

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No. 1214 of 2019

ORDER:

The present Criminal Petition is filed, under Section 482 of Cr.P.C., seeking to quash the order, dated 24.01.2019 passed in Crl.R.P.No.11 of 2016 on the file of the V-Additional Metropolitan Sessions Judge (Mahila Court), Hyderabad, confirming the order of the XV-Additional Chief Metropolitan Magistrate, Hyderabad, passed in Crl.M.P.No.1061 of 2015 in C.C.No.164 of 2011, dated 14.08.2015.

Brief facts of the case are that the petitioner/*de facto* complainant lodged two complaints against respondent Nos.2 to 4/ A-1 to A-3 herein, one is before Gopalapuram Police Station, Secunderabad and another before the Women Police Station, Begumpet, alleging therein that her marriage was performed with respondent No.2/A-1 on 22.10.2004 as per Hindu rites and customs and at the time of marriage, her parents gave cash of Rs.3,00,000/- as dowry and Rs.25,000/- to the elder sister of respondent No.2/A-1 towards Adapaduchu katnam, a wrist watch and five tulas of gold. After marriage, she joined her husband and they lived together for some time. Later, respondent Nos.2 to 4 started harassing her that she has

no job and they also subjected her to cruelty both mentally and physically by demanding additional dowry. Unable to bear such harassment, she lodged the above two complaints. After completion of investigation, the police filed charge sheet before the trial Court, who in turn took the case on file against respondent Nos.2 to 4/A-1 to A-3 and numbered the same as C.C.No.164 of 2011.

When the aforesaid Calendar Case was coming up for arguments, the State represented by Public Prosecutor, filed CrI.M.P.No.1061 of 2015 under section 216 of Cr.P.C., to take cognizance against respondent Nos.2 to 4/A-1 to A-3 for the offence punishable under Section 406 of I.P.C. and Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961 on the ground that the prosecution failed to take steps at the appropriate time seeking for addition of the said penal provisions and also on the ground that the learned Magistrate failed to frame charges. The said petition was dismissed by the learned Magistrate, holding that the ingredients constituting an offence under Section 406 of I.P.C. and Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961, were not attracted. Aggrieved by the same, the State filed CrI.R.P.No.11 of 2016 before the V Additional Metropolitan Sessions Judge, Hyderabad. Vide order, dated 27.10.2017, the learned Metropolitan Sessions

Judge, Hyderabad, disposed of the matter, directing the Magistrate to add Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961. Challenging the same, respondent Nos.2 to 4/A-1 to A-3 preferred CrI.R.C.No.2944 of 2017 before this Court. By an order, dated 07.12.2017, this Court allowed the said revision and remanded the matter to the V-Additional Metropolitan Sessions Judge, Hyderabad, for disposal in accordance with law. Thereafter, the learned V-Additional Metropolitan Sessions Judge, Hyderabad, after hearing the matter afresh, dismissed the said revision. Challenging the same, the present Criminal Petition is filed by the petitioner/*de facto* complainant.

Heard learned Counsel appearing for the petitioner/*de facto* complainant, learned Additional Public Prosecutor appearing for the 1st respondent-State and learned Counsel appearing for respondent Nos.2 to 4/A-1 to A-3.

It has been submitted on behalf of the petitioner/*de facto* complainant that the order passed by the learned Sessions Judge, is bad in law and perverse to the facts and evidence on record. It is also submitted that both the Courts below ought to have seen that, basing on the evidence on record, the prosecution has rightly found that respondent Nos.2 and 3/A-1 and A-2 have committed the offences punishable under Section

406 I.P.C. and Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961, as such the State represented by the Public Prosecutor filed CrI.M.P.No.1061 of 2015 under Section 216 of Cr.P.C. for framing of the charges against respondent Nos.2 and 3/A-1 and A-2, but the trial Court, on erroneous grounds, dismissed the said application, which was confirmed by the Sessions Court. The order passed by the learned Sessions Judge is totally unsustainable in the eye of law and contrary to the evidence on record, as such the same is liable to be set aside and the application needs to be allowed with a direction to the trial Court to add Section 406 of I.P.C. and Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961. It is further submitted that the learned Judge ought to have seen that the evidence of P.Ws.1, 5 and 6 clearly show how the accused demanded additional dowry from the petitioner/*de facto* complainant and her father. Without perusing the depositions, the learned Sessions Judge in a casual and routine manner and without taking into consideration the observations made by this Court while remitting the matter, passed the order under revision, which is totally unsustainable and contrary to the law laid down while deciding the cases arising under Section 216 of Cr.P.C. It is also submitted that the Courts below ought to have seen under Section 216 of Cr.P.C., a Criminal Court can alter or

