FIR is liable to be quashed from perusal of the averments on face value apart from inordinate delay, which is fatal and by placing reliance on the expression of the Apex Court in *Sirajul v. State of Uttar Pradesh*¹ even with observation therein proceedings not covered by the statutory bar of limitation, inordinate delay can be a ground for quashing.

4. The learned counsel for the 2nd respondent stated prima facie there is an accusation from the police in registration of the crime and once the crime is under registration, there are no grounds to quash the FIR and mere delay is not a ground even otherwise learned Public Prosecutor also raised same contention in supporting the contention of the learned counsel for the 2nd respondent but for saying in the course of investigation, the statement of the de facto complainant reveals that her husband was driven to commit suicide by accused and altered section of law to 306 IPC and the investigation is in progress.

5. Heard and perused the material on record.

6. Even taken on face value of the averments from what the complainant stated in the private complaint without even closure of the so called written report when chosen to give Station Officer, Subedar Police Station, on 16.11.2016 that was not in asking to refer the complaint, police for investigation,

¹ 2015(9) SCC 201

once the police refused to receive the written report dated 16.11.2016, there could be no necessity to cause delay to file the private complaint on 05.07.2017, basically for which there is no explanation leave it as it is. The alleged occurrence was on 18.03.2016. According to her say, she rushed to hospital on the night and found her husband was in unconscious stage in Maxcare Hospital, where admitted. She stated that he was treated in the hospital till 11.04.2016 and that he was in coma and doctors advised survival bleak from taken back him to home while under serving him, her husband was improving and occasionally getting consciousness and stated the facts to her. What she stated is, it is revealed by her husband on 15.11.2016 of accused administered the poison in registration of crime from giving of the report to the police from their refusal report not seen the light of the day as referred supra in causing filed later the private complaint. Had it been true, it could be whispered atleast a little as to whether the accused administered the poison on the victim and what poison in what manner atleast basically to know even LW2-Rambabu did not even state anything in this regard. These are the crucial aspects. Leave it as it is. When it is the version that her husband himself stated to her that accused administered poison leave about it is basically when A1 and A2 are wife and husband and not even specifically mentioned A1 alone administered the poison somewhere or both administered at the house of the accused for

how so if A2 and A1 came out and participated in administering poison. When it is the version of her in the private complaint that her husband informed that poison was administered how she can change her own in the statement during investigation after death of her husband of he was driven to commit suicide by abetment of her husband by the accused and if so when, where, how and how she could know contrary that too after the death of the victim, suffice to say none of the ingredients that attracts from the reading of the face value of the FIR with the investigation leave about the unexplained delay with reference to the above to quash FIR.

7. Accordingly the Criminal Petition is allowed quashing the proceedings in Crime No.298 of 2017 on the file of Subedari Police Station, Warangal District. However, this order no way prejudice to the petitioner to avail other statutory or civil remedies against the accused.

8. Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 02.11.2018
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