

HONOURABLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition Nos.11654 and 11801 of 2018

COMMON ORDER:

The petitioners in CrI.P.No.11654 of 2018 are the A.1 to A.3, viz.,Abhishek Maheshwaram, Smt. Madhavi Maheshwram and Upender Maheshwaram 3 (A.1 is son of A.2 and A.3) and petitioner in CrI.P.No.11801 of 2018 is A.5 by name A.Meghana Maheshwaram w/o Raghu Kolluru, resident of Woodinville, Seattle, Washington, USA (sister of A.1) among total 7 accused including the A.4-Deepa Lalukota (another sister of A.1) and whose husband is A.6, besides A.7 is husband of A.5, in C.C.No.638 of 2017 on the file of the XIII Addl.Chief Metropolitan Magistrate (for short, 'the Magistrate'), Hyderabad, taken cognizance for the offences punishable u/sec.498-A, 420, 406 and 506 IPC r/w Sections 4 and 6 of the Dowry Prohibition Act, outcome of Cr.No.768 of 2015, dt.30.12.2015 of WPS, DD, CCS, Hyderabad, registered on the report of 2nd respondent P.Sndhu-wife of A.1.

2. In the charge sheet the A.1 shown residing at Canada. A.2 and A.3 are residing in Somajiguda, Hyderabad though natives of Hanumakonda Warangal. The A.4 to A.7 shown residents of USA.

3. The common contentions in both the quash petitions are that there is no local jurisdiction to the learned Magistrate, Hyderabad to take cognizance for the offences supra against any of the accused, leave about WPS Police DD, CCS, Hyderabad has no local jurisdiction to investigate for the marriage was performed on 14.08.2014 in hotel Taj Banjara Hyderabad and after the marriage, A.1 left Canada on 31.08.2014 from the defacto-complainant was residing in her in-laws house at Hanumakonda, Warangal where the alleged harassment by the A.2 and A.3 for additional dowry took place till she left Canada on 08.03.2015 to join her husband and therefrom staying there with her husband in Canada till 28.12.2015 where she was

allegedly harassed by the A.1. Further on the face value of the allegations no offence u/sec.420 IPC is made out. However there is a bar u/sec.188CrPC without previous sanction of the Central Government for trying in India, offences committed outside India, by citizens of India for the offences to take cognizance by the learned Magistrate concerned for A.5 is staying outside India at Canada and in Sheetal, Washington respectively and A.1 is at Vancouver, Canada. The report and the charge sheet no way discloses any part of cause of action arose including any consequences within the jurisdiction of the WPS, DD, CCS, Hyderabad and the learned Magistrate, Hyderabad and thereby the proceedings are liable to be quashed.

4. Heard the learned counsel for the respective petitioners and the learned counsel for the 2nd respondent-defacto-complainant and the learned Public Prosecutor for the 1st respondent-State who opposed the petition averments and perused the material on record.

5. The report of the defacto-complainant in registration of the crime by WPS, DD, CCS, Hyderabad on 30.12.2015 shows that the marriage of her with A.1 was performed on 14.08.2014 at Hotel Taj Banjara, Hyderabad where her parents given dowry in cash and kind including jewelry having incurred more than 25lakhs towards marriage expenses. All the accused persons through mediator-Pavindrachary lured the defacto-complainant in accepting for the marriage proposal with A.1 with assurance of she can pursue her further studies at Canada and lead happy life with A.1 and ultimately she became the victim of their inducement and even after marriage, right from the date of marriage he avoided even the nuptial ceremony and conjugal contact with her and even 1½ years lapsed after the marriage, the marriage was not consummated and she being doctor realized that he is sexually impotent and by suppressed the fact and

