THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.12864 OF 2018

ORDER:

The petitioners are A-1 to A-3 in C.C.No.203 of 2015, on the file of the learned III Metropolitan Magistrate, Cyberabad, at L.B. Nagar, taken cognizance for the offences punishable under Sections 498-A, 323 & 506 of Indian Penal Code (for short, 'IPC') and Sections 3 & 4 of the Dowry Prohibition Act, 1961, in Crime No.546 of 2014, dated 03.09.2014, of Station House Officer, Medipally Police Station, Cyberabad, and it is outcome of the report of the 2nd respondent/*de facto* complainant, no other than wife of 1st petitioner/A-1.

2. Heard learned counsel for the petitioners, learned Public Prosecutor representing the 1st respondent State and learned counsel for the 2nd respondent/*de facto* complainant and perused the material on record.

3. At the post cognizance after accusations of the accused and from framing of charges, trial commenced. P.W.1 also shown examined. It is at that stage, Crl.M.P.No.1250 of 2018 filed by the State of Telangana, Medipally Police Station, Cyberabad, through learned Additional Public Prosecutor against the accused persons invoking Section 91 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C'), to call for documents from the Manager of ICICI Bank, Kondapur, dated 30.03.2010 & 20.05.2010.

4. The averments in the petition are that A-1 is the husband of the *de facto* complainant and A-2 & A-3 are the parents-in-law. The *de facto* complainant (L.W.1) was examined as P.W.1 and the matter is posted for examination of another witness A.Chandra Sekkar, S/o. Late Vittal (L.W.2), father of the *de facto* complainant, who paid part of the

dowry amounts to accused by depositing into Bank Account as per his instructions *viz.,* on 31.03.2010 – Rs.49,000/-, 03.04.2010 – Rs.49,000/-, 17.04.2010 – Rs.49,000/-, 19.04.2010 – Rs.49,000/-, 21.04.2010 – Rs.42,000/-, 10.05.2010 – Rs.35,000/- & 19.05.2010 – Rs.35,000/-, total Rs.3,08,000/-. That was the account of A-1 bearing No.004001572266 with ICICI Bank Ltd., Madhapur Hi-tech City, IFSC Code – ICIC 0000040. The Bank Statement relating to the said transactions not filed with the charge sheet. However, those are relevant and material and that documentary evidence of the Bank Statement of the accused showing aforesaid transaction is required to be produced and marked in the case and unless it is summoned from Bank to exhibit on behalf of the prosecution, it shall result in miscarriage. Hence, to summon the document and directing the Manager, ICICI Bank Ltd., to produce.

5. The counter filed by the accused persons in opposing the same is that P.W.1's evidence was completed by 22.11.2017 and it is coming for further evidence of the prosecution posted to 11.12.2017 and prosecution did not lead further evidence so far. The *de facto* complainant and A-1 were classmates in High School, studied together including B.Tech and A-1 joined in Cognizant Company in January, 2009. The *de facto* complainant did Bachelor of Decree in Science and joined in Infosys Company in April, 2009, and they were friends and both agreed to marry and consequently their marriage was performed on 20.06.2010 at Medak Town and there was neither demand for dowry nor receiving of dowry including prior to marriage. The *de facto* complainant and A-1 jointly obtained Housing Loan from LIC Housing Finance Ltd. and at the time of obtaining loan, they gave ICICI Bank Account supra of Kondapur Branch through the *de facto* complainant and though the *de facto* complainant failed to co-operate with A-1, he is

paying monthly EMIs regularly of Rs.22,621/- per month through the said Bank to the LIC Housing Finance Ltd. She gave complaint to the Medipally Police on 30.09.2014, from which they registered the crime supra. Neither *de facto* complainant nor her parents or other witnesses during investigation did not mention about the alleged entries. So also, *de facto* complainant in her evidence as P.W.1 and in the DVC.No.2 of 2014 before the learned Judicial Magistrate of First Class, Medak, also did not adduce any evidence in this regard and DVC was ended in dismissal on 12.01.2017. It is also averred that because of their close friendship since prior to marriage being classmates from childhood as referred supra, A-1 took the *de facto* complainant to Sri Lalithambica Jewellery Works, Jogipet, Medak District, on 10.04.2010 and they both handed over 7 tulas gold purchased by A-1 in the said shop and ordered for making ornaments worth 175.180 grams for a total cost of Rs.1,90,582/- and 7 tulas gold valued only Rs.16,800/- per tula and after adjustment, balance paid by A-1 total of Rs.3,08,182/- *vide* Cash Memo No.912, dated 10.04.2010, 06.05.2010, 10.05.2010 and 06.06.2010 and A-1 also spent for purchase of one gold black beeds chain to *de facto* complainant of Rs.28,594/- on 24.07.2010. A-1 used to give hand loan amounts to *de facto* complainant very often when *de facto* complainant joined in Infosys Company in April, 2009, and her salary was very meagre and A-1 used to extend financial support to *de facto* complainant including to her parents, who were taking money from him and her father was working as Assistant Post Master only. At no point of time, they pointed out the said entries as if any amount for dowry. It is only introduced in order to harass and thereby sought for dismissal of the petition.

