HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No. 10350 of 2018

ORDER:

1. This Criminal Petition is filed under Section 482 Cr.P.C. seeking quashing of all further proceedings in C.C.NO.62 of 2018 on the file of the Special Judicial First Class Magistrate for Mobile Judge, Nizamabad. A charge sheet came to be filed against the petitioners for an offence punishable under Section 498-A IPC.

2. The averments in the charge sheet are as under:

Accused No.1 is the husband of respondent No.2. Accused Nos.2 and 3 are parents and accused No.4 is the brother of accused No.1. Accused Nos.2 and 3 are aged about 75 and 65 years respectively, where as accused No.4 is aged about 18 years. The averments in the charge sheet would show that the marriage of the *de facto* complainant with accused No.1 was performed on 18.11.2013. At the time of marriage, no dowry was given but one tola gold and household articles were presented by her parents. After marriage, they lead happy marital life for about five months, thereafter disputes arose between them and she left her in-laws house and went to her parental house.

3. A perusal of the proceeding sheet reveals that earlier notices were sent to the first respondent but she refused to receive the notice. Hence, on 22.01.2019, this Court ordered that the service affected against the first respondent is sufficient as she

refused to receive the notice. Thereafter, the matter has been posted to 03.04.2019 and 10.04.2019.

4. Heard learned counsel for the petitioners and perused the record.

5. It has been submitted by the learned counsel for the petitioners that before filing the present complaint by the first respondent, the first petitioner, who is her husband, was constrained to file H.M.O.P.No.23 of 2014 under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights before the Civil Judge, Senior Division, Ahmedpur on 24.07.2014. Though the notices were served in the said O.P., the first respondent did not choose her appearance before the Court concerned, and hence the Court concerned has proceeded *ex parte* against the first respondent and an *ex parte* decree was passed on 28.01.2015. Basing on the *ex parte* decree, E.P.No.1 of 2018 was filed by the first petitioner and the same has been transferred to Family Court at Nizamabad. It is also submitted that during the pendency of said petition for restitution of conjugal rights, the first respondent filed the present complaint with false and frivolous allegations. The first respondent also filed O.P.No.5 of 2016 under Section 13 (1) (ia) of Hindu Marriage Act, for dissolution of the marriage against the first petitioner before the Judge, Family Court, Nizamabad and on contest the said O.P. was dismissed on 03.07.2018. He submits that since the allegations made in the

F.I.R. are omnibus, continuation of proceedings against the petitioners would be an abuse of process of law.

6. A perusal of the material on record would show that prior to filing of the present report, the first petitioner filed H.M.O.P.No.23 of 2014 seeking restitution of conjugal rights. An exparte decree was passed in the said H.M.O.P. Since the first respondent failed to join the first petitioner, E.P.No.1 of 2018 came to be filed by the first petitioner, which was transferred to Family Court, Nizamabad, for execution. Further, the first respondent herein also filed O.P.No.5 of 2016 seeking dissolution of marriage. In para No.13 of the judgment in O.P.No.5 of 2016, there is a specific finding given by the Judge, Family Court, Nizamabad, that "the first respondent filed F.I.R. in Crime No.89 of 2014 for the offence punishable under Section 498-A IPC. A perusal of the charge sheet shows that while the said crime was registered under section 498-A IPC against her husband, his old aged parents and younger brother initially, but the husband alone was charge sheeted finally, deleting others from it as the case was not established against them in investigation. Thus, the allegations of harassment against the other family members are false." It is further held that the first respondent was not subjected to ill treatment or harassment by her husband and his family members, but the first respondent herself treated her husband cruelly by demanding him to get shifted to Nizamabad, the place of her parents.

7. In view of the findings given by the Judge, Family Court, Nizamabad, that the first respondent was not subjected to any ill treatment or harassment in the hands of the petitioners and having regard to the facts and circumstances of the case, this Court is of the view that continuation of proceedings against the petitioners would be an abuse of process of law and the same is liable to be quashed.

8. Accordingly, the Criminal Petition is allowed and the proceedings against the petitioners/accused Nos.1 to 4 in C.C.No.62 of 2018 on the file of the Special Judicial First Class Magistrate for Mobile Judge, Nizamabad District, are hereby quashed.

9. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

18.07.2019
gkv

HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD