

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.13494 of 2018

ORDER :

The petitioners are A.1 and A.2 in Crime No.679 of 2018, dated 05.08.2018, of P.S.Madhapur (Guttala), out come of the report of the 2nd respondent, no other than wife of A.1, whose father is A.2, registered for the offences punishable under Sections 498-A, 324 and 506 IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. They are seeking to quash the said crime proceedings.

2. The sum and substance of the report of the *de facto* complainant in registration of the crime against A.1 and A.2 among others supra that her marriage with A.1-V.Veera Nagendra Kumar of Yanam near Kakinada performed on 01.09.2007 at Kapu Kalyana Mandapam, Kakinada, where her father, being she is the only daughter, performed the marriage by spending about Rs.15 lakhs and as per the demands of the husband and parents-in-law of her, one flat at Nizampet and one vacant site at Gachibowli given besides Rs.5 lakhs cash, Rs.10 lakhs towards marriage expenses and Rs.2 lakhs house hold articles besides Rs.6 lakhs spent for 'saare' samans three years back and after marriage she joined her husband at Yanam in the in-laws house where her husband's brothers elders and younger, her husband's parents also staying with her co-sisters as a joint family. For few months her marital life went on well and later her mother-in-law was ill-treating her so also her husband by abusing as she brought only small amount of dowry and not to their expectation and asking to commit suicide by

jumping into the canal abutting to their house so that they can perform another marriage to A.1. Even the in the marital life of herself and A.1, they blessed with two daughters, eldest born on 05.06.2009 and younger one was on 18.08.2012 and they were ill-treating for giving birth to the two female children and not blessed with male child and also to meet additional amounts for that and they were trying one way or the other to get rid of her and once on 01.04.2016 her mother-in-law/A.3 tried to squeeze her neck by caught hold of and the domestic female maidservant, who came to her rescue when raised cries so also two co-sisters. When there was a dispute raised elders interfered and set up a caise separate family at Kakinada for A.1 and herself, even there was no change in the attitude of A.1, he was threatening and beating by saying he will kill her and the two children and go for another marriage. It was while so on 22.07.2018 her husband with mop stick beat indiscriminately by saying he will kill her and also two daughters and he necked her out and she lost the conscious and by the time she regained conscious, the door was locked with no other go with wearing clothes she came to the Centre from the house of husband at Kakinada and boarded a bus requesting the bus driver that her father will pay the bus fair at Hyderabad and she telephoned to her father from one of the co-passenger's cell phone and her father came and paid the bus fair amount and taken her to the house and she is fearing about the life of the two children in the hands of A.1 and A.2 and even efforts made, they did not heed and thereby to take action.

3. The grounds urged in the quash petition impugning the said crime pending insofar as against A.1 and A.2 concerned are that it is a false story weaved after deliberations and consultations and she also filed W.P.No.27239 of 2018 in the High Court for Habeas Corpus direction for the two children with concocted story. One Atchuta Rao, family friend of her, assured that she would join soon and she was under mental depression and A.1 believed the same and waited hoping for her joining him, however, there is no response from either side i.e., Atchuta Rao or from her father. A.1 requested her and her parents to join for the house warming ceremony at Yanam on 30.08.2018 and A.2-father of A.1, even visited along with one V. Srinivas Rao of Yanam, the *de facto* complainant parents' house on 24.08.2018 and requested her to join with A.1 with the children for the house warming ceremony on 30.08.2018 at Yanam, she agreed for the time being, however, did not join and they did not attend the house warming ceremony function on 30.08.2018. A.1 paid even first term and second term school fees to the children at Kakinada with a hope that she would join and having no other go, he vacated the apartment at Kakinada on 15.09.2018 from their refusal to join and shifted all movables to the family house at Yanam. He found the medical file belongs to the *de facto* complainant and found she was under treatment of Doctors at Apollo Hospital for mental ill-health and he contacted Doctors at Kakinada and shown the medical history, who informed that she is suffering from mental ill-health. Therefrom he

cause issued legal notice, dated 06.10.2018 and 18.10.2018 calling her to join him and the same returned unclaimed and he filed O.P.No.2869 of 2108 before the Family Court, Kukatpally, for custody of the two children and after receipt of summons from Family Court, Kukatpally, she filed O.P.No.2659 of 2018 seeking divorce against him. He received a phone call from the Inspector of Police, Madhapur Police Station, on 13.12.2018 about the crime pending from her above referred report registered on 05.08.2018. It is the contention that the averments are untrue and false and continuation of crime is abuse of process and there are no sustainable allegations and thereby the crime is liable to be quashed.

4. Learned counsel placed reliance on the two expressions, one is **Amarendu Jyoti and others v. State of Chhattisgarh and others**¹, where it is observed that when the alleged offence of cruelty committed against wife during her stay at matrimonial home at Delhi and wife returned to Chhattisgarh to her father's place and lodged FIR alleging cruelty and dowry harassment, for the alleged acts when taken place at Delhi, which forced her to return to Chhattisgarh for no evidence to show her husband or other members tried to contact her even on phone at Chhattisgarh, Ambikapur, the Court at Ambikapur has no jurisdiction to take cognizance to try the alleged offences. In fact, it is only at the crime stage and as per Section 156(2) Cr.P.C. on the police officer's power to investigate a cognizable offence no

¹ (2014) 12 SCC 362

proceedings of a police officer shall at any stage of the investigation be called in question on the ground that the case was one which such officer is not empowered under the sections to investigate. The jurisdiction aspect arises only for cognizance and not for investigation and it is premature to go into as to the territorial jurisdiction aspect, but for to raise if at all any cognizance taken at the later stage.

5. Coming to the other expression placed reliance in **Pabbatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and others v. State of Gujarat and another**² it is the guiding principle on quash proceedings invoking Section 482 Cr.P.C. discussed, there is no quarrel on that, but for on the factual matrix it deserves quashing of the FIR against A.1 and A.2-the husband and mother-in-law of the *de facto* complainant, from the perusal of the face value of the allegations in the F.I.R. The allegations in the F.I.R. referred supra in registration of the crime on 05.08.2018 shows specific allegations so far as A.1 and A.2 concerned. Once such is the case, for not a case of on reading of the face value of the allegations no offence made out, leave about any delay in F.I.R., it is premature to go into and quash, that too in a matrimonial offence from no wife immediately can be expected for every bickering or single instance to go to police and report the occurrence.

6. Having regard to the above, without prejudice to the available defence in future, the quash petition is dismissed. However, pending

² (2017) 9 SCC 641

investigation the petitioners/A.1 and A.2 shall not be arrested even if they are not enlarged on bail and further the investigation shall go on. However, it does not prevent the police in the course of investigation to secure their presence for the purpose of investigation.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt: 03-04-2019

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