

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION Nos.11397 & 11400 of 2018

COMMON ORDER:

A.1 is the petitioner in CrI.P.No.11400 of 2018 and A.2 to A.4 are petitioners in CrI.P.No.11397 of 2018 respectively in CC.No.858 of 2017 on the file of IV Additional Chief Metropolitan Magistrate, Vijayawada. The learned Magistrate taken cognizance for the offence punishable under Section 498-A IPC from the police final report in the form of charge sheet filed on 16.09.2017 which is outcome of the crime No.188 of 2015 of Kankipadu Police Station, Vijayawada. The 2nd respondent is the defacto complainant no other than wife of A.1 and daughter in law of A.2 and sister in law of A.3, A.4 is no other husband of A.3.

The contentions in the quash petition are that the charge sheet filed by the police after registration of the crime for abuse of process of law by perfunctory and mechanical manner taken cognizance by the Court below from the final report as an empty formality without application of mind with rubber stamp cognizance order and without any material to take cognizance against any of the accused and in particular against A.2 to A.4 for the police final report from the investigation no way makes out any sustainable accusation against A.2 to A.4, but for if at all she met with any cruelty alleged in the hands of A.1, which is also with no basis and

the Apex Court in **Neelu Chopra Vs. Bharti**¹ observed that in the absence of role played by each and every accused in commission of the offence, the continuation of the proceedings is an abuse of process and no person shall be allowed to file a complaint with ulterior motive for coercing the accused and as measure of arm twist tactics even the allegations made against A.1 are incorrect and untrue and outcome of ulterior motive to take cognizance from the investigation for no offence practically made out and thereby sought for quashing proceedings respectively against A.1 and A.2 to A.4 by allowing the petitions.

The learned counsel for the petitioners in this regard by reiterating the submissions placed reliance on several expressions.

The 2nd respondent having been served failed to attend. Heard learned counsel for the petitioners respectively and the learned Public Prosecutor in opposing the same with the submission that but for application of mind no reasons are necessary to furnish for the taking of cognizance and mere use of the rubber stamp cannot be called mechanical way of taking cognizance and non-application of mind when law is fairly settled from the expressions of the Apex Court of if the cognizance taken by the Court from appreciation shows outcome of the application of mind mere non-assigning of reasons not a ground to quash particularly in **Sarah Mathew**

¹ 2009 (10) SCC 184

Vs The Institute of Cardio Vascular Diseases² sought for dismissal of the quash petitions respectively and perused the material on record.

The defacto complainant report in registration of the crime No.188 of 2015 on 08.09.2015 by Kankipadu Police under Section 498-A IPC against 4 accused supra reads that one year prior to that the marriage of her with A.1 performed arranged by elders and at that time in the presence of elders Rs.2,50,000/- as cash given besides gold chain to her husband. Her husband is resident of Hyderabad. Her mother in law was residing at Takkalapadu and sister in law and her husband are residents of Kodad. One week after marriage she joined her husband at Hyderabad where they lived together for 3 months and after 3 months onslaughts begun to her in the marital life as her husband was saying she was not to his liking and his marriage was performed against his wish and he was abusing her and he was saying he loved another girl and he was demanding her to leave the company and he was demanding if at all to stay bring money from her parents. In their wedlock she conceived and after that by saying her parents can look after her while carrying with all care she was sent out to her parents. Prior to that she was sent to his parents and there her mother in law was not even properly providing food, when she explained her onslaughts to her mother in the hands of mother in law, her

² 2013 (14) SCALE 404

mother came and taken her to her parents house. Thereafter neither her husband nor in laws were even telephoning to her and even she was giving calls to her husband he was not talking to her even after birth of the female child in their wedlock and after four months they were persuading him to take her back for the marital life, he and his parents were saying he was not prepared to come and they were not prepared to take her to marital life. Even the sisters in law of her were also supporting them with their say in tune thereby asked her to take action against them and do justice.

From the report there are only specific allegations against the husband and mother in law and not against the sister in law and sister in law's husband in specific, but for a stray sentence or vague allegation. It is therefrom the police after investigation by examination of 5 witnesses viz., the victim as LW.1 defacto complainant, her father and mother as LW.2 & 3, 2 other witnesses of Chalivendrapalem Village of her parents as LW.4 & 5 and LW.6 is the IO who registered the crime and investigated the case and filed final report. The statement of LW.1 is in tune to her report. What all she added so far as the sister in law and her husband A.3 and A.4 is that when complainant explained her plight and the behaviour of her husband and even her mother in law, sister in law and her husband were also saying A.1 is a male person and he can live as he likes with any woman and scolded over phone, later her parents went to her mother in law and sister

in law to persuade A1 to take back the defacto complainant to the marital fold, they refused bluntly saying he will not take her back to marital life.

