

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.8419 of 2018

ORDER :

The petitioners are A.1 to A.8 in C.C.No.731 of 2017 on the file of the XIX Metropolitan Magistrate, Kukatpally at Miyapur, taken cognizance for the offences punishable under Sections 498-A and 417 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961, out come of Crime No.123 of 2016 of Chandanagar Police Station from the report of the 2nd respondent/*de facto* complainant, no other than the wife of A.1, A.2 and A.3 are the parents-in-law of the *de facto* complainant, of whom, A.1 to A.3 are residents of Hanamkonda. A.4 and A.6 are the sisters of A.1 and daughters of A.2 and A.3 and A.5 is the husband of A.4 and A.7 is the husband of A.6 and of whom A.4 and A.5 are residents of Dallas, USA and by now at Notre Dame, USA and A.6 and A.7 are residents of Pune, Maharastra. A.8 is shown as elderly person, who arranged their marriage, is a resident of Warangal. They are seeking to quash the calendar case post cognizance proceedings.

2. Heard counsel for the petitioners, counsel for the *de facto* complainant appeared in person and also learned Public Prosecutor representing the State. Perused the material available on record for answering the rival contentions covered by the *lis*.

3. The report of the *de facto* complainant in setting the law in motion in registration of the crime on 09.04.2016 at 1300 hours reads that she being a B.Tech graduate is working in CSC India Private

Limited, Hyderabad, by residing at Chandanagar. Her parents came in touch with A.1's parents through Somanadham/A.8, family friend, for the marriage proposal from the pretence by A.8 of Grooms' family is very good, they went for negotiations and after that the marriage was performed on 05.03.2014 at Annapurna Kalyana Mandapam, BHEL, Hyderabad. As per the demands of her husband and other family members, her father gave dowry of Rs.2 lakhs in cash and Rs.10 lakhs worth gold jewellery and also spent about Rs.8 to 10 lakhs for marriage expenses as per the desire of groom and his family and after marriage and formalities, she joined her husband at the in-laws house at Hanamkonda, Warangal, and after formalities completed she joined her husband at Bangalore on 03.04.2014 and the marital life went on happily for few days and they went to Mysore for pleasure trip. A.1 had a mental break out and was behaving absurdly like singing, laughing, walking restlessly irrespective of time and when she informed to her father-in-law and mother-in-law/A.2 and A.3 about A.1's behaviour, they tried to impress that he is alright and of good health and also tried to convince that the breakout might be because of stress caused at work and when there was no improvement in his condition and she informed the same to her parents and after couple of days from his mental behaviour his parents came to Bangalore along with medicine 'Serenace' and they stated that they consulted a doctor Jagadeesh Babu of Warangal and got the medicine as per his advice. Her father came to Bangalore on 15.05.2014 and

when her father started asking questions about his condition, they tried to cover up and tried to convince as if he was well by health. On enquiring and further research, they came to know that A.1 has been suffering from Schizophrenia since long time and he cannot stay normal without medicines and has been brought to the notice that it is not curable and he has to go for life time medication. Her in-laws and herself took him to National Institute of Mental Health and Neuro Sciences (NIMHANS), Bangalore, for thorough examination, where he was treated for more than six months and Doctors confirmed that the disease was chronic one and cannot be cured and he has to be on medication for lifetime. After knowledge of the facts to her and her family members, her in-laws started harassing her mentally. She therefrom states above accused persons cheated her by hiding the truth of his mental ill-health and ruined her life. Hence, seeks to take action against her husband, father-in-law, mother-in-law, eldest sister-in-law and her husband and the other sister-in-law and her husband and the groom's family friend N. Somanadham, who acted as mediator, for their cheating and ruining her life.

4. The police having registered the crime, in the course of investigation, examined besides the *de facto* complainant supra, her father, sister, sister's husband as LWs.1 to 4 and Dr.B.Jagadeesh Babu of Jaya Krishna Psychiatric Care and Counselling Centre, Hanamkonda, Dr. Mathew Varghese, Professor of Psychiatric, NIMHANS Bangalore, Dr.Guru Raj, G.P. Psychiatrist in Axon

Hospital, Bangalore and Dr.M.Srinivasa, Director, Spandana Nursing Home, Bangalore and Narayan, HR, IBM India Private Limited, who furnished the leave records, as LWs.5 to 9. LWs.10 to 12 are the Investigating Officers who registered the crime, investigated and filed the charge sheet.

