

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
CRIMINAL PETITION No.3950 of 2015

ORDER :

This Criminal Petition is filed by Petitioners/Accused Nos.2 and 3 under Section 482 Cr.P.C seeking to quash the private complaint proceedings in C.C. No.141 of 2015 on the file of XVII Additional Chief Metropolitan Magistrate, Hyderabad which was filed by 2nd respondent and after recording sworn statement of the complainant (2nd respondent herein) taken cognizance for the offences punishable under Sections 493, 420 and 120-B I.P.C. by the learned Magistrate by order dated 16.02.2015 against the Accused Nos.1 and 3; of whom A-1 and A-3 are brothers and they are the sons of Accused No.2. The petition now is filed by A-2, (father) and A-3 (brother) of A-1, all are aged about 60 years of whom A-2 aged about 90 years (retired teacher) and A-3 aged about 65 years (retired professor). Among them A-1 is the (retired R & B employee) husband of the Complainant.

2) The averments in the private complaint filed by the 2nd respondent/complainant are that her marriage took place with A-1 on 12.05.1978 and blessed with two children viz., son aged about 33 years and daughter aged about 27 years now. It is alleged that the 1st accused, on the instigation and provocation of his father and brother, left the association of the Complainant in the year, 2000 and even the complainant requested him to come back he did not respond, further he is claiming that their marriage performed during minority of the complainant thereby is not a valid marriage. It is further averred that on 17.08.2013, A-1 sent an e-mail to the complainant with filthy, unparliamentary and scandalous words by

insulting her. It is also alleged that A-1 to A-3 conspired in inducing the complainant to sign on MOU dated 30.08.2013 on the stamp papers by securing through her and they again called her to sign on divorce papers on 20.09.2013 as part of their privy. It is further alleged that in the D.V.C.No.221 of 2013 filed by the complainant, A-1 was even called for counseling; at the instance of A-2 and A-3 he did not prefer counseling and filed written arguments on 22.07.2014 before the IV Metropolitan Magistrate and his contentions therein make out the offence punishable under Section 493 I.P.C. The pre-cognizance sworn statement of the complainant also discloses above version and the cognizance order of the learned Magistrate reads therefrom that as per contention of the D.V.C. respondent (A-1 herein) his marriage with complainant (D.V.C. petitioner) dated 12.05.1978 is not a valid one as by then she was a minor, even they lived together for about 37 years and blessed with a son and daughter aged 33 and 27 years respectively and thus it makes out a prima facie case to take cognizance for the offence punishable under Section 493 I.P.C and 420 read with 120-B I.P.C against A-1 to A-3.

3) It is the contention of the petitioners, in seeking to quash the C.C. No.141 of 2015, private complaint case proceedings, that though the complainant is living away from her husband (A-1) separately and independently at least from the year 2000 and the petitioners A-2 and A-3 are nothing to do with the pending proceedings in between the complainant (2nd respondent) and her husband (A-1) the learned Magistrate failed to see that A-1 is well educated and capable of taking his own decisions and the question of their instigation of him for provoking to harass the 2nd respondent does not arise, besides with no basis, that she

presented the complaint with ill-motive and to harass the petitioners (A-2 and A-3) with vague allegation stating as if her husband left her on the instigation and provocation of the petitioners (A-2 and A-3) herein with no any specific averment or proof in relation thereto to make out any offence under Sections 493 and 420 I.P.C against the petitioners, that the contents in the complaint and sworn statement of complainant no way discloses commission of any offence muchless under Section 493 or 420 I.P.C against the petitioners and prayed to allow the application by quashing the proceedings in C.C. No.141 of 2015 on the file of XVII Additional Chief Metropolitan Magistrate, Hyderabad.

4) The 2nd respondent-complainant aged about 52 years, an Advocate by profession, a post graduate in law and also a Doctorate appearing as party-in-person, contended that the petitioners herein being the elderly male persons of the family induced A-1 to leave her and her children and forced to stay with them for their selfish reasons though she was lawfully married to A-1 and in their wedlock blessed with two children, that A-1 being a retired employee get retirement benefits of Rs.45,00,000/- and is also drawing pension of Rs.36,000/- to Rs.40,000/- per month whereas she has no social and monetary security, that she is entitled to 50% of his monthly income whereas towards maintenance she was awarded only Rs.5,000/- per month, in D.V.C No.221 of 2013, that the complaint allegations establish the ingredients of Section 493 I.P.C as the accused persons practiced deception by inducing her to make believe that she was lawfully married to the 1st accused to live together with cohabitation which is the result of deception on her and thereby sought for dismissal of the quash petition.