6. The impugned order of the lower Court therefrom on 02.11.2018 was that due to harassment for additional dowry, father of *de facto*

complainant (L.W.2) deposited into the Account of A-1 prior to marriage Rs.3,08,000/- according to their contest and to prove the same it is required to call for the Bank Account and it is the submission that against the DVC dismissal order, appeal already filed, according to their say and by summoning the documents, no prejudice being caused and thereby considering the facts and circumstances and in the interests of justice for proper adjudication of the case, petition is allowed is the conclusion in asking the Bank Manager by summoning to produce the record. The present impugnment is said order is baseless and unsustainable and against law and there are no sustainable grounds and there is no whisper about said amounts paid were towards dowry prior to the marriage or otherwise and once such is the case, even there are any amounts, the same cannot be considered as dowry or in meeting the demand for dowry, much less prior to the marriage and same transactions cannot be linked for the first time. Allegation of dowry, which is totally missing with such averment, if alleged, right from the legal notice and report and the investigation material and evidence of P.W.1 including in the DVC case and thereby no practical purpose being served by summoning and thereby sought for dismissal of the petition.

7. The counter filed by the 2nd respondent/*de facto* complainant in opposing the present petition seeking to set aside the order of the lower Court by the accused, is with the contentions reiterating their counter filed before the lower Court and by saying the petition was rightly allowed by the trial Court within its discretion and for this Court while sitting against, there is nothing to interfere. Same is also the submission of the learned Public Prosecutor.

8. Learned counsel for the 2nd respondent/*de facto* complainant placed reliance on the expression of the Apex Court in **Nitya Dharmananda Alias K.Lenin and another v. Gopal Sheelum Reddy Also known as Nithya Bhaktananda and another and batch[1].** It is in dealing with Section 91 Cr.P.C. invoked by accused at the stage of framing charge. It is the conclusion that accused has no such right to call for the records prior to the framing of charge. In the course of said order with that conclusion, it is observed by reiterating the principle in this regard laid down in **State of Orissa v. Debendra Nath Padhi[2]** and quoted from para 19 of the another Constitution Bench expression in **Hardeep Singh v. State of Punjab[3]** that Court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the Courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence. It is therefrom observed in **Nitya Dharmananda's Case (supra 1)** at para 8 that while ordinarily the Court has to proceed on the basis of material produced with the charge sheet for dealing with the issue of charge but if the Court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the Court is not debarred from summoning or relying upon the same even if such document is not a part of the charge sheet. It is now to consider how far the principle laid down in the expression is applicable to the facts. It is not even the

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[1] (2018) 2 Supreme Court Cases 93
[2] (2005) 1 SCC 568
[3] (2014) 3 SCC 92

case of the prosecution that they did not investigate. It is not even the case of the *de facto* complainant in the counter in this Court that prosecution withheld any material even they furnished the information in the course of investigation. It is not even the counter averment that they whispered anything in this regard either in their FIR or in the investigation statement. It is not even deposed by P.W.1 of these amounts are paid as dowry be remitting to the Bank Account of A-1. Once such is the case, the principle laid down in the expression has no application to the facts. Even taken for arguments sake that the amounts are remitted and lying to the account of the accused, what is mentioned in the counter is that it is not a dowry and it is their love marriage. Thereby, once there is no whisper that these amounts relate to dowry by practically summoning and proving an undisputed fact of the amounts of remittance, no purpose would be served. That was not considered by the lower Court.

9. Having regard to the above, the Criminal Petition is allowed by setting aside the order of the lower Court.

Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

DR.B.SIVA SANKARA RAO, J

Date: 30th January, 2019

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THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.12864 OF 2018

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