

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.16612 of 2016

ORDER :

The petitioners are A.1 to A.5 of C.C.No.663 of 2016 on the file of the II Addl.Judl.Magistrate of First Class, Madanapalle, Chittoor district. The 2nd respondent is the complainant. It is outcome of Cr.No.90 of 2008 of I Town Police Station, Madapur, registered based on a private complaint of the 2nd respondent that was referred to police for investigation by the learned Magistrate u/ sec.156(3)CrPC and from investigation, police filed final report treating the case as a mistake of law. It is from the protest raised by the defacto-complainant against the said police final report, by the protest in C.F.No.46284/2008, the learned Magistrate has taken cognizance. The same is now impugned.

2. The contentions in the quash petition are that the taking of cognizance by the learned Magistrate by allotting C.C.No.663 of 2016 against A.1 to A.5 for the offences alleged punishable u/ sec.498-A and 494IPC against A.1 and under Section 506 IPC against A.2 to A.5 is unsustainable. The 1st petitioner got married with the 4th petitioner who is the 5th petitioner's daughter under Muslim law and blessed with two children. The marriage of the 2nd respondent with the 1st petitioner was performed at Talakona on 03.09.2001. She filed maintenance case and also C.C.No.102 of 2002 for the offence u/ sec.498-A IPC against him which was taken cognizance for the offences punishable u/ sec.417,498-A and 423

IPC and after trial, the 3 accused i.e. A.1 to A.3 herein were convicted by the Judgment, dt.19.11.2012 and other accused A.4 to A.9 therein were acquitted against which an appeal vide CrI.A.No.299 of 2012 on the file of the II Additional District & Sessions Judge, Madanpalle, Chittoor district was preferred by the petitioners 1 to 3/ A.1 to A.3 herein and the same was allowed by judgment dated 07.02.2014 against which the 2nd respondent/ complainant herein preferred CrI.A.No.1360 of 2014 before this Court and the same was dismissed by its judgment dated 10.03.2015 giving liberty to the 2nd respondent herein to avail any other remedy, thus, the acquittal passed by the appellate Court became final. As the marriage between the A.1 and the 2nd respondent held as per Muslim rites and customs and admittedly was registered in Nikha Register marked as Ex.P.5 in C.C.No.102 of 2002 and in the earlier litigation the petitioners were acquitted for the offences punishable u/ sec.498-A,323IPC, the present proceedings for the offences u/ sec.494 and 498-A IPC against A.1 and u/ sec.506 against A.2 to A.5 are unsustainable and thereby liable to be quashed.

3. The private complaint of the 2nd respondent herein dt.17.07.2008 reads that she married A.1 under Hindu Law on 03.09.2001. A.2 and A.3 are his parents and they all ill-treated inhumanly. She filed maintenance case and she also filed C.C.No.102 of 2002 against them and others. A.1 originally by name Basha born to the Muslim parents changed his religion into

Hinduism as Reddy Basha and married her under Hindu law but his parents spoiled him and she came to know that A.1 again married A.4-daughter of A.5 in the year 2002 or so as per Muslim law and begot two children and he cheated and deceived her and spoiled her life and thereby liable for criminal breach of trust, cheating and for the bigamous marriage after he converted already as Hindu, even with Muslim woman later and that the A.2-a police officer influenced the local police for no action on her report and the accused persons started threatening her including by phone calls and while proceeding by coming across on the streets to harm her and thereby she is constrained to file a complaint.

4. Even from the reading of the complaint, there is no offence of criminal intimidation to attract Section 506 IPC for the offence u/ sec. 503 IPC against the accused persons 1 to 5. So far as the offence u/ sec. 494 and 498-A IPC against the A.1 concerned, undisputedly from the above private complaint referred to police, and the police after investigation filed the final report stating the facts mostly covered above by saying the A.1 married A.4. She filed earlier C.C.No.102 of 2002 against them among others of the alleged offence of cheating is by contacting so called second marriage which is described as a bigamous marriage and in this regard, earlier crime 163 of 2001 was registered for the offences u/ sec. 417, 498-A and 323 IPC and the final report filed was taken cognizance as C.C.No.102 of 2002 holding A.1 and A.3 are Muslims

and there is no bar for the second marriage under Muslim personal law and the offence u/ sec.494IPC has no application.

