

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7716 of 2013

ORDER :

The criminal petition is filed by the petitioner/accused under Section 482 Cr.P.C seeking to quash the proceedings in Crime No.16 of 2013 of Kurnool II Town Police Station registered for the offences punishable under Section 366 I.P.C which is the outcome of the private complaint filed by the 2nd respondent/defacto-complainant before the learned Magistrate at Kurnool who referred the same to the police for investigation under Section 156(3) Cr.P.C.

2) In the complaint, the offence mentioned is Section 366 I.P.C. It is pursuant to which the crime registered and the investigation is pending. It appears that the petitioner was enlarged on bail in CrI.M.P.No.1247 of 2013 before the VI Additional District and Sessions Judge, Kurnool. It shows from the material filed by the accused, the affidavit given by the wife of the defacto-complainant stating that she was not kidnapped by accused, but she left. The affidavit further reads that she got illicit relationship with the accused even prior to her marriage and when she wanted to marry the accused, her parents against her will, performed the marriage with the defacto-complainant and thereby on knowing it, the defacto-complainant since was harassing, she filed a divorce petition in O.P. No.1314 of 2011 in the Family Court, L.B.Nagar. It is in support of the accused, she has given the affidavit, thereby saying there is no offence of kidnap or abduction and she voluntarily left.

3) In the private complaint the averments show there is an elopement by accused with the wife of the defacto-complainant and he kidnapped under the guise of providing employment from kurnool to Hyderabad in his absence on 02.06.2012 in a car, on return to home, he found and even reported to police no action that could be taken, thereby constrained to file the private complaint.

4) No doubt, it is the submission by the learned counsel for the

defacto-complainant that there is an offence under Section 497 I.P.C and it is a private complaint and the learned Magistrate instead of taking cognizance referred to the police for investigation. The private complaint filed clearly for the offence under Section 366 I.P.C. It is an offence for the police to register but the wife of the defacto-complainant allegedly kidnapped and herself states on oath by affidavit and filed before the Court, where granted bail application clearly speaks there was no offence of kidnapping, for the police to register the crime or to investigate so far as the offence under Section 497 I.P.C concerned, even to direct the police for further investigation as it is a non-cognizable offence, there is a bar under Section 155 Cr.P.C.

5) Having regard to the above, such recourse if at all is not a bar for the defacto-complainant but for not sustainable to consider that submission for continuation of criminal proceedings, for the offence under Section 366 I.P.C since not made out, from that material. The proceedings are thus liable to be quashed.

6) In the result, the petition is allowed and all the proceedings in Crime No.16 of 2013 of II Town Police Station, Kurnool are hereby quashed. Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

17.11.2015

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