

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

Criminal Petition No.13833 of 2013

Between:

Praya Raj and another

Petitioners

And

Sreevani @ Vani and another ...

Respondents

DATE OF JUDGMENT PRONOUNCED: **04.08.2015**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. *Whether Reporters of Local Newspapers
may be allowed to see the judgments?* Yes / No
2. *Whether the copies of judgment may be
marked to Law Reporters / Journals?* Yes / No
3. *Whether Their Lordship wish to
see the fair copy of the Judgment?* Yes / No

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.13833 of 2013

ORDER:

In this petition filed under Section 482 Cr.P.C., the
petitioners/Accused Nos.1 and 2 seek to quash the proceedings

in C.C.No.720 of 2012 on the file of learned X Chief Metropolitan Magistrate, Secunderabad originated on a private complaint filed by first respondent/complainant.

2 a) First petitioner is the husband of first respondent. He filed O.P.No.806 of 2010 under Section 9 of Hindu Marriage Act, 1955 seeking restitution of conjugal rights against the first respondent alleging that she left the matrimonial home without there being any reasonable cause. While so, the first respondent made a counter claim agreeing for decreeing the petition for restitution of conjugal rights subject to condition that the impotency of first petitioner is opined as being curable by panel of expert doctors or else to grant decree of divorce. Pending enquiry, first petitioner it appears, filed I.A.No.29 of 2011 to direct respondent No.1 to undergo medical test in Osmania General Hospital or NIMS or KIMS to ascertain the fact from which deceased she was suffering and whether it was curable and she was fit for consummation of marriage or not. Per contra, respondent No.1 herein filed I.A.No.528 of 2010 to direct petitioner No.1 to go to Osmania Medical College or Gandhi Medical College or NIMS or any other renowned institute for examination to note whether he was suffering from curable impotency or incurable impotency. Both the petitioners were allowed by a common order dated 27.01.2011 whereunder both the parties were directed to appear before the RMO, Gandhi Hospital, Secunderabad for tests and it appears they obliged. Respondent No.1 was examined by lady doctors and they

issued a medical certificate with which we are not much concerned here. Petitioner No.1 is concerned, as per the instructions of RMO, he appeared before the doctors (RWs.3 and 4 in O.P.No.806 of 2010) and they advised him to undergo T3, T4, TSH, Rigi Scan to give report on his potency. He did not undergo those tests but approached 2nd petitioner/A2 who was a Professor, Head of Forensic Medicine, Gandhi Medical College and obtained a report from him stating that he was fit for marital life. He produced the said certificate before the Court. Not agreeing with the same, the first respondent filed I.A.No.222 of 2011 seeking a direction to petitioner No.1 to attend Andromeda Andrology Centre or Dr.K.S.Memorial Clinic for submitting himself to T3, T4 and TSH test, Testosterone Level test and Rigi Scan test for facilitating his medical examination for potency. This application was resisted by him by pleading that he already obtained potency certificate issued by 2nd petitioner/A2 and subjecting him to further test amounts to harassment. Accepting his contention the lower Court dismissed I.A.No.222 of 2011 by its order dated 07.05.2011.

b) Subsequently, respondent No.1 filed I.A.No.214 of 2012 for similar relief claiming that petitioner No.1 was not examined by doctors of Gandhi Medical College as they suggested him to undergo certain tests but without undergoing those tests, petitioner No.1 obtained a false certificate from petitioner No.2 by playing fraud and she already challenged the said certificate before Andhra Pradesh Medical Council, Hyderabad which held

that the certificate issued by 2nd petitioner/A2 was not valid and that potency certificate can be issued only by Board of doctors consisting of Urologist, Psychiatrist, Endocrinologist or Physician and therefore, her petition may be allowed. The lower Court has reconsidered its earlier view taken in I.A.No.222 of 2011 and allowed I.A.No.214 of 2012 by directing petitioner No.1 to undergo the above-mentioned various tests.

c) Aggrieved, petitioner No.1 filed C.R.P.No.3117 of 2012 before the High Court. However, the said petition was dismissed confirming the order in I.A.No.214 of 2012. Petitioner No.1 however, did not undergo the tests as prescribed by the panel of doctors of Gandhi Hospital.

