

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.9094 of 2014

ORDER :

The petitioners are the accused 1 and 2 in C.C.No.418 of 2013 pending on the file of the V Addl.Judl.Magistrate of First Class, Nellore, where the learned Magistrate has taken cognizance for the offences punishable u/ Sec.494,420,466 and 471 IPC which is outcome of the private complainant of the 2nd respondent that was referred to police for investigation and police therefrom registered as a case in Cr.No.2 of 2013,dt.05.01.2013 and from the investigation filed the final report.

Heard the learned counsel for the petitioners/ A.1 and A.2 and also the learned Public Prosecutor for the 1st respondent-State and learned counsel for the 2nd respondent-defacto- complainant.

The averments in the complainant covered by the FIR in nutshell are that after marriage of the 2nd respondent with the 1st petitioner-A.1 dt.07.05.1990, they were blessed with three children in their wedlock and later as differences arose she was deserted by him and she filed DVC 2/ 2007 that was allowed by the Judl.Magistrate of First Class, Kovvur and he filed appeal No.93 of 2007. While so, it came to light that he married the 2nd petitioner A.2 on 04.05.2013 at Penusila Laxminarasimha Devasthanam at Penchalakona of Rapur Mandal and she got that information under RTI Act, that recently she came to know that the A.1 erased the name of the complainant in the Service Register and entered the

name of A.2 and also affixed her photograph as his wife by removing the photograph of 2nd respondent(his wife) and he filed divorce petition vide FCOP No.136 of 2011 which is pending before the Family Court, Nellore and she is contesting the same and when she approached the police, the police did not receive report thereby she filed the private complaint with no other go.

As per the quash petition, it is submitted that the allegation of A.1 married A.2 is false and as both the A.1 and the complainant decided to live separately due to differences and wanted to obtain customary divorce in the presence of elders and well wishers and accordingly the A.1 paid Rs.1,00,000/- to the complainant and both of them agreed to put an end to their marital tie and entered into an agreement which was registered before the Sub Registrar Office, Nellore. Since then she was residing separately and developed illegal intimacy with **one** Bellamkonda Suresh working as constable who is also living separately from his wife Madhavi due to differences. Even said Madhavi also gave report to the All India Democratic Women Association(for short, 'AIDWA') who in turn gave report to the Rural sub-Divisional Officer, Nellore, and the police there conducted enquiry and submitted the report to the Superintendent of Police, on 27.05.2007, there also it discloses the amount of one lakh paid by A.1 to the defacto-complainant and they are living separately. The 2nd respondent earlier has given a complaint covered by crime No.46 of 2007 for the offences u/ sec.498-A, 494 and 506IPC on 02.04.2007 against the A.1, his

brother and three others and the police referred the same with closed report as false.

The complainant filed DVC No.2 of 2007 seeking protection, to hand over the possession of House bearing D.No.24-1-460 situated at Moolapet, to direct the 1st petitioner to return an amount of Rs.1,00,000/- and 20 sovereigns of gold which was given by her parents, further to pay an amount of Rs.80,000/- for her operation, to pay an amount of Rs.6,000/- each to all the children and herself and further to pay an amount of Rs.50,000/- per year to the minor children for their education. In the DVC case, a complaint filed by one Madhavi i.e. the wife of Bellamkonda Suresh with whom, the 2nd respondent is having illegal intimacy was marked and one Mastanamma, who was the witness to the customary divorce was examined. In the DVC the learned Judge held that the 2nd respondent and the A.1 were living separately since long back and she has knowledge about the 2nd marriage and the death of second wife and the third marriage with the 2nd petitioner herein. In spite of all these facts, she has not taken any steps against the A.1 except seeking money by way of filing DVC No.2 of 2007 and further gave finding that she is having illegal relationship with B.Suresh and negated her reliefs but basing on sale deed and cancellation deed, directed the A.1 to hand over the possession of the house property and to pay an amount of Rs.1,000/- p.m. to each child. Aggrieved by the same, the petitioners herein preferred CrI.R.C.No.2280 of 2011 before this Court and this Court in CrI.R.C.M.P.No.3407 of 2011 granted

interim suspension of the orders passed in DVC No.2 of 2007. It is averred that having taken the customary divorce and kept quiet even filing DVC No.2 of 2007, the 2nd respondent is interfered with the life of the petitioner to extract money taking advantage of no Court divorce proceedings obtained which made the A.1 to file divorce Petition F.C.O.P.No.136 of 2011, that the proceedings are nothing but frivolous and unsustainable and nothing but abuse of process, the cognizance order of the learned Magistrate is liable to be quashed.

The police filed final report after examining of 8 witnesses by L.W.9 Sub Inspector of Police who registered crime and filed chargesheet after investigation, of whom L.W.1 is defacto-complainant herein and L.Ws. 2 and 3 are the witnesses to speak to the facts of occurrence. L.Ws.4 to 8 are cited as witnesses to the marriage between the A.1 and A.2 which include L.W.4 is the senior Assistant in Penchalakona Devasthanam to speak with reference to the records of the temple. L.W.7 is Assistant of the District Police Office to speak about the A.1 erased the name and removed the photo of defacto complainant in the Service Register and entered the name of the A.2 by affixing her photo and said information is furnished under the RTI Act, also to the defacto-complainant.