add any charge before the judgment is pronounced. When the evidence on record clearly shows that respondent Nos.2 and 3/A-1 and A-2 have committed the offence under Section 406 of I.P.C. and Sections 3, 4 and 6 of the Dowry Prohibition Act, the learned Magistrate as well as the learned Sessions Judge, erred in rejecting the said application. The findings given by the Courts below are totally contrary to the evidence on record and settled principles of law laid down while deciding the cases arising under Section 216 of Cr.P.C. If the impugned orders passed by the Courts below are allowed to stand, it would be an occasion to miscarriage of justice, therefore, the same are liable to be set aside.

Learned Counsel for respondent Nos.2 to 4/A-1 to A-3 would submit that once there is an alteration or addition of charge, then that is required to be read and explained to the accused and a new trial will be conducted. Since the matter was posted for arguments, now addition of charge at this belated stage would cause great prejudice to the respondent Nos.2 to 4/A-1 to A-3.

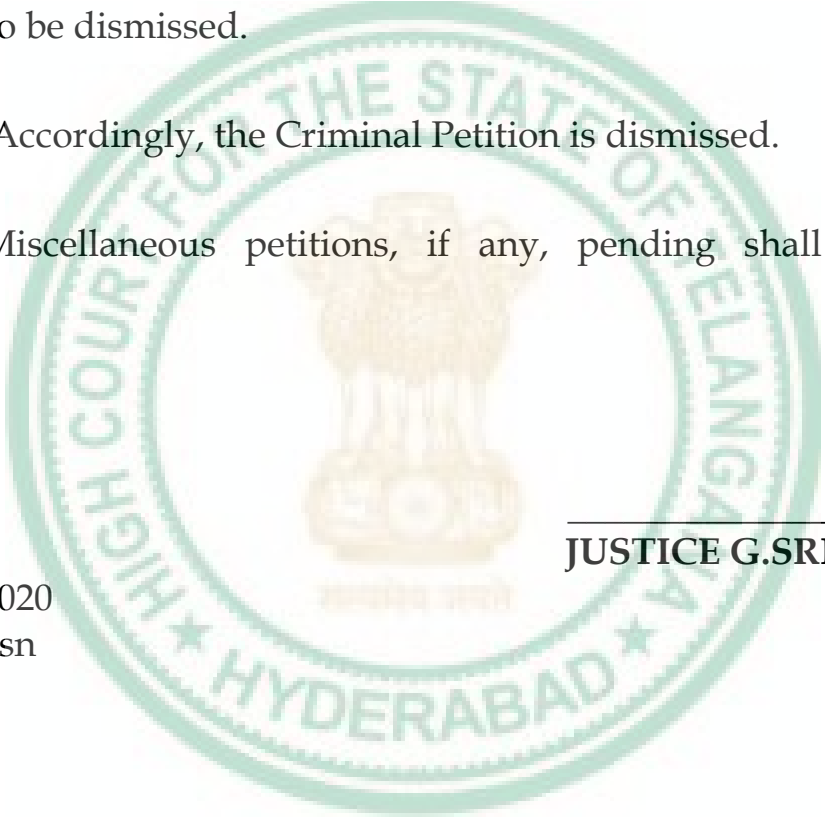
A perusal of the complaints filed by the petitioner/*de facto* complainant, which were marked as Exs.P1 and P2, and the depositions of the witnesses, there are no specific allegations

with regard to the entrustment of property and also misappropriation of the same by respondent Nos.2 to 4/A-1 to A-3. In the absence of any material, both the Courts below have rightly rejected the prayer seeking addition of Section 406 of I.P.C., and Sections 3, 4 and 6 of the Dowry Prohibition Act, 1961. Hence, there is nothing to interfere with the findings arrived at by both the Courts below and the Criminal Petition is liable to be dismissed.

Accordingly, the Criminal Petition is dismissed.

Miscellaneous petitions, if any, pending shall stand closed.

03.02.2020
gkv/Gsn


JUSTICE G.SRI DEVI



