

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.2287 of 2013

ORDER:

This Criminal Revision Case is filed by petitioners/A2 to A5 under Sections 397 and 401 Cr.P.C. aggrieved by the order dated 08.07.2013 in CrI.M.P.No.1265 of 2013 in C.C.No.123 of 2013 on the file of XV Additional Chief Metropolitan Magistrate-cum-Special Court for Trial of Video Piracy Cases, Hyderabad, whereby and whereunder the learned Judge dismissed the petition filed by the petitioners under Section 239 Cr.P.C. to discharge them from the case.

2) Brief facts of the case are that:

a) The Inspector of Police, Women Police Station, Begumpet, North Zone, Secunderabad filed charge sheet in C.C.No.123 of 2013 against A1 to A6 for the offences under Sections 498A, 420, 506, 323 IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961 on the allegation that all the accused subjected the *defacto* complainant to cruelty by harassing her both mentally and physically for additional dowry.

b) Aggrieved, petitioners filed CrI.M.P.No.1265 of 2013 under Section 239 Cr.P.C. seeking to discharge them from the case stating that they are innocent and *defacto* complainant with malicious intention falsely implicated and filed the above case against all the family members. In Mohammedan law, there is no concept of dowry, as alleged. In fact, A1 himself presented gold ornaments and gave Mehar to *defacto* complainant at the time of marriage. Therefore, the ingredients of the

alleged offences are not made out. Apart from that, A2 is the age old mother of A1; A3 and A5 are married sisters and A4 and A6 are their husbands and they are residing separately. Therefore, the question of their harassing the *defacto* complainant did not arise. The learned Magistrate dismissed the petition observing that case record would reveal a *prima facie* case against the petitioners attracting the ingredients of the charges levelled against them by the IO.

Hence, the present CrI.R.C., at the instance of petitioners/A2 to A5.

3) Heard Sri Mujahid Ur Rehman, learned counsel for petitioners and learned Additional Public Prosecutor for the State (Telangana) for R1. There is no representation for R2.

4) Learned counsel for petitioners would strenuously argue that except the general and omnibus allegations, there were no specific averments against the petitioners/A2 to A5 giving the required details showing the dates and other particulars as to the method and manner in which the petitioners/A2 to A5 have allegedly harassed and tortured the 2nd respondent/*defacto* complainant so as to hold about the existence of *prima facie* incriminating material against them to frame charges. He would further submit A2 is the age old mother of A1; A3 and A5 are married sisters and A4 and A6 are their husbands and all of them are residing separately and pursuing their own activities without indulging in the family affairs of A1 and *defacto* complainant. Therefore, it is preposterous to allege that A3 to A6 have tortured and tormented the

defacto complainant to bring additional dowry and harassed her physically and mentally. Learned counsel, in order to project the falsity in the allegations made in the charge sheet that finally on 24.03.2012, A2 to A6 picked up quarrel with the complainant and beat her and necked her out of the house by retaining all her golden ornaments and belongings, would argue on the strength of immigration stampings on the passport of A5—Smt. Sameena Nasreen to the effect that on the specific day she was in abroad and returned to India on 11.04.2012. Learned counsel vehemently argued, that itself would show that a false case was foisted against the accused. Unfortunately, the trial Court without considering the factual scenario dismissed their discharge application.

5) On a careful scrutiny of material placed on record, I find some force in the argument of learned counsel for petitioners. The charge sheet is mainly based on the statements of LWs.1 to 5. LWs.1 to 3 are complainant and her parents, whereas LWs.4 and 5 are stated to be independent witnesses.

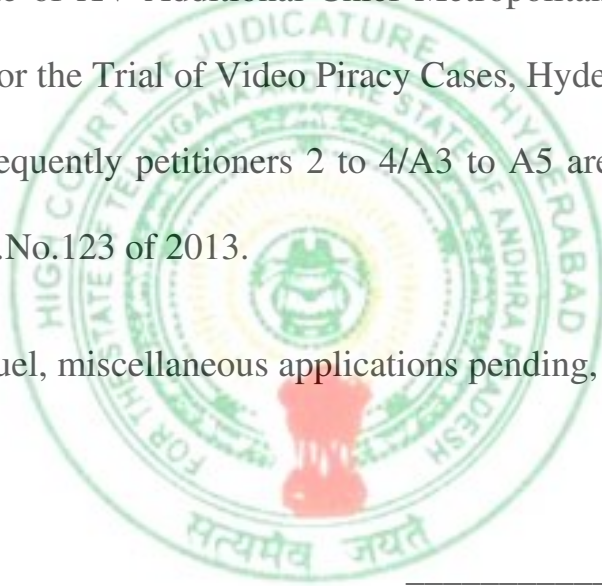
A scrutiny of their statements would show that LWs.1 to 3 identically stated about the harassment and torture meted out mainly by A1 and A2. Their statements would reveal A2 is none other than the paternal aunt of *defacto* complainant. The allegation is that on her demand LW2 paid Rs.3 lakhs to her even before marriage for advanced study and securing job by A1 in Ireland. It was only after much persuasion, A1 and A2 settled the marriage between A1 and *defacto* complainant on 16.02.2007. One month the couple led happy marital life and thereafter, A1 left for Ireland leaving the complainant to

the mercy of accused. The allegations would show that complainant is B.Com (Vocational) graduate and A2 forced her to do job and took her monthly salaries between April, 2007 and June 2010 on the pretext of keeping in Fixed Deposit. The further allegations would show that the accused started her harassing for additional dowry and they did not allow her to go to Ireland and on the other hand, they informed, A1 had already married a foreign national and got children and they performed the marriage of A1 with complainant only to serve them and ultimately drove her out of the house on 24.03.2012. The narration of statements of LWs.1 to 3 would show that the allegations are more specific so far as A1 and A2 are concerned, but A3 to A5 are concerned, they were only general and omnibus. Admittedly, A3 and A5 are married sisters of A1 and therefore, it is highly unlikely that they would constantly intervene with the marital affairs of A1 and complainant. The allegation that on 24.03.2012 her in-laws picked up quarrel with her and mercilessly necked out of the house creates a doubt in the light of immigration stamps on the passport of A5—Smt.Sameena Nasreen produced by the counsel for petitioners. It contains several immigration stampings showing the departures to abroad and arrival to India on different dates. One of such departures is on 28.09.2011 and arrivals is on 11.04.2012. At any rate, the different dates of departures and arrivals would give an impression that A5 was constantly moving between India and abroad during the relevant period. So, her participation in the act of necking out the complainant on 24.03.2012 appears to be highly doubtful. The statements of LWs.4 and 5 so far as indulgence of petitioners 2 to 4/A3 to A5 is concerned, is more

omnibus and general rather specific. Thus, on a conspectus of the entire facts, I am of the view that there is no *prima facie* material against A3 to A5 to frame charges against them for any of the offences alleged in the charge sheet. However, there is strong *prima facie* case against 1st petitioner/A2. The trial Court, unfortunately, has not considered the material on record in proper perspective.

6) In the result, this Criminal Revision Case is partly allowed and the order dated 08.07.2013 in CrI.M.P.No.1265 of 2013 in C.C.No.123 of 2013 on the file of XV Additional Chief Metropolitan Magistrate-cum-Special Court for the Trial of Video Piracy Cases, Hyderabad is partly set aside and consequently petitioners 2 to 4/A3 to A5 are discharged from the case in C.C.No.123 of 2013.

As a sequel, miscellaneous applications pending, if any, shall stand closed.



U.DURGA PRASAD RAO, J

Date: 28.03.2018
Murthy