THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.8080 of 2011

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C., seeking to quash the proceedings against the petitioner-accused No.1 in C.C.No.164 of 2011 on the file of the III Chief Metropolitan Magistrate, Ranga Reddy District, at L.B. Nagar (for short, 'the trial Court')

The brief facts of the case are as under:

The 2nd respondant herein Ms. Anandamayee, daughter of Y. Arun Kishore (hereinafter referred to as 'the complainant'), filed a private complaint before the trial Court, under Section 200 Cr.P.C., stating that her marriage was performed with the petitioner-accused No.1 on 27.08.2005 at Padmashali Kalyana Mandapam, Secunderabad, and after the marriage, she stayed with the petitioner at Mahendra Hills in Secunderabad for three months ; that the petitioner as well as Accused Nos.2 to 4 have harassed her physically and mentally pressurizing her for more dowry and also to transfer her maternal property on to the name of the petitioner;that the petitioner went to USA in the 1st week November 2005 on Job Visa, and she later joined the petitioner in the 2nd week of December 2005 and they led marital life and were blessed with a daughter. The complainant got a job in Scalar USA Company and used to earn substantial amounts as salary, and she opened an account in TCF Bank, Illinois, with Account No.9876683790.

The petitioner has put a condition that she should not have an individual bank account of her own and later forced her to make him a joint account holder of her account which she was operating with TCF Bank. As soon as she made the petitioner a joint account holder of her account in TCF Bank, he diverted all the funds available in her account to the Account No.5864532333, and from there he diverted the entire funds to the Account No.004801522514 of ICICI Bank operated by Accused No.2 in India. It is alleged that as on 10th Oct, 2008, the joint account of the complainant and the petitioner had a fixed deposit of $20,000 (equivalent to Rs.10 lakhs), and the petitioner diverted the entire funds to the account of Accused No.2. It is alleged by the complainant that herself and the petitioner were also having three different accounts in Chase Bank apart from the above account in TCF Bank; and the said accounts are Account No.000000686486390 with an amount of $8,322.85 (almost 4 lakhs); Account No.000000782134506 with an amount of $1,316.40 (almost Rs.50,000/-); and Account No.000002048687541 with an amount of $10,158 (almost Rs.5 lakhs), and all those amounts were also diverted to the account of Accused No.2 in India. Out of the said amounts, the petitioner sent an amount of $50,000 to the account of Accused No.2 which were shared by all the accused; and later the petitioner sent $20,000 to the accounts of Accused Nos.2 to 4; in all a total amount of $70,000 (almost Rs.35 lakhs) of her hard earned money, parked in the joint accounts maintained in USA, were siphoned off by the petitioner by sending the amounts to the accounts of Accused Nos.2 to 4 in India. It is further alleged that the petitioner has always abused and harassed her physically and mentally even during the stage of advanced pregnancy and used to threaten with divorce and dire consequences. After delivery of child, the petitioner requested his parents to come to USA for rendering domestic assistance, but they denied, and thereafter, the petitioner requested the mother of the complainant to come to USA and her mother came to USA to help her in the initial months of delivery. It is alleged that the petitioner used to abuse the complainant in front of her mother in unprintable language. The petitioner with his violent behaviour did not even spare the baby and did not allow the complainant to feed the baby. It is alleged that the marriage of Accused No.4 was fixed in March 2009 and an e-mail invitation was sent to the petitioner and complainant. The petitioner did not attend the marriage but sent the complainant and her daughter to attend the marriage. It is alleged that when the complainant went to the house of Accused No.2 to 4, they did not receive her well and ill treated her and asked not to attend the marriage. On 06th April 2009, the complainant along with her mother returned to USA and landed in O'Hare International Airport, and the petitioner came to the airport and tried to kidnap the daughter and asked the complainant not to enter their joint residence in Illinois. The complainant approached the police and they registered a complaint against the petitioner and advised the complainant to approach the Court concerned i.e., Mc Henry County Court and obtain an Order of Protection for herself and the baby. After grant of Order of Protection, the petitioner approached the Court through his counsel and requested for Visitation Rights for which the complainant accepted as per the schedule fixed by the Court. The complainant stayed in a Motel along with her daughter and mother, and when she checked her bank accounts, she came to know that all the amounts were already withdrawn by the petitioner, thereby the complainant suffered as she had no money to sustain in USA. It is also alleged that whenever the petitioner took the daughter during Visitation, she used to return with scratches on her body, and the petitioner used to return the daughter during odd hours in the night making the complainant to wait and suffer anxiety and tension over the safety of her daughter. It is stated that the health of the mother of the complainant has deteriorated and, therefore, the complainant came to India to drop her mother, and she informed the petitioner about the fact that she has come to India to drop her mother and hence would not be able to give visiting rights on 10th July, 2009 to the petitioner. It is alleged that the petitioner has taken undue advantage of the situation and filed a petition in Mc Henry County Court in USA for dissolution of marriage. As the complainant failed to appear before the Court, the Court has passed a default order against her on 21st September, 2009 dissolving the marriage, and granting the custody of minor child to the petitioner. It is stated that pursuant to the child abduction complaint, the USA Consulate Officials in Hyderabad visited the residence of the complainant and gave a Welfare Report stating that the baby is healthy and happy.

