

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P.No.6038 of 2014

ORDER :

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the 7 petitioners-Accused persons to quash the proceedings in Cr.No.12 of 2014 on the file of the Station House Officer, Mahila Police Station, Anantapur registered for the offences under Sections 498-A,494,420,323 read with 34 of I.P.C. and under Section 4 of the Dowry Prohibition Act(for short, 'the Act'), on the report of the 2nd respondent/defacto-complainant.

2. Heard both sides and perused the material on record.

3. Among the 9 accused in the crime supra the petitioners 1 to 7 who are A.2 to A.8 of whom A.1 is husband of the defacto-complainant by name Vijayender Janga, who contacted alleged bigamous marriage with A.5 T.Akhila, A.2 and A.3 are his parents (her in-laws), A.4 is her husband's brother and A5 to A.8 are the relatives of her husband. The marriage of the defacto-complainant with A.1 was performed on 30.07.2006, the report of the defacto-complainant dated 15.02.2014 reads that she is presently staying in Anantapur new town, that her husband Vijayender earlier resident of Hyderabad presently staying in Australia as permanent citizen of that country, that the couple lived together after marriage in Australia, from 2007 onwards, by practicing as Dentists and running a dental clinic named as Ormeau Dental, shop No.9, Vaughan Drive, Ormeau, QLD,4208 with names VJ and SL Private Limited Company, that while they were staying in Australia on 10.07.2013 her in-laws(A.2 and A.3) came to Australia and stayed with them till they returned to India on 10.10.2013, that after they came to Australia on 10.07.2013, she came to India on 19.07.2013 and went back to Australia on 2/3.11.2013, on which day, when she entered into matrimonial house, her husband Vijayender informed at the doorstep that he got marriage with one T.Akhila who is related to him and he told further that it was an arranged marriage performed by his parents at Tirupati on 23.10.2013 to her shock for her questioning how he could marry another woman while their marriage is in substance, he raised heated argument saying he could leave said Akhila within 15 days by negotiating with her and her parents, she went in depression without proper sleep or food with dizziness and even unconscious and survived by Juices, even he dragged her by holding her hair from bedroom to

living room and also abused her and beat hitting her stomach with right leg and also choked her with hands causing bleeding scratches on his neck with fingernails and threatened her to kill unless she leave the home and the country Australia saying he can live with said Akhila as her parents are not agreeing to get rid of her, that he tortured the defacto-complainant physically and mentally to get rid of her from which unable to bear, she came back to India on 07.11.2013 at the advice of her father and thereafter she fell sick from brooding with depression, suffering with anorexia, insomnia and hypotension as she was unable to come out from the shock of her husband's unlawful marriage with T. Akhila and from his brutal behavior with her for nearly three months. It is also her averment that her husband Vijayender (passport No.N5952987) cheated her having married T.Akhila arranged by his parents that was registered under the Hindu Marriage Act No.436 of 2013 volume 7 page 66 without any information to her and her parents knowingly and intentionally and wrongfully suppressing his marriage with her(defacto-complainant). She averred further that her husband came to India with his parents from Australia on 10.10.2013 to Hyderabad and stayed for 20 days and married T.Akhila on 23.10.2013 and left to Australia on 30.10.2013(sic for 30.11.2013).

4. It is also her averment that her husband Vijayender, having wrongfully married Akhila, applied for spouse migration/visiting /student visa to said Akhila by his sponsoring spouse migration as his wife through Infant Jesus Educational Consultancy, Secunderabad with marriage certificate obtained at Tirumala and Said Akhila also obtained passport mentioning Vijayender as her husband from the original passport office, Secunderabad suppressing the facts and by cheating and with false information to Australia High Commission, New Delhi. She averred further that her husband and in-laws forced her to get from her father 50 lakhs additional dowry and to transfer land in her native village, in the name of her husband and for refusal, her husband and in-laws harassed her and all the acts are in collusion with her father-in-law and mother in law with conspiracy and her husband marrying Akhila no other than the relative even without divorce of the first marriage hence to take action.

5. The quash petition grounds to quash the crime proceedings with allegations supra are that the A.1 married the defacto-complainant undisputedly on 30.07.2006 and later the couple started living at Australia by practicing as dentists, however, the further allegations that she questioned the A.1 on 2/3.11.2013 about his marrying

T.Akhila, for which her husband stated her that he would get rid of said T.Akhila within 15 days, and again stated her parents unwilling and started harrassing her etc., are all false, that the A.1 married said Akhila on 23.10.2013 at Tirumala which is an arranged and the same also registered. According to the quash petitioners are concerned, there is a divorce petition between A.1 and the defacto-complainant in the Federal Magistrate Court, Australia before whom the defacto-complainant appeared and offered no objection for grant of divorce and the Court supra granted divorce by orders dated 18.10.2012. and after said divorce order they are living aloof in Australia and even being a party to the divorce proceedings she suppressed all the facts and foisted the false case with ill-intentions to harrass and to have wrongful gain and visited the house of A.1 in Australia on 02.11.2013 and created domestic violence and therefrom A.1 approached local police in Australia and the defacto-complainant was taken to custody and produced before the competent Court and restraining orders were passed against her on 11.11.2013 for violating the restraining orders passed by the Court while granting divorce on 18.10.2012 and the order clearly speaks the defacto- complainant herein appeared before the Federal Magistrate Court of Australia on 17.10.2012 and offered no objection for grant of divorce, and the same is reflected in the orders dated 18.10.2012 and the present petition is nothing but false and fictitious by roping parents and other family members of the A.1 and including Akhila and by stating as if the marriage of defacto-complainant and A.1 still subsisting and thereby the F.I.R proceedings are liable to be quashed. There was interim stay of all further proceedings in CrI.M.P.No.5525 of 2014 since 05.06.2014 and the same are in force. The defacto-complainant filed CrI.M.P.No.107 of 2015 to vacate said interim stay with her affidavit averments that the A.1 apparently submitted divorce paper in the year 2011 and in the proceedings before the migration authorities, defacto-complainant in October, 2012 deposed on oath that they were happy going couple and their relationship is in subsistence, she is absolutely unaware of the divorce proceedings but for to say to her re-collection at his instance though she is educated, having been completely trusted him said 'yes' to all questions before the Australian authority and such pleadings in the Criminal petition for quashing are false and self-serving and to avoid criminal liability if possible.