5. The final report in nut shell from the statement of LW.1 besides of the other witnesses speak that after registration of the crime and from the statement of LW.1 recorded in tune to the FIR contents, the Investigating Officer examined her family members supra, who corroborated to the contents of her and collected address particulars and contact numbers of the all accused persons and served Section 41-A Cr.P.C. notice, other than to A.4 and A.5 who are at abroad, and there was an order not to arrest pending investigation obtained by them from the High Court. LW.8-Dr.M. Srinivasa of Spandana Nursing Home, Bangalore, informed in his letter dated 01.08.2016 expressing opinion that A.1 got five years history of episodic illness and he was on irregular treatment and he was admitted with symptoms of increased anger and irritability with increased self esteem, talking high of self, abusive against family members with suspiciousness and homicidal tendencies and it was diagnosed by bipolar affective disorder, current episode mania and treated as inpatient after decreased symptomatology to premorbid levels and he is under follow up under his treatment. The letter of Dr. Guru Raj of Axon Hospital, Bangalore, with opinion, dated 07.08.2016, speaks he was treated as

out patient having visited for the first time on 01.06.2015 and at that time, his mother and wife gave different and inconsistent informations in respect of time and course of symptoms of A.1. The mother reported that he had similar episodes in the past with good response to medications medicines and recovery to pre-morbid level of functioning, however not regular in taking medicines. When he examined on 09.06.2015, he was not cooperative, walked out of the examination room and refused to take treatment. He was referred to higher centers for further inpatient assessment and management having been provisionally diagnosed as suffering from Bipolar Disorder. Dr.B.Jagadeesh Babu of Jaya Krishna Psychiatric Care and Counselling Centre, Hanamkonda, stated in his opinion letter of he admitted as inpatient and only treated as out patient and he got only clinic and not hospital and there was no case sheet maintained and he is not supposed to reveal medical report of A.1, unless revelation required by law. Dr.Mathew Varghese, Professor of Psychiatric, NIMHANS, Bangalore, in his letter dated 05.08.2016, informed that unless received orders from the Court, record cannot be furnished being confidential and they are in his safe custody. It is stated the above material well established of A.1 suffering from Bipolar Disorder, A.2 and A.3 used to stay with A.1 and take care of and all accused suppressed the facts about his disease in performance of the marriage and ruined life of complainant.

6. Investigation revealed, during marriage talks, A.1 to A.8 did not disclose about A.1's disease to LW.1 and her father/LW.2 and they suppressed the fact and fixed the marriage engagement and cause performed the marriage and thereby it constitutes the offences of cruel treatment, cheating and dowry harassment. It is said final report taken cognizance.

7. In fact, from the FIR and also from the statement of the *de facto* complainant as LW.1 during course of investigation there is no mention about the presence of A.4 to A.7 in the marriage talks specifically. Any subsequent introduction alleged in evidence if any will not come, leave about not even filed by the *de facto* complainant or Public Prosecutor. Thus, therefrom what is stated is on seeing his bio-data registered with Telugu Matrimony, her parents came in touch with A.1's family through matrimonial site and A.1 along with his family members and family friend Somanadham came to the house where the match was held and both sides agreed in performing the marriage and it was accordingly performed. He is working as Software Engineer in IBM, Bangalore. Even LW.2-father of her by name Satyanarayana Murthy, a retired Bank Manager, did not specifically state presence of A.4 to A.7 to the marriage lookings and talks. LWs.3 and 4 are sister and sister's husband LW.1/*de facto* complainant, they also did not specifically state about A.4 to A.7. There are no even any documents like photos or video of any engagement filed to say A.4 to A.7 also present, leave about any

specific assertion of when enquired about the health or found any abnormality at the time of marriage lookings and engagement ceremony when enquired about the health, any of the accused among A.4 to A.7 specifically stated of A.1 is good health for the alleged offence of cheating. Leave about the duty of A.1 and his parents to disclose the health condition of A.1 to the bride and her father and other relatives among LWs.1 to 4 and leave about any specific role of A.8 as marriage engagement elder also a resident of Warangal being of different area to the house of A.1 to A.3 of Hanamkonda.

8. Having regard to the above, there are no sustainable allegations so far as A.4 to A.7 concerned, thereby quash petition against them can be allowed by setting aside the cognizance order of the learned Magistrate, but for against A.1 to A.3 and A.8.

9. Having regard to the above, the criminal petition is allowed in part by quashing the proceedings so far as against A.4 to A.7, by continuing against A.1 to A.3 and A.8 in C.C.No.731 of 2017 on the file of the XIX Metropolitan Magistrate, Kukatpally at Miyapur, and A.4 to A.7 are acquitted. The bail bonds of the A.4 to A.7, if any, shall stand cancelled. The dismissal of the petition is not a bar to A.8, if at all from material available at trial Court, there is no sustainable accusation, to file discharge application by deletion of charge under Section 216 read with 245(2) Cr.P.C. to decide by trial Court on own merits and for that also can appreciate any evidence available on record before trial Court. Needless to say, A.1 to A.3 and A.8 can by

virtue of this order move trial Court a petition invoking Rule 37 of the Criminal Rules of Practice, for one to represent the other.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt:03-04-2019

mar