thereby she was cheated by all of them. 15 days after marriage, A.1 left for Canada and she was made to reside at her in-laws house where they harassed her with a demand for additional dowry constantly till she went to Canada after procuring Visa papers on 09.03.2015 for joining marital life with her husband and after reaching Canada she faced indifferent, volcanic and fanatic behaviour by A.1 and she was subjected to extreme cruelty, beatings, mental and physical torture which she patiently put up and he even not provided basic needs to her and also used unexplainable vulgar language including her sister-in-laws and forced her to give divorce to A.1. The A.1, being habituated to drinking and enjoying with his girlfriends in Clubs, left her at home all alone for 15 days without money and groceries and stayed in Seattle etc., He left a box of sleeping pills on an eye catching corner of a table and she was starved without food and he used to record her conversations secretly. On their first marriage anniversary in Canada, he took her to a place called Victoria from Vancouver made her to drink wine and made her semi conscious. Then he took her pictures and spread them around. A.1 withdrew her resident spousal visa, with an intention to leave her permanently in India. The A.1 committed criminal acts against her in connivance with his parents and mediator Ravindra Chary. As A.1 and herself would be arriving on 27.12.2015 from Canada to Hyderabad, India where she apprehends danger from A.1 and having PR Status in Canada, there is possibility of his absconding from India and thus to take action.

6. In the First Information Report, there are only vague allegations against the A.4 to A.7. In the First Information Report, it is silent as to where her in-laws were residing much less for the complainant to contend they were at Warangal. The charge sheet shows they are residents of Somajiguda Hyderabad and no document filed. It is the contention of the learned counsel for the petitioner-A.5 of parents of A.1 (A.2 and A.3), A.4

and A.5 are residents of Warangal by the time of marriage of defacto-complainant with A.1 and subsequently even by the time of report of the defacto-complainant on 30.12.2015. Thereby the contention that the police, DD, CCS, Hyderabad have no jurisdiction to investigate much less for the Magistrate to take cognizance is untenable for not a case of the defacto-complainant where according to her stay with in-laws in the absence of her husband or where she was left by her husband and fled away on 27.01.2015 not within the jurisdiction of the learned Magistrate.

7. So far as the allegations against the other accused persons A.4 to A.7 concerned particularly of the petitioner-A.5, wife of A.7, similarly situated are A.4 and her husband A.6 no doubt the report referred supra and the police investigation from the final report shows all the accused lured her and her parents in fixing the marriage through marriage mediator but she did not state specifically of so called cheating taken place in abroad and it is not even a case much less by production of the passport and Visa of the A.4 to A.7 even of they never visited India much less the house of A.2 and A.3 either during the defacto-complainant's stay with them or attend before the time of marriage of the defacto-complainant with A.1. What of Section 188 CrPC speaks is the offence committed outside India by Indian citizen, there is requirement of previous sanction of Central Government. The offences alleged herein not stated exclusively committed outside India, though some of the acts committed outside India by the A.1, A.4 to A.7 while outside India that is not the purport to say even for that previous sanction of the Central Government required merely because the A.4 to A.7, leave about the A.1, are in Canada or in USA respectively. What all it speaks is for enquiry or trial of the case, only the previous sanction is required and not for investigation and taking of cognizance and the proposition in this regard is very clear from the expression of the Apex

Court in Thota Venkateshwarlu Vs. State of Andhra Pradesh¹ and from various expressions referred therein and even from the decisions cited by counsel for quash petitioners, from which it is made clear that upto the stage of taking cognizance, no previous sanction of the Central Government in terms of Sections 188 CrPC is required, however if at all such case falls u/ sec.188 CrPC arena, trial or post cognizance pretrial enquiry on charges or discharge cannot be proceeded without such previous sanction, for there is no enquiry from hearing both sides including accused in pre-cognizance stage including from any private complaint precognizance enquiry, leave about no such bar herein for the case on hand taken cognizance is from police final report from FIR. It is thus made clear that the Magistrate is free to proceed even with a case in respect of the offences committed in India and to complete trial and pass judgment without influenced by other offences committed outside India for which prosecution would be required before the pretrial post cognizance enquiry if any and trial commences.

8. Once such is the case, there is nothing to quash the proceedings against any of the accused petitioners, but for to say all defences are left open if at all there are no grounds in the enquiry to be taken up for framing charges and any requirement of Section 188CrPC compliance, such remedy is left open to urge before the trial Court, for any post-cognizance pre-charge enquiry. For any difficulty of personal appearance at the post-cognizance stage once appeared, liberty is available to move application under Rule 37 of the Criminal Rules of Practice for one to represent the others so to permit with necessary requirement of as and when personally required or under Section 205 CrPC for each individual concerned if any.

¹ 2011 9 SCC 527

9. With these observations, these Criminal Petitions are disposed of rather than dismissal. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Dr. JUSTICE B. SIVA SANKARA RAO

Date:14.12.2018
vvr

