

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.6409 OF 2018

ORDER:

Accused No.2 and 3 in C.C.No.431 of 2017 on the file of Additional Judicial Magistrate of First Class, Giddalur, filed the criminal petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') to quash the proceedings against them in the above Calendar Case registered for the offence punishable under Section 498-A of the Indian Penal Code, 1860 (for short, 'I.P.C.').

The second respondent lodged a complaint with the Station House Officer, B.V.Peta Police Station, alleging that she was harassed and subjected to cruelty for her failure to meet their illegal demand and on the strength of the report, the police registered a case in Crime No.129 of 2017 and issued F.I.R. against the petitioners and A.1. During investigation, the police examined L.Ws.1 to 5 and recorded their statements under Section 161 (3) Cr.P.C. On the basis of the evidence collected during investigation, the sub-Inspector of police, B.V.Peta Police Station filed charge sheet concluding that there is *prima facie* material against the petitioners and A.1 for the offence punishable under Section 498-A I.P.C.

The petitioners filed the present criminal petition on the ground that the allegations made in the complaint even if accepted on its face value would not constitute an offence punishable under Section 498-A I.P.C. and that no specific overtacts have been attributed to these petitioners to proceed with the trial.

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In view of specific contention raised by the petitioners in the petition and during argument by the counsel on record, it is necessary to advert to the allegations made in the charge sheet to decide the real controversy.

The specific allegations are extracted hereunder for better appreciation:

“A1 to A3 came to LW1 parents and talked with them to marry LW 1 and they agreed and as per the consent of A1 to A3, LW 1 marriage was performed with A1 on 21.05.2017 at Srisailam in the presence of their caste elders. A1 first wife died and they begot two children. At the time of LW 1 marriage with A1, the parents of LW 1 gave dowry of Rs.one lakh, 15 tulas gold, one house site plot to A1. A1 stated to LW 1 that he is working as Teacher in Brahmarambha school, Cumbum. The LW1 agreed with A1 that she will look after the children of first wife of A1. After the marriage LW1 joined with the company of A.1 and they lived happily for about 3 months. Then LW1 was pregnant. Thereafter A1 used to quarrel with LW1 and pressing her about her first marriage as to why LW1 gave divorce to her first husband and to that A2 and A3 used to encourage A1 in harassing LW1 and A1 to A3 used to abuse LW1, used to beat LW1 frequently and A1 to A3 used to torture her . Due to that harassment, LW1 sustained Miscarriage. A1 used to abuse LW1 through phone. As A1 to A3 failed to maintain LW1 and did not allow her to lead marital life with A1 and on that LW1 reached to her parents village Chinthalapalem and residing with her parents. A1 broken LW1 mobile and thrown LW1 clothes out of the house.”

The allegations are specific that A.1 to A.3 failed to maintain the *de facto* complainant and did not allow her to lead marital life

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with A.1 and thereafter she returned parental house at Chinthalapalem residing with them. These allegations directly show the involvement of these petitioners i.e. in-laws as to how they subjected the *de facto* complainant to mental cruelty. The complainant/ second respondent was not allowed to lead marital life with her husband, which the purpose of marriage, for her failure to meet the illegal demand of payment of additional dowry, such act would amount to mental cruelty.

The evidence collected and statements recorded during investigation is part and parcel of the charge sheet, but for one reason or the other, it was not placed on record. Hence, based on the allegations made in the charge sheet, it is difficult to accept the contentions of the petitioners.

At the end, the counsel for the petitioner requested this Court to dispense with the personal appearance of the petitioners before the Magistrate in connection with the above C.C.

But this Court cannot exercise power under Section 482 Cr.P.C. when there is specific provision under Section 205 Cr.P.C. to make a request to dispense with the appearance of the petitioners before the Magistrate.

Therefore, I am not inclined to dispense with the personal appearance of the petitioners in connection with the above C.C. before the Magistrate, however liberty is given to the petitioners to file appropriate application before the Magistrate under Section 205 Cr.P.C. or under Rule 37 of Criminal Rules of Practice. On

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filing such application, the learned Magistrate is directed to dispose of the application within 7 days, in accordance with law.

With the above direction, the criminal petition is dismissed.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

21.06.2018
BV