So far as the mother in law while staying with the mother in law at the instance of A.1, the defacto complainant was not providing food properly and ill-treating and LW.2 father of the defacto complainant also stated in tune to it by saying they were not even disclosing the whereabouts of A.1 with address at Hyderabad to drop back defacto complainant in the company of A.1. LW.3 mother of defacto complainant also stated the same. So far as LW.4 & 5 concerned, their statements are in tune to LW.1 and they acted as mediators earlier besides one Baseveswar in relation to not to ill-treat further.

In the quash petition filed by A.2 to A.4 supra among the averments what all generally saying the allegations are false and there is no any specific statement of defacto complainant never stayed with A.2 mother in law to belie the so called allegations of there she was ill-treated not even providing food properly. In **Varala Bharath Kumar Vs. State of Telangana**³ the Apex Court observed that mere unhappiness with husband can be a no ground for prosecuting to the offence under Section 498-A IPC where there are no sustainable allegations subjecting the defacto complainant to cruelty within the meaning of Section 498-A

³ (2017) 9 SCC 413

IPC from face value of the material on record of disclosing any willful conduct of such a nature likely to drive the complainant to commit suicide or to cause grave injury or danger to life, limb or health of the complainant, the prosecution no where sustain to continue.

In **K.Subba Rao Vs. State of Telangana**⁴ the Apex Court observed from the sister and her husband mostly residing in US the mere allegation that other accused supporting the couple in their marital discard for the husband physically and mentally torturing the complainant, not a ground to rope others much less to say there is any conspiracy to ill-treat through him.

In **Neelu Chopra** supra it was held vague allegations will not survive to continue the prosecution against the family members of the husband. In **Bhaskar Lal Sharma and another Vs. Monica**⁵ it was observed the complainant must make allegations of harassment either to meet additional demand for dowry or willful conduct of any of the accused in specific of their acts to drive to commit suicide or injury or danger to life or limb or health to attract the offence under Section 498-A IPC and without which vague allegations does not constitute the offence.

Coming to the expression in **Sunil Bharat Mittal Vs. Central Bureau of Investigation**⁶ three judge bench relied

⁴ 2018 SCC Online 1080

⁵ (2009) 10 SCC 604

⁶ 2015 (4) SCC 609

saying the order of the Magistrate issuing process without ascribing in incriminating role to the accused against the directors of the company for they happened to be the Directors from mere allegations against company it is not possible to fasten vicarious liability thereby the cognizance and issuance of process no way sustain. It is no doubt not a case on hand, but for whether the learned Magistrate's order taking cognizance is sustainable or not as referred supra the Apex Court in **Sarah Mathew** supra categorically observed mere non-assigning of reasons by itself not a ground to quash when the order taking cognizance from persual of the material shows outcome of application of judicial mind.

No doubt in the case of hand, the order of the learned Magistrate taking cognizance on the police final report is by filling the gaps on the rubber stamp proforma, which is no doubt not encourageable however cannot be a sole ground without referring to whether the police investigation and final report material otherwise sustains the cognizance taken or not to appreciate with reference to the facts.

Here from the facts supra so far as A.1 concerned there are specific allegations of ill-treatment and harassment and so far as A.2 mother in law of the defacto complainant concerned during the defacto complainant's stay in the mother in law's house and carrying at the instance of A.1 having sent saying she could be taken care there the mother in law ill-treated without even providing food properly thereby

but for that so far as A.3 & A.4 concerned there are no any worth allegations to rope them not even residents with A.1 or A.2 and defacto complainant not even stayed at the house of her sister in law and sister in law's husband but for the vague allegation of she and her parents when telephoned to the sister in law of defacto complainant they also supported the acts of A.1 refusal to take the defacto complainant to marital life after birth of the child shall by itself does not constitute the offence under Section 498-A IPC so far as A.3 & A.4.

Having regard to the above and in the result, (a). the Criminal Petition No.11397 of 2018 is partly allowed by quashing the proceedings against A.3 & A.4 and dismissed so far as against A.2 and (b). the Criminal Petition No.11400 of 2018 is dismissed.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 20.12.2018
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