

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.11639 of 2018

ORDER:

The petitioners are A1, A2, A4 & A5 among five accused in C.C.No.277 of 2016 pending on the file of the learned Judicial Magistrate of First Class, Palakonda, Srikakulam District taken cognizance by the learned Magistrate for the offences punishable under Sections 498-A, 323 r/w 34 IPC and Section 4 of the Dowry Prohibition Act, which is outcome of Crime No.92 of 2016. Respondent No.2-*de facto* complainant is no other than daughter-in-law of A1 & A2, and the petitioner-A4 is her sister-in-law, A3 is the husband of sister-in-law, and A5 is the daughter of A3 & A4.

2. After registration of the crime, the police after investigation filed the final report by citing eleven witnesses including LWs 10 & 11 (Investigating Officers), LW9-Dr. G.Raghuram, Medical Officer, Area Hospital, Palakonda, who treated the *de facto* complainant and issued the Wound Certificate of LW1 showing simple injuries for the offence punishable under Section 323 IPC, and LWs 1 to 8 are the *de facto* complainant and other circumstantial witnesses.

3. So far as the petitioner-A5 is concerned, in the course of hearing the quash petition, learned counsel for the petitioners drawn attention of the Court that A5 is the student of B.Tech. in SRM University, SRM Nagar, Tamilnadu. It is one of the submissions that her presence is not there. What all the documents show she is the student. It is difficult to

gaze there from whether she was presented at the occurrence or not in the absence of filing the college attendance proof. However, the fact remains that she is the only daughter, spinster, of A3 & A4 and there is no basis for the accusation even taken on its face value from the allegations of the occurrence on the college working day which happened on Thursday not a public holiday even, she was also present along with other accused in the alleged attack concerned. Hence, taking cognizance so far as A5 concerned is set aside and this Criminal Petition is only allowed to that extent.

4. So far as the other accused are concerned, there is nothing to interfere with the cognizance order of the learned Magistrate, but for if at all there is any ground to file discharge application before the lower Court, the lower Court to consider on own merits. So far as the difficulty expressed that all to attend the Court practically or personally from Visakhapatnam to Palakonda is concerned, liberty is given by virtue of this order to apply before the learned Magistrate under Rule 37 of the Criminal Rules of Practice for one to represent the others, for the learned Magistrate to consider with necessary conditions after hearing.

Accordingly and in the result, this Criminal Petition is partly allowed. Miscellaneous Petitions, if any, pending shall stand closed.

Dr. B. SIVA SANKARA RAO, J

28.11.2018
MVA