

HONOURABLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.8292 of 2013

ORDER:

The petitioners are A.2 and A.5 among 5 accused in C.C.No.261 of 2013 on the file of the Judicial Magistrate of First Class, Mahaboobabad, outcome of Cr.No.27 of 2013 of Dornakal Police Station, Warangal district, registered for offences punishable u/ sec.498-A, 494 of IPC and under Sections 3 and 4 of the Dowry Prohibition Act(for short, 'the DP Act'), on the report dt.15.02.2013 of the 2nd respondent/ defacto-complainant-D.Harita, none other than wife of A.1-Dharavath Huddilal and the petitioners/ A.2 to A.5 are parents, brother and neighbour of A.1.

2. The averments in the report of the defacto-complainant in registration of the crime supra are that marriage of defacto-complainant was performed with Daravathu Huddilal-A.1 by her parents and at the time of marriage they gave Acs.2-00 cents of agricultural land and 5 Tuals of Gold as Pasupukunkuma to the A.1 and after marriage they lived happily and were blessed with a female child now aged about 7 year. Due to loss sustained by her husband-A.1 in the business and birth of female child, the A.1 caused her physical and mental harassment and also demanded to bring additional dowry and used to beat her severely. Her in-laws A.2 and A.3, her brothers-in law-A.4 and other brothers-in-law Daravathu Ravilal and Daravath Devilal and her co-sister-Daravathu Padma W/ o. Pannalal, her junior aunt Kalavathi and her brother-in-law Gagulothu Naresh S/o. kalavathi also harassed her by demanding for additional dowry and also beat her and necked her as a result, she sustained injury at left thigh and since they did not stop harassing her, she went to her parental home. Later she came to know that he got second marriage with one belongs to Relakayalapalli village of Khammam District. Hence, to take action.

3. After registration of the crime, during investigation, the police examined L.Ws.1 to 14 viz: L.W.1-defacto-complainant, L.W.2-father of L.W.1, L.W.3-mother of L.W.1, L.W.4-brother of the L.W.1, L.W.5-Maloth Kishan, L.W.6-Rayala Venkateshwarlu, L.W.7-Maloth Thyrya, L.W.8-Bhukya Dhal Singh, L.W.9-Islavath

Nama are panchayat elders, L.W.10-G.Sathyanarayana and L.W.11-Banoth Laxman are circumstantial witnesses, L.W.12-D.Kamalakumari- who speaks of her marriage with the A.1, L.W.13- C.Sathyanarayana, Head Constable who registered the crime and L.W.14-J.Krishna Reddy Inspector of Police, the investigating officer who arrested the accused and filed charge sheet by deleting the names of A.6- D.Ravilal, A.7-D.Devilal, A.8-D.Padma, A.9 Guguloth Kalavathi and A.10-Gaguloth Naresh, mentioning as no case made out against them with the permission of his superior officers.

4. The contentions in the quash petition are that in August, 2010 the defacto-complainant left matrimonial house and did not come, then the A.1 filed O.S.No.22 of 2012 for dissolution of marriage before the Agency Divisional Officer, Kothagudem on 01.09.2012, who by providing sufficient opportunity to the defacto-complainant for appearance and on her absence despite notices, decreed the suit, dt.22.03.2013 by dissolving the marriage but the chargesheet was filed on 30.05.2013 which is subsequent to that. The defacto-complainant and the A.1 were living separately and the A.4 is working as a teacher at Koyagudem and the A.5 is a neighbour and working as a teacher who can do nothing with the case. It is further submitted that the FIR and the chargesheet are false and with incorrect factual matrix which is abuse of process. The defacto-complainant did not even appear in the suit for reconciliation and the allegations against the petitioners are ex-facie untenable as all of them are living separately, the name of the 4th petitioner/ A.5, who is a neighbour of A.1 and not a family member nor a relative of A.1 was unnecessarily dragged. The allegations in the chargesheet are vague. Hence, to allow the petition by quashing the proceedings in the Calander Case supra against them.

5. Heard the learned counsel for the petitioners/ A.2 to A.5 and the learned Public Prosecutor representing the 1st respondent/ State and also the learned counsel for the 2nd respondent-defacto-complainant and perused the material on record.

6. The Apex Court in Neelu Chopra Vs. Bharati¹, Kailash Chandra Agarwal Vs. State of UP², Kansraj Vs. State of Punjab³ and Geeta Mehrotra Vs. State of Uttar Pradesh⁴, and Manoj Mahavirprasad Khaiton Vs. Ram Gopal Poddar⁵ categorically held that unless there are specific allegations in the complaint against other relatives of husband, no cognizance can be taken against the family members, more particularly from the tendency of making baseless allegations in roping them. Even a stray sentence as suffered harassment in the house of in-laws not sufficient as held by this Court while quashing from such a bald statement in Shhaik Kusrouddin Vs. State of A.P.⁶ against the in-laws and other relatives of the husband. It is also held by the latest expression of the Apex Court in Taramanio Parakh Vs. State of M.P.⁷ that if the allegations not make out a case, it can be held as abuse of process to continue the crime proceedings. It is further held that in matrimonial cases, Courts have to be cautious when omnibus allegations are made particularly against relatives of husband. Coming to the family members of the husband who are the petitioners-A.2 to A.5 and any specific overt acts with date, time, and place to attribute any specific role against any of them, no ingredients of the offences alleged supra that apply.

7. From the above legal position but for vague allegations of other family members of A.1 also harassed for additional dowry, there are no any specific instances of date or time to attribute against any of the accused either in the First Information Report or in the statement of the defacto-complainant and in the absence of which but for the main allegations of harassment against the husband, there is no sustainable accusation so far as the offence u/ Sec.498-A IPC against the other accused concerned. Even the First Information Report speaks A.1 married second time without her knowledge and she came to know on enquiry, it is not even mentioned who is said second wife of A.1 to attract the offence u/ sec.494IPC even for the learned Magistrate to take cognizance leave about no sustainable

¹ 2010(1)ALT(CrI) 146 SC,

² 2015(1) ALT(CrI)229(SC),

³ 2000(5) SCC 30

⁴ 2012 10 SCC 741

⁵ 2010(10) SCC 673

⁶ (2004) 2 ALD CrI.195

⁷ 2015(2) ALT(CrI) 336 SC

accusation against these petitioners to see as they are also privy to cause performed the second marriage to A.1, leave about the fact that the cognizance for the offence u/ sec.494 IPC arises mainly from the private complaint from the very wording of Section 198 CrPC and not on police report though there is no bar for registration of crime and investigation for the police as a cognizable offence.

8. Having regard to the above, the cognizance order of the learned Magistrate dt.04.07.2013 of the offences u/ sec.498-A and 494 IPC and Sections 3 and 4 of the DP Act against the petitioners/ A.2 to A.5 is liable to be set aside.

9. In the result, the Criminal Petition is allowed by quashing the proceedings in C.C.No.261 of 2013 on the file of the Judicial Magistrate of First Class, Mahaboobabad against the petitioners/ A.2 and A.5 and they are acquitted. Their bail bonds shall stand cancelled. Consequently, pending miscellaneous petitions, shall stand closed.

Date:03.04.2019
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Dr. B.SIVA SANKARA RAO J,