5. Having regard to the above, it is referred as a mistake of law. The protest raised by her in CFR No.46 of 2008 dt.23.10.2009 is in saying the police failed to consider the exact reason for the present complaint and the investigation with referred report is unsustainable as the accused cheated the complainant and they are liable to face accusation. In her sworn statement, she deposed that mother of A.4 is A.5. A.1 married the complainant on 03.09.2001 against the will of his parents-A.2 and A.3 and A.1's original name is Basha. He informed in marrying the complainant of changed his religion into Hinduism and changing his name as Reddy Basha and he asked her to stay at her parents and wherefrom she was attending computer institution. While so, on 08.09.2001, he came in a TATA SUMO vehicle and informed her that his parents made arrangements in Chittoor to perform their marriage again as per Muslim law against his will and from that his marriage with A.4 was performed and thereafter she filed M.C.11/ 2002 and also filed a criminal case covered by Cr.No.163=C.C.102 of 2002 and she was granted maintenance. In the Criminal case, appeal filed was allowed by their acquittal, though before trial Court he was convicted and he married subsequently. The second witness is cattle raiser who is not even a witness to alleged second marriage and even the 3rd witness who is a framer also not an eye witness to the alleged marriage.

6. From these statements, the cognizance order of the learned Magistrate dated 09.11.2016 speaks "*Heard. Perused the record. Cognizance is taken for the offence u/ sec.498-A and 494 IPC against A.1; and under Section 506IPC against A.2 to A.5*". In fact as referred supra, from the very statement of defacto-complainant apart from her protest to take cognizance, there is no any specific acts after the first complaint case and what she referred in the sworn statement even is A.1 subsequently married after her first complaint in 2001 from A.1 informed her about her parents arranged under Muslim law another marriage to him. To say that A.1 converted into Hinduism as Reddy by virtue of conversion, there is no basis. There is no proof. There is no any ceremony much less with any procedure for conversion. His parents are Muslims. A.1 is practically a Muslim and there is no prohibition for his second marriage as per the Quranic(Holy book of Muslims) tenets, leave about the wisdom must prevail to treat all equally even if want to marry more than one. Once such is the case, prosecuting under Section 494IPC is not tenable. Even to say any offence of cheating, it is not a case of new information to her. Her very sworn statement shows on 08.09.2001 itself A.1 informed of his marriage was going to be performed with another Muslim woman by his parents under Muslim law and even according to her the marriage was performed within no time thereafter. Once such is the case, the filing of another complaint in 2008 covered by Cr.No.90 of 2008 for the self-same offences alleged in the original

complaint and the cognizance taken earlier in C.C.No.102 of 2002 was from no offence made out under Section 494IPC for Muslim law permits more than one marriage and only for the offences punishable u/ sec.417,498-A and 323 IPC and tried. Once to file another report or complaint or to take cognizance on protest against referred report again with no further facts of showing she and A.1 were living together at any time later, the question of another complaint attracting Section 498-A IPC does not arise and no offence of cheating even that could attract and even the offence u/ sec.498-A otherwise to take cognizance barred long back and filing of another complaint about 7 years after the original complaint and more than 6 years after alleged second marriage with knowledge and even police referred the case, by ignoring the police final report from the protest with no basis and sworn statements of the defacto-complainant and two witnesses even no way makes out any case to take cognizance, the one line order by the learned Magistrate in taking cognizance is per se with no basis and quite unsustainable and is liable to be quashed for continuation of said proceedings are nothing but abuse of process.

7. Coming to the additional documents filed by R.2-complainant on re-opening of the matter and from hearing further arguments as per CrI.P.M.P.Nos.10381 and 10139 of 2017, so far as deposition as R.W.1 in the M.C.No.11 of 2012, by A.1 herein concerned his version is not that he was converted from Islam to Hindu Religion but of the defacto-complainant in vice versa. In the

Ration Card, name of him no doubt shows as S.Reddy Basha. The maintenance granted in M.C.No.11 of 2012 and revision Case No.65 of 2015 against the same filed by him was dismissed on 10.04.2006. The finding in awarding maintenance from the relation of man and wife subsists since not in dispute and further the document and legal notice version, the ceremony of marriage between A.1 and defacto-complainant taken place on 08.09.2001 before Government District Khaji, Chittoor. Even taken from all these, it is as per Muslim law, the marriage taken place at Khaji's presence and then the 2nd marriage is not as per Muslim law bigamous.

8. Accordingly and in the result, the Criminal Petition is allowed by quashing the proceedings in C.C.No.663 of 2016 on the file of the II Addl.Judl.Magistrate of First Class, Madanapalle, Chittoor district. The case against the petitioners/ A.1 to A.5 is acquitted and their bail bonds shall stand cancelled. Consequently, pending miscellaneous petitions, if any, shall stand closed.

Date:10.10.2017
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Dr. B.SIVA SANKARA RAO J,