d) The matter went on trial. During trial, petitioner No.1 examined petitioner No.2 (A2) on his behalf as PW3. During his evidence PW3 deposed that against the earlier order dated 09.02.2012 of A.P. Medical Council holding that potency certificate issued by him was not valid and the same was issued without any investigations and without following the protocol, he preferred a review before the A.P. Medical Council and the Council by its order dated 17.11.2012 while allowing the review petition, withdrew its warning earlier issued to him and held that the potency certificate issued by Forensic Medicine Department is accepted by convention. The review order dated 17.11.2012 was marked as Ex.P22. Basing on Ex.P22, petitioner No.1 contended before the lower Court that Ex.P11—potency certificate issued by petitioner No.2/A2 was a valid certificate

and petitioner No.2 (PW3) was competent to issue potency certificate and that he was potent and had no defects. However, the lower Court did not consider Ex.P11—potency certificate holding that petitioner No.1 was not referred by RMO to petitioner No.2 and further, in Ex.P11 it was not mentioned what tests were underwent by petitioner No.1 to facilitate petitioner No.2 to issue Ex.P11—certificate. The lower Court inferred that petitioner No.1 has not undergone any test and petitioner No.2 has not verified any test reports and issued Ex.P11—certificate and therefore, Ex.P11 was not a valid certificate (vide para-23 of its judgment in O.P.No.806 of 2010). Ultimately, the lower Court basing on the judgment of Apex Court, has made an adverse inference against petitioner No.1 and dismissed the petition for restitution of conjugal rights and allowed counter claim of respondent No.1 and granted decree of divorce.

3) Be that it may, basing on the earlier order dated 09.02.2012 of A.P. Medical Counsel, respondent No.1 filed a private complaint in C.C.No.720 of 2012 before the X Additional Chief Metropolitan Magistrate, Secunderabad alleging that contrary to the instructions of team of doctors to undergo certain tests, first petitioner herein clandestinely approached 2nd petitioner/A2 and obtained a bogus potency certificate dated 22.03.2011 which was held to be invalid certificate by A.P. Medical Counsel Hyderabad and hence A1 and A2 entered into conspiracy and created a false certificate to use it in a court of law and therefore, they are liable for the offences under

Sections 197 and 198 r/w 34 and 120B IPC. The said complaint was taken cognizance by learned Magistrate.

Hence, the instant quash petition.

4) It may be noted that when there was no representation for petitioners, this Criminal Petition was dismissed on 02.03.2015. Thereupon, petitioners filed Crl.P.M.P.No.2857 of 2015 requesting the Court to restore the Criminal Petition No.13833 of 2013 and hear the matter. Both the Crl.P.M.P.No.2857 of 2015 and Criminal Petition No.13833 of 2013 were heard and orders were reserved. Today, Crl.P.M.P.No.2857 of 2015 is allowed and Crl.P.No.13833 of 2013 is taken up for pronouncement of orders.

5) Heard arguments of Smt. K.V.Rajasree, learned counsel for petitioners and Sri Rakesh Sanghi for R1 and learned Public Prosecutor for R2.

6) Vehemently opposing the criminal proceedings, learned counsel for petitioners/A1 and A2 submitted that A1 approached A2 directly and PW3 (A2) being Professor and Head of Department, Forensic Medicine, Gandhi Medical College competent to issue potency certificate and so, after verifying the reports of petitioner No.1/A1 i.e. Testosterone levels, CBP, Blood Sugar, Urine Examination, ESR, GTT, HIV, Blood Group, Ultrasound Abdomen, Doppler Scrotum and Semen analysis he issued Ex.P11—certificate. There was a convention of doctors of Forensic Department issuing potency certificates and Rigi

scan is not compulsory to decide the potency and petitioner No.2/A2 brought all these facts before the A.P. Medical Council in his review petition and A.P. Medical Council in its order dated 17.11.2012 observed that issuing of potency certificates by Forensic Department is accepted by convention and accordingly withdrawn the warning issued earlier. Learned counsel submitted that in view of review order passed by A.P. Medical Council, it cannot be alleged that A2 is not competent to issue potency certificate and it is a false one. As such, continuation of criminal proceedings which are based on earlier order of A.P. Medical Council are not maintainable in view of subsequent events and such continuation would amount to abuse of process of the Court.

