

SMT JUSTICE T.RAJANI

CRIMINAL PETITION Nos.1862 AND 1898 OF 2011

COMMON ORDER:

These two Criminal Petitions, under section 482 of Cr.P.C., are separately filed by the Petitioner/Accused seeking to quash the proceedings in C.C. Nos.2052 of 2008 and 326 of 2010 respectively, pending on the file of the Court of Additional Judicial Magistrate of First Class, Huzurabad, Karimnagar District (for short, 'the trial Court'), registered for the offences punishable under Sections 498-A, 506 of I.P.C. and Sections 4 and 5 of the Dowry Prohibition Act, 1961 (for short, 'the Act').

2. Heard learned counsel for the petitioner, learned Public Prosecutor, appearing for the 1st respondent – State, and learned counsel for the 2nd respondent – *de-facto* complainant.

3. The *de-facto* complainant in the aforesaid cases is the wife of the petitioner. In the complaint, which is filed on 30.10.2004, she alleges that she was married to the petitioner as his 2nd wife. The petitioner, prior to his marriage with the complainant, already had three sons and one daughter through his 1st wife. At the time of marriage, the petitioner did not take any kind of dowry from the complainant; he ill-treated and harassed her subsequently for want of dowry. When the complainant became pregnant, the petitioner took her to a hospital on the guise of checkup and by inducing sedatives, got aborted her pregnancy. Again, after some months, when she got pregnancy, the petitioner tried to abort her pregnancy but, due to Dasara festival, she went to her parents' house and delivered a male child. The petitioner, suspecting her character that the child was not born through him, did not take either the complainant or his child to his

conjugal society; the complainant sent her family members asking the petitioner to attend the panchayat at Karimnagar to settle the matter, but the petitioner evaded to attend the same on the ground of his ill-health. Subsequently, when she called the petitioner to another panchayat at Jammikunta Police Station, he declined to accept them and asked to conduct D.N.A. test to prove that the child is not born through him by depositing Rs.10,000/-. He also filed a Petition before the Court of Karimnagar. Based on the said report, this case was registered.

4. Learned counsel for the petitioner submits that the 1st wife of the petitioner died on 28.02.1996 and, thereafter, the petitioner married the complainant on 20.01.1999 and, on 20.12.1999, the complainant deserted him. At this stage, the petitioner filed O.P. No.33 of 2004, under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955, seeking divorce. Thereafter, the complainant lodged the complaint which was registered as a case in Crime No.283 of 2009 and, at that stage, the petitioner approached this Court by filing Criminal Petition No.893 of 2010; wherein this Court, on 05.02.2010, while staying arrest of the petitioner disposed of the Criminal Petition. It was also observed therein that earlier also there was a complaint of similar nature and there were divorce proceedings between the parties. Subsequently, the case in Crime No.283 of 2009 was registered as C.C. No.326 of 2010 before the trial Court.

5. Learned counsel for the petitioner submits that D.N.A. test was also conducted and it proved that D.N.A. of the child born to the complainant did not match with the D.N.A. of the petitioner. He also submits that the divorce petition viz., O.P. No.33 of 2044 was decreed in his favour on 04.03.2010.

6. *Per contra*, learned counsel for the 2nd respondent - complainant vehemently opposes these Petitions on the ground that there are allegations against the petitioner which have to be decided only during trial.

7. But on the basis of the complaints, the allegations seem to have been made as a counterblast to the divorce Petition filed by the petitioner. The material produced by the petitioner is taken into consideration by virtue of the ruling of the Apex Court reported in ***Rajiv Thapar and others Vs. Madan Lal Kapoor***¹, wherein the Apex Court observed as follows:

“30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 Cr.P.C:

30.1 Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2 Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges leveled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 Cr.P.C. Such exercise of power, besides doing justice

¹ 2013 (3) SCC 330

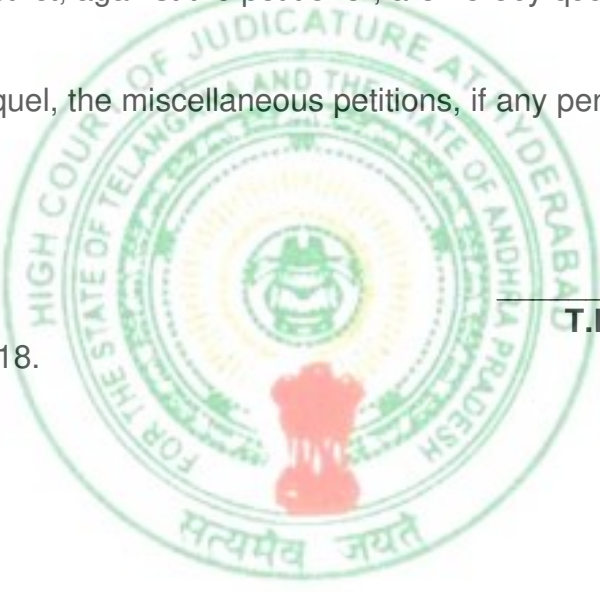
to the accused, would have precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”

8. Hence, in view of the above, this Court opines that continuation of further proceedings against the petitioner would result in sheer abuse of process of law.

9. Therefore, these two Criminal Petitions are allowed and all further proceedings in C.C. Nos.2052 of 2008 and 326 of 2010 on the file of the Court of Additional Judicial Magistrate of First Class, Huzurabad, Karimnagar District, against the petitioner, are hereby quashed.

10. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

Date: 18.09.2018.
Dsh

T.RAJANI, J

SMT JUSTICE T.RAJANI**232****24092018****CRIMINAL PETITION Nos.1862 & 1898 OF 2011**

Date. 18.09.2018

DSH