

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRI.P.Nos.15539 of 2016 and 6485 of 2018

COMMON ORDER:

Since both these criminal petitions are filed under Section 482 of Cr.P.C. by petitioner/A1 in C.C.No.326 of 2011 pending on the file of I Additional Chief Metropolitan Magistrate, Visakhapatnam, they are being disposed of by this common order.

2. The petitioner filed Crl.P.Nos.15539 of 2016 and 6485 of 2018 to quash the proceedings in the aforesaid C.C. and the order of proclamation dated 31.01.2018 issued against him in the said C.C., respectively.

3. The first respondent, Smt A. Kailasa Rani, who is the mother-in-law of petitioner, lodged a report with the police making serious allegations that the petitioner along with the other accused subjected her daughter to cruelty for her failure to meet the illegal demand of additional dowry and that they demanded additional dowry attracting the offences under Sections 498-A IPC and under Sections 3 and 4 of Dowry Prohibition Act. On the basis of the complaint, a case in Cr.No.311 of 2010 on the file of III Town Police Station, Visakhapatnam, was registered against the petitioner and others. During investigation, the police examined L.Ws.1 to 4 and recorded their statements under Section 161(3) of Cr.P.C. Based on the evidence collected during investigation, the Sub-Inspector of Police, III Town Police Station, Visakhapatnam, having concluded that there

is *prima facie* material to proceed against the accused filed charge sheet before the Magistrate, who in turn, took cognizance of the offences alleged and issued summons to the accused.

4. The main contention of petitioner before this Court is that the marriage between the petitioner and his wife i.e., the daughter of the de-facto complainant, was dissolved by a decree of divorce passed by the Court at U.S.A. on 08.06.2010 and that the daughter of de-facto complainant is now residing at U.S.A. and not prosecuting the proceedings. But, during pendency of C.C., the trial Court issued proclamation order under Section 82 of Cr.P.C., for non-appearance of the petitioner and apart from that, the proceedings against the other accused in the aforesaid C.C., were already quashed by this Court in Crl.P.No.8557 of 2011 dated 09.12.2011 against A6 to A8 and in Cr.P.No.9986 of 2016 dated 26.08.2016, against A2 to A5 and the proceedings against the petitioner/A1 are only continuing. His further contention is that since the allegations made in the charge sheet do not constitute the alleged offences, *prima facie*, and as the marital relationship was dissolved by the Court at U.S.A., he requested this Court to quash the proceedings against him in C.C.No.326 of 2011 and also the proclamation dated 31.01.2018 issued against him.

5. Though the first respondent was served with notice, none appeared on her behalf.

6. During hearing, learned counsel for the petitioner has reiterated the contentions urged in the petitions.

7. Admittedly, the marriage between the petitioner and the daughter of de-facto complainant was dissolved by a decree of divorce granted by the Court at U.S.A., and a copy of the same is placed on record. The offences allegedly committed by petitioner are occurred one week prior to the grant of divorce and the complaint was lodged by the mother-in-law of the petitioner, who came to India from USA in anticipation of the divorce being granted by the Court at U.S.A. The allegations made in the charge sheet do not constitute the offences alleged if accepted on its face value and that when the proceedings against the other accused, who are facing the same allegations but with lesser gravity, are quashed in two different criminal petitions, the proceedings against the petitioner are liable to be quashed. Moreover, by the date of complaint, petitioner and victim woman were living separately and divorce proceedings are pending. In such case, the allegations made in the complaint are highly improbable and aimed to wreck vengeance against the petitioner. However, as on today, the petitioner, his divorced wife and mother-in-law are residing at U.S.A., and there were none to prosecute the proceedings and the CC is pending for adjudication since long time. Therefore, the proclamation issued on the ground that the petitioner is absconding is without any merit. Therefore, issuance of such proclamation under Section 82 of Cr.P.C., is in contravention of the provisions of Cr.P.C.

8. Taking into consideration the facts and circumstances of the case including the statements recorded under Section 161(3) of

Cr.P.C., and the orders passed by this Court in Crl.P.Nos.8557 of 2011 and 9986 of 2016 quashing the proceedings against the other accused, it is a fit case to quash the proceedings against the petitioner and also the proclamation issued against him.

9. In the result, both the Criminal Petitions are allowed, quashing the proceedings in C.C.No.326 of 2011 on the file of I Additional Chief Metropolitan Magistrate, Visakhapatnam and the proclamation dated 31.01.2018, issued against the petitioner in the said C.C. Miscellaneous petitions, if any, pending in these petitions shall stand closed.

7th August, 2018

sj

M. SATYANARAYANA MURTHY, J