7) In oppugnation, learned counsel for respondent No.1 vehemently argued that respondent No.1 had already submitted a representation before All India Medical Council against Ex.P22—review order issued by A.P. Medical Council and the said representation is pending before All India Medical Council and therefore, the review order was not a final one and accused cannot plead for quashment of proceedings on the strength of review order. He vehemently contended that learned lower Court made an elaborate discussion about the omissions and commissions on the part of both accused in generating Ex.P11—potency certificate i.e. A1 did not undergo required tests as suggested by team of doctors, but A2 issued the potency certificate without having authority and without conducting

mandatory tests like T3, T4, TSH, Rigi scan etc. and he has not even mentioned in Ex.P11 about the reports which he examined for issuing Ex.P11 and therefore, the lower Court rightly held that it was an invalid certificate and hence there is a debatable issue in the complaint as to whether Ex.P11—certificate was genuine or a false certificate and as such, criminal proceedings may not be quashed. He thus prayed for dismissal of criminal petition.

8) The point for determination is:

“Whether there are merits in this petition to allow?”

9) **POINT:** A perusal of facts and record which are not disputed by both sides show RMO, Gandhi Hospital directed petitioner No.1/A1 to consult two doctors viz., Dr.K.S.Ahok Kumar and Dr.Ravi Jagirdar (RWs.3 and 4 in O.P.No.806 of 2010) for conducting potency test. They advised him to undergo certain investigations like T3, T4, TSH, Testosterone levels and Rigi scan as those investigations were not available in Gandhi Hospital. It is a further admitted fact that A1 did not undergo those tests but consulted 2nd petitioner/A2 who is Professor, HOD, Forensic Medicine who in his individual capacity issued Ex.P11—potency certificate after alleged verification of certain reports i.e. Testosterone levels, CBP, Blood Sugar, Urine Examination, ESR, GTT, HIV, Blood Group, Ultrasound Abdomen, Doppler Scrotum and Semen analysis. Initially, AP Medical Council held that any certificate of potency or impotency shall be issued by Board of doctors consisting of Urologist,

Psychiatrist, Endocrinologist or Physician and certificate issued by A2 in his individual capacity was not a valid one and later on review by 2nd petitioner/A2 observed that issuing of potency certificate by the Department of Forensic Medicine is accepted by convention and accordingly withdrew the warning issued earlier against A2. Whereas the lower Court on appreciation of evidence held that Ex.P11—certificate issued by A2 was invalid certificate as nothing was mentioned in it about the nature of test reports which he perused before issuing the said certificate.

10) In the above backdrop, the complainant alleges that A2 was not competent to issue potency certificate and he issued a false certificate to A1 in collusion without conducting any tests or observing any medical reports. Whereas the petitioners/A1 and A2 are heavily banking on the review order of A.P. Medical Council to contend that A2 is competent to issue potency certificate as it was observed in the review order that by convention Forensic Department of Gandhi Medical Hospital was issuing such certificates and they further contend it was not mandatory to conduct Rigi scan to decide the potency of a person.

11) Hence, in my considered view, there are triable points involved in the criminal case such as whether A2 being a Professor and Head of Department, Forensic Medicine and not a Urologist, is competent to issue potency certificate and if so, whether he can issue certificate without the necessity to conduct T3, T4, TSH and Rigi scan as earlier instructed by team of

doctors. So, at this stage, it cannot be said that no *prima facie* case is made out and continuation of criminal proceedings would amount to abuse of process of law. On the other hand, as discussed earlier, the competency or otherwise of A2 to issue potency certificate and compulsory nature of perform T3, T4, TSH, Rigi scan to decide potency have to be discussed in the criminal case to decide the guilt or innocence of the accused. So, I find no merits in this petition to quash the criminal proceedings at the threshold.

12) This Criminal Petition is accordingly dismissed.

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

U. DURGA PRASAD RAO, J

Date: 04.08.2015

Murthy