After coming to India, the complainant lodged a complaint under Section 498A IPC against the petitioner, and also filed a divorce application. It is alleged that the petitioner has hacked the e-mail account of the complainant and has sent fraudulent mails to the relatives and friends of the complaint to malign the reputation of the complainant. It is alleged by the complainant that the petitioner has filed a private complaint under Section 200 Cr.P.C., before the XIII Metropolitan Magistrate, Cyberabad, at L.B. Nagar, on 02.11.2010 making false allegations against her father and brother that they had misappropriated the amounts sent by the petitioner to their accounts in India for purchase of land property. The said private complaint was registered as FIR No.269 of 2010 of Nacharam Police Station, under Sections 420, 406, 120(B) r/w 34 IPC, and the police have filed a charge sheet before the Court, and that her father and brother have obtained anticipatory bail in the said case.

It is alleged that while the complainant was in India during March 2009, she went to ICICI Bank, SD Road, Secunderabad, and came to know that the petitioner, with the collusion of Accused Nos.2 to 4 have transferred the entire amount to the account of Accused No.2 in ICICI Bank in India, and that the ICICI Bank has informed that the required transaction statements would be furnished to the Court when the Bank is summoned to furnish the statements.

The petitioner has also filed another document which is an investigation report dated 07th December, 2009, of HUNTLAY POLICE, which reveals that the Police Department has conducted an investigation into the Child abduction of DEVISHI NANDANOORE and found that the petitioner's wife has committed an act of Child abduction, as she had left the country, and therefore the Police Department issued an arrest warrant for her arrest in the case.

The complainant filed a petition O.P.No.769 of 2009 on 10th August, 2009, on the file of the Judge, Family Court, Ranga Reddy District, at L.B. Nagar, seeking divorce by dissolving the marriage. The Family Court, by order dated 3rd September, 2010 granted decree of divorce. The petitioner filed I.A.No.723 of 2010 in the said O.P.No.769 of 2009, seeking Visitation Rights. The Family Court, on consideration of the merits of the case, granted visitation rights to the petitioner.

Therefore, the complainant filed the aforesaid private complaint which is registered as C.C.No.164 of 2011, against the petitioner/A1, and also A2 to A4, alleging that they have committed offences punishable under Sections 420, 406 read with 120B IPC.

This Criminal Petition is filed by the petitioner - Rupesh Nandanoore, husband of Ms. Anandamayee, the 2nd respondent herein, for quashing of the proceedings initiated against him by Ms. Anandamayee in her private complaint under Section 200 Cr.P.C., for the offences punishable under Sections 406, 420, r/w. Section 120B IPC registered by III Chief Metropolitan Magistrate, Ranga Reddy District at L.B. Nagar, in C.C.No.164 of 2011. Ms. Anandamayee has also prayed in the complaint to try her complaint along with C.C.No.455 of 2010. The petitioner has stated in para-10 that respondent No.2 with similar allegations already filed a complaint, upon which a criminal case is pending in C.C.No.455 of 2010 on the file of the very same Court. However, the learned counsel for petitioner has argued the criminal petition on merits mainly on the grounds, *firstly*; on the point of jurisdiction under Section 188 of Cr.P.C. to try this case in Indian Courts without sanction from Central Government, and *secondly*; that the complaint do not contain the ingredients of offence under Sections 406, 420 and 120B IPC.

It is argued that the conducting of trial without sanction under Section 188 of Cr.P.C. is abuse of the process of Court. The contentions raised in this petition in respect of jurisdiction depends upon the facts of the case. The scope of Section 482 Cr.P.C. is very limited. It can only be looked into, as to whether any ingredients of Sections 420, 406 and 120B IPC are prima-facie present in the complaint or not, it cannot go beyond that to decide the merits of the contentions raised in this petition.

In view of the fact that there are cases and counter-cases filed by the parties against each other for the same cause of action, and as one of the parties i.e., 2nd respondent herein has sought the Court to try both the cases together, as the question involved in both the cases is one and the same i.e., that the husband – Rupesh transferred the amounts from the joint account to India to the accounts of his father and brother, with a dishonest intention, as per the complaint of 2nd respondent; and, as per the complaint of the husband, the amounts that he sent to the father and brother of 2nd respondent have been mis-appropriated by them, and, therefore, this petition cannot be decided on merits as there are cases and counter-cases involving the same subject matter and questions of fact and law that are to be decided by the same Court.

In view of the facts of the case, this Court is not inclined to go into the merits of this petition, leaving it open to the parties to agitate their respective contentions before the trial court. Hence, the petitioner is given liberty to raise all the contentions raised in this petition before the trial Court, as the cause of action for filing complaints by the parties against each other is with regard to the question of fact of opening of joint account and also the dishonest intention in sending money by the husband to India to his father and brother, and also to his in-laws, has to be considered in both the complaints.

With these observations, this Criminal Petition is disposed of without recording any finding on the merits of this petition as questions of fact and law are involved in this petition and, therefore, liberty is given to the petitioner to raise all the pleas raised in this petition, before the trial Court. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE GUDISEVA SHYAM PRASAD

14th February, 2018.
Msr / Ksm

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION NO.8080 OF 2011

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KSM