5) Heard the arguments of both sides at length and perused the entire material on record including the written arguments filed by the 2nd respondent, who also filed stay vacate petition with material.

6) It is needless to say, for A-1 (husband of the complainant (2nd respondent) not a party to the quash proceedings, about the other proceedings between the couple vide Crime No.369 of 2013, registered by C.C.S, Woman Police Station, Hyderabad on her report dated 26.08.2013 by array of the petitioners also as parties to the crime and the crime was quashed so far as the petitioners concerned by order in quash petition in CrI.P.No.11303 of 2013 dated 21.01.2014, besides the D.V.C case filed by her against him and the divorce case filed by him against her undisputedly pending as O.P. No.736 of 2013 on the file of the Judge, Family Court, Rangareddy district at L.B.Nagar.

7) From the above factual background, coming to Section 493 I.P.C, it attracts where cohabitation caused by a man deceitfully inducing a belief of lawful marriage and Section 420 I.P.C applies if there is a deception in this regard. Here, in the case on hand, all the parties agreed that the marriage was performed to the 1st accused with the 2nd respondent. It is not her allegation that the cohabitation caused is by deceiving her to make believe that she is the wife of the 1st accused by not marrying her. The complaint averments itself say that the 1st accused is her husband and they voluntarily as man and wife lived together for time and in their wedlock from the marriage dated 12.05.1978, she gave birth to two children and further they admittedly lived together at Vijayawada for nearly one year and later shifted their

family to Hyderabad and lived together, but for saying for past 12 years her husband is not coming to her from the differences cropped up between the couple. It is not her case that the 1st accused refused her and marrying another girl or living with another woman. Apart from that the children who born to the 2nd respondent through the 1st accused were aged about 33 years and 27 years by now with no dispute on paternity. It is also not in dispute of the 1st accused issued a legal notice to her for legal separation in the year, 1993 and he later filed divorce petition to dissolve their marital tie. The same shows their marriage is legal and valid, irrespective of his contention in the D.V.C. case that said marriage of them performed in her minority is not legal. The contention according to her has no legal basis or force and the D.V.C Court (learned Magistrate) negated said contention of him. When such is the case, none of the ingredients of Sections 493 and 420 I.P.C attract to make out any of the offences alleged against the 1st accused even, not mention of nothing makes out against the petitioners (A-2 and A-3). The defacto-complainants very pre-cognizance sworn statement dated 28.11.2014, page 2 middle, there was a counseling wherein A-1 demanded her to give divorce and for which she put a condition to retain to her the dowry amount given at the time of marriage. It shows she is not for marital life, but money, needless to say, she can get from her husband what she legitimately entitled, that does not mean he shall not care his father or brother or not to lookafter them. It is also her say in the sworn statement dated 15.12.2004 that she and A-1 entered MOU, dated 30.08.2013 and the claims settlement for Rs.15,00,000/- for which A-1 issued a cheque that was dishonoured and he later filed divorce petition against her which is

pending. Needless to say even for dishonour of cheque, criminal prosecution under Section 138 of Negotiable Instruments Act not invoked, civil remedy within 3 years to recover the amount with interest at 18% p.a. therein under Section 117 of the Negotiable Instruments Act is not a bar.

8) The learned Magistrate did not apply the judicial mind in taking cognizance on the private complaint pre-cognizance proceedings by impugned order dated 16.02.2015. It is needless to say the private complaint proceedings and its taken cognizance and any continuation is not at all for legitimate prosecution and same is nothing but abuse of the process and thereby it requires to be quashed to subserve the ends of justice as laid down in ***Geetha Malhotra V. State of U.P.***^[1] The decision relied on by the 2nd respondent/defacto-complainant in her written arguments of ***Ramachandra Bhagat V. State***^[2] has no application to the present facts, for what is discussed supra and more particularly when it is not even the case of the defacto-complainant that she is not the wife. In fact, divorce case filed, pending between them and there was a settlement also in regarding the claims in between them as wife and husband reflected. As such, a sentence in the counter to D.V.C case does not enable her to make use to implicate invoking the provision even against the husband leave about any iota of material against A-2 and A-3 to implicate them.

9) Accordingly and in the result, the petition is allowed and the proceedings in C.C. No.141 of 2015 on the file of XVII Additional Chief Metropolitan Magistrate, Hyderabad so far as against the petitioners A-2 and A-3 are quashed and their bail bonds stand cancelled.

10) Consequently, miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

16.09.2015
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[\[1\]](#) (2012)10 SCC 741

[\[2\]](#) CrI.A.No.439 of 2006, dated 09.12.2012