

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

Criminal Petition No.11238 of 2017

ORDER:

The 1st petitioner-Md.Jahangeer and the 2nd and 3rd petitioners Wazeera Bee and Md.Abbas Ali are A.1 to A.3 respectively in C.C.No.353 of 2014 pending on the file of the I Addl.Judicial Magistrate of First Class, Mancherial (for short, 'the Magistrate') outcome of Cr.No.173 of 2013, dt.02.10.2013 of the Mandamarri (M) Police Station registered for the offences punishable u/ sec.406 and 506 IPC r/ w 156(3) CrPC on his/ her forwarding the private complaint filed by the 2nd respondent-complainant by name Ruksana Begum before the learned Magistrate for registering crime and investigation. On which the police supra after investigation filed chargesheet on 30.07.2014 and the same was taken cognizance by the learned Magistrate and numbered as Calander Case supra.

2. The contents of the private complaint of the 2nd respondent-complainant in registering the crime are that the marriage of the complainant with A.1 was performed on 30.07.2010 at her parents' house at Mandamarri as per their caste custom and at the time of marriage, L.W.2-Raja Mohammad, father of the complainant gave cash of Rs.4,50,000/-, 4 tulas of gold and household articles worth of Rs.2,00,000/- to the accused as stridhana property in the presence of L.W.3-Md.Osman Bashu and L.W.4-Shaik Mohamood and other relatives. After the marriage, the accused persons started ill-treating the complainant demanding for additionally dowry and in turn the father of the complainant paid Rs.5,00,000/- to the A.1 on 26.12.2010 and again Rs.6,00,000/- on 16.02.2011 and also paid Rs.4,00,000/- on

29.05.2011 in all Rs.19,50,000/- towards stridhana property of the complainant, but the accused again demanded for additional dowry of Rs.3,00,000/- and caused domestic violence. In the month of December, 2011, all the accused abused and beat the complainant demanding for additionally dowry, snatched gold ornaments and necked her out. The complainant, after waited for some time expecting change in the attitude of the complainant, finally lodged a complaint to police supra who registered it as Cr.No.37 of 2012 for offence punishable u/ sec.498-A IPC against the accused persons herein. She further averred that the above presentations including Rs.19,50,000/- which are stridhana property of the complainant entrusted to the accused, they are being the custodians of said property, liable to hand over as and when demanded but they kept with them and misused for their own and refused to pay the amount and return the articles saying they used away the same. Finally on 10.07.2013 when the complainant demanded for return of the amount and articles supra, the accused refused and threatened her and her parents with dire consequences to do away with their lives. Hence to take action.

3. The police having registered the crime after investigation filed charge sheet on 30.07.2014 by citing 7 witnesses including the investigating officer who registered the crime from the referred private complaint of the Magistrate and investigated, among others L.W.7 is the complainant, L.W.2 her father-Raja Mohammad, L.Ws.3 to 6 other witnesses to corroborate in saying in the course of investigation L.W.2 corroborated to L.W.1 said facts covered by the

First Information Report supra. It is not mentioned what L.Ws. 3 to 6 stated separately but for in para-13 of the charge sheet page 2 mentioned as they corroborate the statement of L.W.2 and the learned Magistrate therefrom taken cognizance for the offence supra by allotting Calander Case number 353 of 2014(present Case) which is subject matter of the impugnment in the quash petition.

4. The contentions of the accused in their quash petition as well as during arguments are that the Investigating Officer did not examine and record statements during investigation of any witnesses L.Ws.2 to 6 and not ascertain any truth of it and thereby the charge sheet also not disclosing what they stated. It is further submitted that much prior to filing of this quash petition, the complainant filed a criminal case against the petitioners and others u/ sec.498 IPC in Cr.No.37 of 2012 and on filing chargesheet, the Magistrate taken cognizance and numbered as C.C.No.135 of 2012 and renumbered as C.C.No.456 of 2015 and after trial, they were acquitted by the trial Court's Judgment dt.21.07.2017. The facts in the said case and the present quash petition are one and the same and same is nothing but abuse of process and they cannot be driven to face another trial herein with same and similar fats besides the facts are even inconsistent. It is also the contention that the complainant also filed a claim for Rs.19,50,000/- along with other reliefs under Protection of Women From Domestic Violence Act, 2005 vide DVC No.16 of 2012 before the same Court which is also with same set of facts, wherein the learned Magistrate by order dt.24.04.2017 allowed for maintenance and other amounts only by dismissing claim of Rs.19,50,000/- against which no

appeal was preferred by the complainant and since the order in DVC has become final, it operates as obiter and bar to the present Calander Case also by double jeopardy and issue estoppel. Lodging of Series of complaints by the 2nd respondent thereby shows with an intention to harass the petitioners and extract huge amounts by abuse of process. It is also contended that there is no occasion for the petitioners to go to Mandamarri to question her relatives including her father much less on 10.06.2013 as alleged in the complaint and the case registered is only on the version of the complainant and table made examination of interested persons of the complainant as witnesses and therefrom sought for quashing of the Calander Case proceedings.

5. The counsel for the complainant and the learned Public Prosecutor for the State sought for dismissal of the quash petition saying there are no grounds to quash the Calander Case proceedings from *prima facie* accusation and no way barred by double jeopardy.

6. Undisputedly, the C.C.No.135 of 2012 covered by Cr.No.37 of 2012 on the self-same complainant's report dt.26.03.2012 from investigation by Mandamarri Police, against the accused/ petitioners and others post-cognizance trial conducted and ended in acquittal from her allegations are for dowry harassment and the trial was thereby for the offences punishable u/ sec.498-A IPC and Section 4 of the Dowry Prohibition Act. Had there been any worth material of any entrusment and not as dowry, she could have been mentioned that factum also for not a case of any entrusment subsequent to her report in Cr.No.37/ 2012 dt.26.03.2012, for filing the present private

complaint in registration of the crime in July, 2013 and so that was forwarded to Magistrate in registration of the crime No.173/ 2013 on 03.10.2013 alleging the so called entrustment as if there is no dispute even on the fact that in DVC No.16 of 2005 filed by her by making a claim in this also for its return/ compensation for the same that was disbelieved and the claim was dismissed for self-same amount of Rs.19,50,000/- by judgment of the learned Magistrate in the DVC Case on 24.04.2017. Though said C.C.No.135 of 2012 re-numbered as C.C.No.456 of 2015 and its acquittal judgment dt.21.07.2017 and the DVC No.16 of 2012 and its judgment dt.24.04.2015 are subsequent to registration of the present crime (Cr.No.173 of 2013) in 2013 in view of the same issue decided therein as referred supra particularly in the DVC Case by negating the crime there is issue estoppel and the accused on the self-same accusation of such disbelieved entrustment of the jewellery for the alleged offence of criminal breach of trust cannot be prosecuted for said offence u/ sec.406IPC and so far as the other offence u/ sec.506IPC there is no substance much less any material.

7. Having regard to the above and from the said material, the continuation of the proceedings in C.C.No.353 of 2014 for the alleged offence of criminal breach of trust and criminal intimidation outcome of a private complaint is nothing but abuse of process and investigation is nothing but mechanical and thereby liable to be quashed.

8. In the result, the Criminal Petition is allowed quashing the proceedings in C.C.No.353 of 2014 pending on the file of the I

Addl.Judicial Magistrate of First Class, Mancherial, against the petitioners/ A.1 to A.3 and they are acquitted. Their bail bonds shall stand cancelled. Pending miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO J,

Date:31.01.2019
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