

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.12645 OF 2017

ORDER:

This Criminal Petition, under Section 482 of Cr.P.C., is filed by the petitioner-A.4 seeking to quash the proceedings against her in C.C.No.1631 of 2016 on the file of the III Additional Chief Metropolitan Magistrate at Nampally, Hyderabad, for the offences under Section 417 I.P.C. and Section 4 of the Dowry Prohibition Act.

2. Heard the learned counsel for the petitioner-A.4, the learned Additional Public Prosecutor appearing for the 1st respondent-State and the learned counsel for the 2nd respondent-*de facto* complainant, apart from perusing the material available on record.

3. It is contended on behalf of the petitioner-A.4 that even if the allegations made in the charge sheet are taken as true, no offence is made out against the petitioner-A.4; the 2nd respondent-*de facto* complainant filed a false report against the petitioner-A.4; the petitioner-A.4 is a woman and pursuing M.B.A.; the continuation of proceedings against the petitioner-A.4 is abuse of process of law; and ultimately, prayed to quash the proceedings against the petitioner-A.4.

4. On the other hand, learned Additional Public Prosecutor opposed the relief sought for by the petitioner-A.4.

5. Learned counsel for the 2nd respondent-*de facto* complainant would contend that there are specific and grave allegations against the petitioner-A.4; the truth or otherwise would be decided during trial; there is nothing to quash the proceedings against the petitioner-A.4; and ultimately, prayed to dismiss the application.

6. In view of the contentions put forth by both sides, the point for determination is, whether the proceedings against the petitioner-A.4 in C.C.No.1631 of 2016 on the file of the III Additional Chief Metropolitan Magistrate at Nampally, Hyderabad, are liable to be quashed?

7. As per the material available on record, in the month of October/November, 2015, A.2 and A.3, who are the parents of A.1, approached L.W.2-M.Muralidhar Rao and L.W.3-M.Vimala, who are the parents of *de facto* complainant, through one common relative and requested them to arrange the marriage of the *de facto* complainant with A.1, L.W.2 and L.W.3 did not agree for the same, since one engagement was cancelled one year prior to that by bridegroom, as he was in love with some one. Thereafter, A.2 and A.3 forced and convinced L.W.2 and L.W.3 stating that they knew everything about the engagement and they have no problem with the alliance. On repeated requests and at the instance of well-wishers, L.W.2 and L.W.3 accepted the marriage proposal. Thereafter, A.1 was in touch with the 2nd respondent-*de facto* complainant through phone from Australia, started chatting with her and developed love with her. On 24.12.2015, A.2 and A.3 called L.W.2 and L.W.3 and informed they that they have received a call from unknown persons and questioned them about the previous engagement of the *de facto* complainant and also stated that there was a love affair between the earlier bridegroom and the *de facto* complainant. On 27.12.2015 at the instance of A.2 and A.3, L.W.2 and L.W.3 arranged a small engagement function and invited around 100 members and the marriage was fixed on 26.11.2016. Between 27.12.2015 and 06.04.2016, the *de facto* complainant was treated with love and affection, A.1 was in touch with the *de facto* complainant on phone for number of hours and shared photos. On 06.04.2016, A.2 and A.3 invited the *de facto* complainant for lunch at

restaurant. L.W.2 and L.W.3 were busy in their works. During lunch, it is alleged that A.2 to A.4 insulted the *de facto* complainant. Thereafter, A.1 stopped talking to the *de facto* complainant and after some time, A.1 responded to her, blamed her and demanded Rs.20,00,000/- as dowry and also stated that some unknown person informed them that the character of the *de facto* complainant is not good. Thereafter, it was stated that the accused party do not want to proceed with the marriage. It is alleged that the *de facto* complainant was cheated. The statement of the *de facto* complainant was recorded under Section 161 Cr.P.C., wherein she stated that on 06.04.2016, the petitioner-A.4 insulted her during lunch. Thereafter, A.1 did not spoke to her and the parties could not proceed with the marriage alleging that the character of the *de facto* complainant is not good. Even in the first information report as well as the statement of the *de facto* complainant, there is no mention that this petitioner-A.4 demanded dowry or she had abused, causing damage to the reputation of the *de facto* complainant. In the statements of L.W.2 and L.W.3 (parents of the *de facto* complainant), they did not state anything about the alleged insult made by the petitioner-A.4 to the *de facto* complainant. Even they did not say about the alleged demand of dowry by this petitioner-A.4. The relationship between the parties is stained. On the score of alleged insult, this petitioner-A.4 has made as an accused in this case. When there is a stained relationship between the parties, there is possibility of making false allegations and implicating innocent persons in criminal cases. The negotiations were made by A.2 and A.3 with regard to the marriage of A.1 with L.W.2 and L.W.3 parents of *de facto* complainant. The petitioner-A.4 is not an instrumental or she has not played an active part the marriage settlement.

8. It is apt to refer the decision of the Apex Court in **S.W. Palanitkar and others v. State of Bihar and another**¹, wherein it is held as follows:

"In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating."

9. The above view in **S.W. Palanitkar's** case (1 supra) was referred to and followed by the Apex Court in **Rashmi Jain v. State of U.P. and another**². In the instant case, no such element of dishonest inducement and cheating is present as far as the petitioner-A.4 is concerned. Even if the allegations made in the first information report as well as the charge sheet are not **revoluted**, the petitioner-A.4 is not liable for the offence under Section 417 I.P.C. In order to constitute the offence of cheating, *mens rea* on the part of accused is also essential. Under these circumstances, it can be safely concluded that the petitioner-A.4 is implicated in this case in view of cancellation of marriage. Further, it can also be safely concluded that the continuation of the proceedings against the petitioner-A.4 in the impugned Calendar Case is abuse of process of law and the same are liable to be quashed.

10. In the result, the Criminal Petition is allowed and the proceedings against the petitioner-A.4 in C.C.No.1631 of 2016 on the file of the III Additional Chief Metropolitan Magistrate at Nampally, Hyderabad,

¹ AIR 2001 SC 2960 = (2002) 1 SCC 241

² (2014) 13 SCC 553

are quashed. Miscellaneous petitions, if any pending in this Criminal Petition, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date: 14-03-2018

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