

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.41044 of 2016

ORDER:

This writ petition under Article 226 of Constitution of India is filed seeking to declare the charge sheet in C.C.No.13 of 2008, on the file of the XIII Additional Chief Metropolitan Magistrate, Hyderabad, against the petitioner, as illegal and arbitrary and to quash the same.

The grievance of the petitioner is that the 5th respondent performed second marriage with the petitioner on 18.12.1993 and they are blessed with two female children and that surprisingly, the 5th respondent lodged a complaint on 08.07.2007 i.e., after 15 years of marriage and the 5th respondent stayed with the petitioner in U.S.A. for nearly 13 years and that the entire allegations made in the complaint are vague and baseless and that the petitioner was also granted final decree of divorce by the learned Presiding Judge, in District Court 219 Judicial District, Collin County, Texas on 28.01.2008. The 4th respondent, after investigation in FIR No.227 of 2007, filed charge sheet and the case was taken on file as C.C.No.13 of 2008 and is pending for trial on the file of the XIII Additional Chief Metropolitan Magistrate, Hyderabad, and the trial Court has also issued N.B.W. against the petitioner on 09.08.2016, which is pending.

The truth of the said allegations can be decided only after due trial. Hence, this Court is not inclined to interfere with the proceedings against the petitioner before the trial Court.

At this stage, learned counsel for the petitioner submitted that the petitioner is ready to appear before the trial Court, but in the charge sheet filed against the petitioner, it was reported to the Court to issue NBW against the petitioner, who is residing in U.S.A., consequently, the trial Court has issued Non-Bailable Warrant against the petitioner and

the petitioner apprehends that he may be arrested in view of the Non-bailable warrant issued by the trial Court. Learned counsel for the petitioner further submitted that since the NBW is pending against the petitioner, the same may be recalled. Learned counsel for the petitioner also prayed for dispensing the presence of the petitioner before the trial Court.

Having heard the learned counsel for the petitioner and the learned Government Pleader for Home and having perused the material available on record, this Court is of the view that the writ petition can be disposed of with the following directions:

The petitioner is directed to appear before the Court concerned and file a petition to recall the warrant pending against him and on such petition being filed, the Court concerned is directed to recall the warrant on the same day on his executing personal bond for a sum of Rs.5,000/- (Rupees five thousand only) with one surety for a like sum and further, having regard to the facts and circumstances of the case and as the matter arises out of matrimonial dispute and the question of identity of the persons also not in question, the presence of the petitioner before the trial Court is dispensed with except on the dates of framing of charges, if any, examination under Section 313 Cr.P.C., and also on the date of pronouncement of judgment. The petitioner shall be properly represented through his counsel before the trial Court.

Accordingly, the Writ Petition is disposed of. No costs. Pending Miscellaneous Petitions, if any, shall stand closed.

RAJA ELANGO,J

Date: 25th November, 2016

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