

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.182 of 2015

ORDER:

In this petition filed under Section 482 Cr.P.C, petitioners/A.2 and A.7 are seeking quashment of the proceedings in FIR No.130 of 2014 on the file of Kothapatnam P.S, Prakasham District.

2 a) A.1 is the husband of the *defacto* complainant, A.2 is alleged to be the second wife of A.1, A.3 and A.4 are parents of A.2, A.5 and A.6 are sisters of A.2 and A.7 is the brother of A.2 whereas A.8 and A.9 are the parents of A.1. The complainant's case is that her marriage with A.1 took place on 08.03.2007 in Kandukur Town, Prakasham District and the parents of the complainant gave Rs.6,50,000/- in cash and 100 tulas gold towards dowry to the parents of A.1. The complainant was working in USA at the time of marriage. Within short time after marriage, A.1, A.8 and A.9 started harassing her and A.1 demanded additional dowry of Rs.60,00,000/- and he alternatively suggested her for abortion. Ultimately unable to bear the tortures of A.1, A.8 and A.9 she lodged a complaint and after investigation charge sheet was filed and case was registered as C.C.No.227/2007 before the Judicial First Class Magistrate at Kanigiri and later A.1, A.8 and A.9 were convicted for the offences

under Section 498-A IPC r/w Sec.3 & 4 of Dowry Prohibition Act. They filed Criminal Appeal No.51 of 2012 before the VII Additional Sessions Judge, Ongole and the same was allowed. The complainant challenged the same in Criminal Appeal No.245 of 2013 before the High Court and the same is pending.

b) The further allegations in the complaint are that A.1 filed a divorce petition before New Jersey Court, New Jersey, USA with an ulterior motive that the complainant cannot approach USA and contest. She sent her counter by Fedex Courier on 24.01.2009 and 08.05.2009 challenging the jurisdiction of the said Court. However, an ex parte divorce decree was granted in favour of A.1. The complainant filed O.S.No.173 of 2009 before Additional Chief Judge, City Civil Court, Secunderabad seeking declaration that the said divorce decree dated 03.06.2009 obtained by A.1 in USA Court was vitiated by fraud and misrepresentation and without jurisdiction and not binding on her. The said suit was transferred to VI Metropolitan Sessions Judge-cum-XX Additional Chief Judge, City Civil Court, Secunderabad. In I.A.No.403 of 2013, the Court granted interim injunction restraining A.1 from contracting second marriage and same is still in force.

c) Added to above, the complainant filed O.P.No.244 of 2009 before the Judge, Family Court at Secunderabad

seeking maintenance to her and her daughter.

d) Then the further allegations are that A.1 of-late illegally married A.2 in a temple at Gadepalem village under the guise of foreign decree despite the prohibitory orders in O.S.No.173 of 2009, A.2 to A.9 abetted the said marriage. A.1, A.8 and A.9 gave Rs.20,00,000/- as Kanyasulkam to A.2 and her family members. Hence the complaint for the offences under Section 494 r/w 109 IPC and Section 420 IPC. The complaint was forwarded to Police Kothapatnam P.S, who registered FIR in Crime No.130 of 2014 and investigating the matter.

3) Denying the allegations, learned counsel for petitioners/A.2 to A.7 submitted that except vague allegations there is no tangible material to hold that second marriage was performed between A.1 and A.2 with the connivance of other accused. Learned counsel argued that no time, date and place of the alleged marriage were mentioned and the allegations do not show that A.2 to A.7 had prior knowledge of the first marriage of the *defacto* complainant and A.1. He submitted that in the light of these facts, continuation of the investigation will be nothing but abuse of process of law and thus prayed to quash the FIR.

4) Per contra, vehemently opposing the petition, learned counsel for 2nd respondent/*defacto* complainant

submitted that the complaint allegations would clearly project the necessary material against A.2 to A.9 for their connivance in performing the second marriage between A.1 and A.2 and since the complainant was not a direct eye witness to the said marriage, it is difficult for her to give the exact date and time of the marriage but still, she could give the necessary particulars which constitute the offence. He argued that if the investigation is allowed to continue, all the facts relating to the second marriage which was performed secretly by the accused will be brought-forth with full details. He thus prayed to dismiss the Criminal Petition.

5) On hearing the both sides and perusing the complaint allegations, I find force in the submission of learned counsel for 2nd respondent/ complainant. The complainant was not an eye witness to the alleged second marriage and she could get the knowledge only from the third parties and hence it is difficult for her to give all the minute details of the alleged second marriage between A.1 and A.2 and also the respective roles of other accused. It should not be forgotten that an FIR is not an Encyclopedia to give the minute details relating to an offence but suffice, if the details narrated in the complaint disclose the commission of a cognizable offence to act upon by the police machinery. In that view of the matter, the FIR in the instant case *prima facie*

discloses the offence against A.1 to A.9. So it is not a fit case to order quashment of the proceedings at this stage. Therefore, the investigation shall continue.

However, considering that the offence alleged is not a grave and heinous one and that some of the accused are women, the petitioners/A.2 to A.7 can be granted bail.

6) In the result, this Criminal Petition is dismissed with the following directions:

- (i) The Police of Kothapatnam P.S, Prakasham District shall continue the investigation to its logical end.
- (ii) In the meanwhile, the petitioners/A.2 to A.7 are directed to surrender before the II Additional Judicial First Class Magistrate, Ongole on or before **09.02.2015** and on such surrender, they shall be enlarged on bail on each of them executing a bond for Rs.20,000/- (Rupees Twenty Thousand only) with one surety each for likesum to the satisfaction of the said Court.
- (iii) The petitioners/A.2 to A.7 are directed to cooperate with the investigating agency for smooth completion of investigation.

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

U.DURGA PRASAD RAO, J

Date: 02-02-2015

Note: Issue C.C by today.

(b/o)

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