6. It is further contended by the defacto-complainant in the vacate stay petition that she came to India on 19.07.2013 to her grandfather's ceremony and stayed with her parents at Anantapur and went back to Australia on 02.11.2013 and reached

Australia went to the marital house there on 03.11.2013 and what she averred in the complaint of what was taken place were true and she was as tortured and necked out from the matrimonial house at Australia for which she returned to India on 07.11.2013. It is averred that herself and A.1 as wife and husband lived together under the same roof even after an alleged divorce till then and the divorce proceedings are obtained by fraud, fraud vitiates the entire proceedings and thereby so called divorce per se not binding on her and the migration proceedings in Australia during July, 2012 is a proof that they were living together and later by October, 2012 by suppressing the same he obtained decree of divorce and his parents visited Australia and stayed from 24.08.2012 to 04.09.2012 and because the alleged divorce in Australia Court is non-est the marriage of him with Akhila is bigamous for the fraud and cheated and for the cruelty and harassing is liable for consequences.

7. Perused the above material on record with reference to the pleadings and inquest documents in reference to it from hearing on both sides at length.

8. Undisputedly both are educated and she even practised as dentist. It is quite unbelievable to say she simply nodded her head by saying nodded head to the tunes of her husband and to claim therfrom of deceived on the factual aspects, leave about other contention of any decree of the Australian Court whether binding on the parties or not from the say the marriage performed under Hindu law in India and the divorce to be granted is under the provisions of the Hindu law even at Australian Court to enforce under Section 13 of the C.P.C and decree/judgment of the Federal Magistrate Court on 18.10.2012. The fact that she appeared before the Australian Court in divorce proceedings even from her said say not in dispute. It is meaningless but for to get and participate in the divorce proceedings for her going to the Australia Federal Magistrate Court otherwise for no cause of action if not for what purpose she went there. Leave about stated 'yes' for the question asked there and there was not even disputing she attended and stated 'yes' to the consent for divorce in its granting. Leave about binding nature of the civil side so far as the criminal prosecution concerned doctrine of waiver comes in the way that too, it is not her case that she filed any application either in the Australian Court, to set aside the decree alleging outcome of fraud or it was not a proceedings following Hindu Marriage Act, and not even issued any notice questioning the validity of the decree much less proceeding in any Indian Court or Australian Court for restitution of

conjugal rights. Even according to her on 03.11.2013 she entered the matrimonial home and to her shock she noticed T.Akhila second wife of her husband Vijayender and allegedly even stayed for few days and left India therefrom on 07.11.2013 either during that period at Australia even arrived India no legal proceedings taken and even the report for registering present crime given was on 15.02.2014 though she reached back to India on 7/8.11.2013 and not a case that she subsequently came to know of the so called marriage of him with Akhila. So far as the other accused concerned, other than Akhila, there is no worth allegations but for against her parents-in-law of alleged demands for additional dowry as a stray sentence. In fact it is her version that her parents-in-law and husband and herself allegedly lived together and they were moved for several places of visiting interested by going for outing in those days frequently for site seeing or the like. Is it believable of so called harassing or demanding for additional dowry if at all that was only in Australia so far as the offence under Section 498-A alleged by her, alleged beating also there under Section 323 IPC alleged dowry demand also there during that stay under Section 4 of the D.P.Act, but for alleged so called second marriage in India and at Tirumala of A.1 with Akhila for the offence under Section 494 of IPC among several sections mentioned in registering the crime. Suffice to say by virtue of the divorce proceeding, the very maintainability of the offence under Section 494 of IPC is in grave doubt if not to say not sustainable and other offence allegedly taken place in Australia and husband is of resident of Australia and there is a bar under Section 188 of Cr.P.C. even though such bar is not there in investigation for filing of final report by the police from such investigation. Thus, suffice to say in the factual matrix that the present crime proceedings are not a bona fide prosecution to vindicate any grievance but for appearing outcome of spite and ill-will and by twisting and by pilfering the facts as an abuse of process and cannot be allowed to continue in furtherance of justice but for to quash, more particularly against the petitioners.

9. Having regard to the above, the Criminal Petition is allowed and the proceedings in Cr.No.12 of 2014 on the file of the Station House Officer, Women Police Station, Anantapur so far as the petitioners herein are concerned, are quashed. Consequently, miscellaneous petitions, if any pending, in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:13.10.2015

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