

HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No.6146 of 2011

ORDER :

The petitioners, who are arrayed as A.2, A.5, A.6 and A.7 in C.C.No.327 of 2007 on the file of the II Additional Judicial First Class Magistrate, Nellore, filed this Criminal Petition under Section 482 Cr.P.C. seeking to quash the proceedings in C.C.No.327 of 2007.

The contention of the petitioners is that petitioners 2 and 3 are the parents and the fourth petitioner is the brother of the first petitioner. The allegation in the complaint is that A.1 married A.2 while subsistence of the first marriage between A.1 and the complainant/second respondent. In the protection petition though there is no specific allegation against petitioners 2 to 4, the only allegation is that they participated in the second marriage. In the absence of abuse of process of law, the complaint against them is liable to be quashed.

On the other hand, the second respondent contended that at the instance of petitioners 2 to 4, the marriage between the first petitioner and A.1 was performed and they are instrumental in the said marriage. There is sufficient material both oral and documentary to make over the offence against the petitioners.

A perusal of the record suggests that the marriage between the second respondent/complainant and A.1 was

performed 01.05.1987. When her husband and parent-in-laws started harassment, she gave a complaint in C.C.No.192 of 2000 for the offence under Section 498-A I.P.C and the same was ended in conviction of A.1.

It is also *prima facie* made out from the statements of the witnesses, namely, Oleti Kameswaramma, Sk. Khaja Mastan and Sk. Gudumbi, recorded by the II Additional Judicial Magistrate of First Class, Nellore, that A.1 married A.2 on 25.08.1987. Though all the witnesses stated that they witnessed A.1 marrying A.2 at the house of A.5, none specifically speak either in arrangement of the marriage or their presence at the time of marriage talks.

In the Protection Petition, the allegation against the petitioners is that the first petitioner/A.2, who was practicing as an Advocate and having a female child through her boyfriend, was leading adulterous life with A.1. In the statement before the Magistrate also, the complainant stated that A.1 developed illicit intimacy with A.2 and later married her while subsisting the first marriage between A.1 and the complainant. At para 5 of the complaint, the allegation against the petitioners is that A.3 and A.4, who are father and mother of A.1, were also present along with A.5 to A.8 (petitioners 2 to 4 and another) at the time of second marriage of A.1 and A.2 and participated in the marriage by providing flowers and also other requirements and sprinkling

akshinthalu on A.1 and A.2 and thus, A.5 to A.8 participated in the second marriage of A.1 and A.2.

Mere participation/attending marriage itself is not sufficient to say that they are responsible for the marriage between A.1 and A.2. The specific allegations in the complaint is that before marriage, A.1 developed illicit intimacy with A.2, which shows that they have fair contacts and there is nothing to suggest any contribution of petitioners 2 to 4 in performing their marriage. Thus, adding petitioners 2 to 4 as accused is nothing but abuse of process of law and miscarriage of justice. Hence, the proceedings in C.C.No.327 of 2007 on the file of the II Additional Judicial First Class Magistrate, Nellore, against petitioners 2 to 4/A.5 to A.7 are quashed.

In the result, the Criminal Petition is allowed insofar as petitioners 2 to 4/A.5 to A.7 and dismissed insofar as the first petitioner/A.1. Consequently, the interim stay granted on 26.07.2014 in CrI.P.M.P.No.6251 of 2011 is vacated and the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE N. BALAYOGI

Date: 24.10.2017

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