

**THE HONOURABLE SRI JUSTICE RAJA ELANGO**

**Crl.P.No.6026 of 2016**

**ORDER**

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The present criminal petition under Section 482 Cr.P.C., is filed by the petitioner/A3 seeking to quash the proceedings in C.C.No.4 of 2012 (Old C.C.No.694 of 2013) on the file of the Judicial First Class Magistrate, Piler, registered for the offences punishable under Sections 498-A and 494 IPC, against him.

2. Heard and perused the material on record.

3. The brief facts of the prosecution case are that the 2<sup>nd</sup> respondent is legally wedded wife of A2 and during the wedlock, they blessed with a daughter. A2, who joined in Kuwait Military Services, did not send money to the complainant and her daughter as he could not get good job. While so, the complainant had purchased a property with her hard money and on the advise of her husband/A2, she got registered it in his name for obtaining Bank loan and to get a good job in Kuwait. Thereafter, A2 gradually stopped all his contacts with the complainant and her daughter. After some time, the complainant came to know that A2 married A1 at Kuwait during subsistence of first marriage with her. A3 is the henchman of A1. With a view to defeat and defraud the complainant and her daughter, all the accused planned to knock away the property purchased by her and A3 also filed a suit and obtained an *ex parte* decree against her husband-A2 with respect to the said property. Hence, she filed the said complaint.

4. On the basis of a private complaint, the learned Magistrate took cognizance for the offences punishable under Sections 498-A and 494 IPC against A1 to A3. On earlier occasion, this Court vide order dated 24.11.2015 in CrI.P.No.6978 of 2015 quashed the proceedings in C.C.No.694 of 2013 on the file of Judicial Magistrate of First Class, Piler, Chittoor District, against A1.

5. Learned counsel for the petitioner/A3 submits that before taking cognizance of offence, the learned Magistrate has to record the statements of witnesses concerned, but he took cognizance only on the basis of the sworn statement of the de facto complaint. Learned counsel further submits that as per the offence under Section 498-A IPC, the prosecution has to file a case against the husband or relative of husband of a woman subjecting her to cruelty, but as the petitioner is a friend of A2, the proceedings against him are liable to quashed.

6. The ingredients of offence under Section 498-A IPC are as under;

**“498-A. Husband or relative of husband of a woman subjecting her to cruelty:-** Whoever, being the husband or the relative of the husband of a woman, subjects such woman, to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation:- For the purposes of this section “cruelty” means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of woman, where such harassment is

with a view to concerning her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand”.

In the present case, as rightly pointed out by the learned counsel for the petitioner, the petitioner/A3 is not a relative of the husband of complainant i.e., A2 and there is no material on record to show the relationship of A3 with A2. As far as the offence under Section 494 IPC is concerned, it relates to marrying again during lifetime of husband or wife. Therefore, the complaint does not disclose any offence committed by the petitioner herein, more particularly, Section 498-A IPC. In view of the said facts and circumstances of the case, this Court is of the view that the learned Magistrate took cognizance against the petitioner/A3 for the offences punishable under Sections 498-A and 494 IPC without following due procedure. Therefore, the criminal proceedings against the petitioner/A3 are liable to be quashed and are accordingly quashed.

7. In the result, the Criminal Petition is allowed and the proceedings in C.C.No.4 of 2012 (Old C.C.No.694 of 2013) on the file of Judicial First Class Magistrate, Piler, Chittoor District, are hereby quashed against the petitioner/A3. The bail bonds of petitioner/A3, if any, shall stand cancelled. Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

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**JUSTICE RAJA ELANGO**

21<sup>st</sup> April, 2016

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