

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.15421 of 2016

ORDER :

The petitioner, no other than husband of the defacto-complainant, is A.1 in C.C.No.108 of 2016 on the file of the XIV Metropolitan Magistrate, Cyberabad at L.B.Nagar, taken cognizance for the offence punishable u/sec.498-A IPC outcome of Cr.No.165 of 2015 of Saroor Nagar Woman Police Station on the report of the defacto-complainant and from investigation filed chargesheet against 4 accused who are no other than parents and married sister of A.1 from the memo of evidence by citing 7 witnesses including two Investigating Officers-L.Ws.6 and 7 and the defacto-complainant-L.W.1, her father, mother and two relatives as L.Ws. 2 to 5. From the very First Information Report in registration of the crime vis-à-vis the statement of the defacto-complainant during investigation on the same day which shows she is the eldest of the two daughters of her parents and after completion of her B.Sc.(Computer) degree, her marriage with the A.1 was arranged through V.Mohan Reddy mediator who suppressed the factum of the A.1 was already married. The marriage arrangement was made on 15.11.2004 in Minarva Hotel, Himayath Nagar with the A.1. As a consequence, the marriage was performed at Yadagiri gutta temple on 27.11.2004. Later her husband in March 2005 left USA by kept the defacto-complainant and her parents at Joy Nivas, Tarnaka and later on 19.08.2006 taken her on dependant Visa to USA and they stayed at California and in their wedlock in July, 2007, they were blessed with a female child by name Gowripriya and at the 6 month age of the child, her parents went to USA and the child was sent with them to India and when she went to USA and at the time of her going to USA, her mother-in-law and sister-in-law(A.3 and A.4) took her 22 tulas of gold ornaments forcibly and at the first birthday of her child performed on 03.07.2008 in India, her husband beat her and her

husband lost job in 2009 and while she was working at USA, her earnings of 25lakhs were taken by her husband and 5 months later he got job at Texas and at that time she was beaten on her head. Her husband sent her to India by leaving her at Shamshabad Airport, Hyderabad asking her to obtain Visa in her name and then only come to USA and he used to beat her frequently for no causes. Then she filed a maintenance case against her husband, for that the A.2 to A.4 abused her by came to her parents saying the Court granted maintenance at Rs.45,000/- per month and to avoid it, her husband with pretence to join her, kept them at Sahara, Mansurabhad from December, 2010 to June, 2014 and was coming and going and in June, 2014, he left and since then she was staying at her parents' house and whereabouts of her husband are not known to her.

2. The report was as referred supra, dt.25.08.2015. The alleged beating and ill-treatment were mainly at USA during their stay and after filing of Maintenance Case from her husband dropped her at Shamshabad warning to get visa and neglected, later he wanted to take care of her and kept in a separate house at Hyderabad since December, 2010 onwards even from her very say and alleged ill-treatment long prior to that and nothing in that period from the said report in registration of the crime and filing of chargesheet.

3. Though part of cause of action took place in India, it is sufficient to sustain the complaint before the learned Magistrate, there is a bar for post-cognizance enquiry and trial u/sec.188 CrPC, for the alleged occurrence in USA which are the main allegations to attract the offence u/sec.498-A IPC as subsequent to the filing of the Maintenance Case by her from the alleged neglect, restitution of conjugal rights petition in O.P.No.1625 of 2012 filed by him settled through elders. He filed divorce petition O.P.No.1935 of 2012 dt.15.02.2016 and the FIR as referred supra

was long subsequent to that after serving notices in the divorce petition, that too, on 25.08.2015.

4. Having regard to the above as observed by another Bench of this Court on 31.10.2016 in granting stay while ordering notice to 2nd respondent before admission, the very sustainability of the cognizance order of the learned Magistrate is bleak, leave it apart from the additional material filed by the petitioner from the 2nd respondent served failed to attend, one is her deposition as P.W.2 in O.P.No.1930 of 2015 which is for mutual consent divorce filed which affidavit is in November, 2017 in which she did not whisper any harassment but for about pendency of the Calendar Case (present one) and submitted that the claims settled and the child custody is given to her by relinquishing right by her husband and she agreed to withdraw Criminal Case(present one) after getting divorce and also not pressing the maintenance case further proceedings in M.C.No.185 of 2015 which is subsequent even that also can be taken note of.

5. In this regard, in the expression of the Apex Court in **Ruchi Agarwal Vs. Amit Kumar**¹ it is **observed that** once there is a settlement, the continuation of the proceedings is nothing but abuse of process.

6. Apart from it, in a subsequent expression of the Apex Court in **Shlok Bhardwaj v. Runika Bhardwaj**², it is also a case under Sections 498-A and 506 IPC and Sections 3 and 4 of the Dowry Prohibition Act of the crime registered in 2002 and later pending divorce proceeding the matter went upto Supreme Court, where the parties by mutual consent settled their disputes and claims from which divorce granted. Pursuant to the direction of the Supreme Court by the Family Court by decree of divorce, dated 04.04.2005, and wife did not press her counter claim for maintenance and did not reserve any liberty for any action against husband and

¹ (2005) 1 ALT(CrI) 101 SC

² (2015) 2 SCC 721

meantime wife filed revision against withdrawal letter of the crime dated 03.07.2002 but High Court set aside withdrawal order and remitted matter back to the trial Court. The Apex Court observed that the husband was not justified in setting aside withdrawal order by sitting in revision leave about bound to the registration of crime that too before the High court in 2006 when he filed affidavit placing on record, order of the Supreme Court and order of the Family Court on mutual decree of divorce and mentioning of after dissolution of marriage, wife re-married from which the revision petition ought to have been dismissed rather than allowing. The contention of the wife that even after mutual divorce by consent taken she was not prevented to pursue the criminal proceedings against the husband is not tenable, as once the matter was settled between the parties and settlement was given effect, with divorce by mutual consent and of no further dispute to survive between the parties, though not expressed by order of the Supreme Court for no liberty reserved by wife to continue the criminal proceedings against husband and after settling the matter putting end to the marital tie, the wife is estopped to continue the criminal proceeding.

7. In the result, the Criminal Petition is allowed by quashing the proceedings against the petitioner/A.1 in C.C.No.108 of 2016 on the file of the XIV Metropolitan Magistrate, Cyberabad at LB Nagar, outcome of Cr.No.165 of 2015 of Saroornagar Woman Police Station and he is acquitted. The bail bonds of the petitioner/A.1 shall stand cancelled. Miscellaneous petitions pending if any, shall stand closed.

Date:31.12.2018
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Dr. B.SIVA SANKARA RAO J,