

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.6978 of 2015

ORDER :

The Criminal Petition is filed by the petitioner under Section 482 Cr.P.C seeking to quash the proceedings in C.C. No.694 of 2013 on the file of Judicial Magistrate of the First Class, Piler, Chittoor District which is a private complaint filed by the 1st respondent and the learned Magistrate taken cognizance for the offences punishable under Sections 498-A and 494 I.P.C against the A-1 to A-3 including the petitioner who is A-1.

2) Based on the private complaint of the defacto-complainant in October, 2011, after considering the sworn statement of the complainant with documents referred, the learned Magistrate taken cognizance for the offences supra. Thus, what the counter filed by the defacto-complainant in opposing at para No.4 in the quash petition saying as if the learned Masgistrate recorded the sworn statement and also issued a direction to the police to register the case after thorough enquiry is not correct from bare perusal of the docket proceedings but for if at all any red corner notice pending against the petitioner/A-1 is from the said summons issued against the accused from the private complaint cognizance and from non execution including of the warrant in issuing red corner notice as A-1 is shown settled and staying at Kuwait equally A-2.

3) On perusal of the order of the learned Magistrate, taking cognizance shows, after the private complaint filed on 20.10.2011, objections taken as to maintainability, to describe the documents and to give the particulars of the witnesses and date and place of the offence, of the police station for jurisdiction and where the accused resides and to submit postal covers. It is as can be seen after the

typed complaint containing 12 paras pages 1 to 5, representation to the above objections is at page No.6 by writing submitted on 09.11.2011 referring to four documents and four witnesses and the description of the four witnesses with addresses. The documents referred are Photostat copies of marriage certificate dated 21.12.2002 affidavit filed by one Sivamma dated 01.11.2001 and marriage certificate issued by Embassy of India on 13.11.2001 and the postal receipt dated 14.10.2011. Even in the complaint particularly at para Nos.4 to 6, date of marriage between A-1 and A-2 not mentioned but for saying the marriage was allegedly performed in Kuwait in the year 1996, the date of marriage of the defacto-complainant and A-1 not mentioned but for saying she performed the marriage of the daughter in their wedlock some time prior to the complaint even not taken care to perform the marriage by the A-2 husband of the defacto-complainant. The complainant must show from the perusal of the complaint averments to make out a case of her marriage first in point of time to the so called second marriage of A-1 and A-2. Further what she stated supra of the marriage is allegedly performed in Kuwait practically there is no jurisdiction even on the private complaint from the learned Magistrate to proceed by virtue of Section 198 Cr.P.C, for no part of cause of action of the alleged bigamous marriage between A-1 and A-2 within India, apart from the specific bar under Section 188 Cr.P.C, same is also the expression of the Apex Court in ***Thota Venkateswarlu V. State of A.P.*** Thus, there is no jurisdiction for the learned Magistrate to take cognizance for the offence under Section 494 I.P.C. Even same is non-cognizable, when offence under Section 498-A I.P.C is cognizable to make the other also cognizable, if at all by police report as if referred by the counter of the defacto-complainant, which is not as can be seen from the record as referred supra. Thus, even taken as compliance under Section 198 Cr.P.C for private complaint procedure, for want of sanction or permission by the Central Government before taking cognizance which is a bar under Section 188 Cr.P.C. Further more even there is no sworn statement recorded by the learned Magistrate as contemplated by Section 200 read with Section 201 Cr.P.C. It is a pre-requisite to take cognizance

under Section 190 Cr.P.C even to issue summons under Section 204 Cr.P.C to the accused. It is because the very endorsement on the docket of the learned Magistrate shows on 14.11.2011 as for sworn statement of complainant and witnesses by 22.12.2011 and the order dated 22.12.2011 shows complainant present and sworn statement filed, call on 03.01.2012 and on 03.01.2012 shows complainant present, sworn statement already filed, hence case taken on file against A-1 to A-3. It is not by any specific provision in a case under Negotiable Instruments Act to accept affidavit at pre-cognizance stage for taking cognizance. As such, it is mandatory to record sworn statement of the complainant and other witnesses if any and as the case may be. The further order with a different typing shows "on perusal of the complaint side in allegations and the documents, there is a prima facie case to proceed against the accused under Sections 498-A and 494 I.P.C and accordingly this case is taken on file under Sections 498-A and 494 I.P.C against accused No.1 to 3, issue summons to the accused on payment of process by the complainant and call on 07.02.2012". Thus, suffice to say the procedure adopted by the learned Magistrate is against law to quash the case proceedings without going into merits as to offence made out or not.

4) Even coming to merits on the offence, what the defacto-complainant in the complaint averments even alleged regarding the offence under Section 498-A I.P.C for no offence under Section 494 I.P.C survives for what is discussed supra, apart from a belated claim even of the marriage allegedly taken place in 1996 in filing the complaint in 2011; that even any specific version as she came to know only for the first time recently, cannot be allowed to continue as nothing but abuse of process and the inherent powers are meant including to meet such contingency to sub-serve the ends of justice and to prevent such abuse of process. Equally for the offence under Section 498-A I.P.C there are no specific allegations as to the nature of the cruelty and place where she met when the husband is allegedly staying and settled at Kuwait, equally A-1 by showing A-3, a third person has colluded with them. Needless to go into the other

details of there are money transactions between A-2 and A-3 covered by suit O.S. No.1 of 2005, where they both contested the matter, disposed of on merits to say even from that no possibility to believe any collusion to defeat any rights of the defacto-complainant.

5) The further averments mentioned in the complaint relating to alienation of properties or attaching of the property in the suit for the alleged collusion in between A-2 and A-3 is a civil lis left open to the defacto-complainant to prosecute.

6) In the result, the criminal petition is allowed and all the proceedings in C.C. No.694 of 2013 on the file of Judicial Magistrate of the First Class, Piler, Chittoor District are hereby quashed in respect of the petitioner/A-1. The bail bonds of the petitioner/A-1, if any, shall stand cancelled. Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

24.11.2015

ksh