This Court while entertaining the quash petition, on 21.08.2014 while ordering notice ordered stay of further proceedings of the Calander Case supra. The A.1 filed in CrI.R.C.No.2280 of 2011 dt.16.11.2011 where there is an interim

suspension of the order of the learned Sessions Judge in CrI.A.No.93 of 2010,dt.28.10.2011 confirming the DVC Case order of the learned Magistrate. The petitioners also filed the proceedings of the SDPO, Nellore rural, dt.24.05.2007 addressed to the Superintendent of Police in reference to the representation on behalf of D.Madhavi w/o. B.Suresh ARPC No.2308. It speaks the marriage of the said Madhavi was performed with said B.Suresh 8 years back. Said Suresh developed illegal intimacy with Nirmala (defacto-complainant herein) since 2005. Suresh was harassing and assaulting Madhavi. On 21.10.2005 Suresh attempted to kill Madhavi putting his legs on her throat even she was pregnant and said report was received by the Superintendent of Police in January,2006 and in April, 2006, mother of Madhavi for the alleged assault by Suresh also given report to the Police, I Town Police Station and again saying 10days later parents-in-law of Madhavi tried to throttle her neck that was also reported to the Superintendent of Police, Nellore and in the end of April, 2006 and May,2006 report lodged by said Madhavi with Police in Augsut,2006. Madhavi's mother was abused and assaulted by Suresh and in this regard also report was given to I Town Police. In December,2006, Suresh and Nirmala-the defacto-complainant threatened Madhavi. Said Madhavi since has been residing at Guntur at her mother's place since 2006 April. Enquiry reveals that said Suresh got illicit intimacy with Nirmala-Defacto-complainant, who was divorced wife of Janardhan(A.1) and due to matrimonial differences between Janardhan and Nirmala, they

have decided to live separately and she received one lakh rupees from Janardhan and registered deed to that effect was executed on 06.08.1999 and it is subsequent to that the Nirmala/ Defacto-complainant herein developed illegal intimacy with said Suresh-husband of Madhavi and therefrom Suresh is living with Nirmala as concubine and misunderstandings therefrom developed. It is also referred that on 02.04.2007 Nirmala-the defacto-complainant filed a complaint before Kovvur Police which registered as Cr.No.46 of 2007 for the offences punishable u/ sec.498-A,494 and 506IPC against Janardhan-A.1, his brother and three others which is about 8 years after their separation covered by registered deed of 1999 and from the police investigation it is referred as false. Later the complaint of Madhavi in Cr.No.155 of 2006 registered by I Town Police, Gudur against said Suresh and Nirmala. There is no part-II Case Diary filed in this case but these facts are also covered by the DVC Case by its order dt.23.03.2010 from evidence before the learned Magistrate.

The fact that the earlier crime vide Cr.No.46 of 2017 on the report of Nirmala-the defacto-complainant against A.1 and others registered for the offence u/ sec.494IPC including other offences, and the police referred the same as false by filing report not in dispute. The private complaint is not even a protest application against which by the defacto-complainant, but filed long later in 2012 October, in the private complaint she did not mention about the earlier giving of the report and registering a crime in saying A.1 and A.2 are liable u/ sec.494IPC for their second marriage from the

subsistence of her prior marriage with A.1 and also liable for the offences of forgery and using as genuine a forged document in tampering Service Record showing the name of A.2 as wife of A.1 by erasing the name of the defacto-complainant including by affixing photo. The police final report nowhere even referred to earlier crime but it is only in the report of SDPO to the Superintendent of Police, dt.24.05.2007. There is in fact suppression of the material fact by Nirmala/ defacto-complainant in filing the private complaint including during investigation for filing the final report. The DVC order was even dt.23.03.2007 to say 2½ years earlier to her private complaint referred to police who registered the crime in filing a report there even Ex.P.11=P.13 is the copy of the FIR in Cr.No.46 of 2007 of Kovvur Police Station. She relied on Ex.P.8 letter of 24.05.2007 of SDPO to the Superintendent of Police relied by the A.1 and A.2 herein as Respondent Nos.1 and 3 to the DVC No.2 of 2007. Once the private complaint of the defacto-complainant referred to police for investigation by the learned Magistrate referring to DVC No.2 of 2007 at para-4 in simply saying she totally succeeded in DVC and A.1 maintained appeal. At least it is the duty of the police as part of investigation to verify and ascertain the facts and had it been, the final report could not be filed to take cognizance. Once such is the case, there is no absolute bar therefrom for the crime and investigation. Had it been disclosed, the Magistrate could not have taken cognizance, that too, on a private complaint referring to police for investigation particularly again even earlier report of the

police referred as false for the offence u/ sec.494 and coming to the other offence u/ sec.468, 471, 466 and 420 IPC even the DVC case refers to Ex.R.9 relinquishment deed, dt.06.08.1999 mentioning about receiving of amount relinquishing right to maintenance and though it is not likely to put an end to the marital tie. It itself speaks since then the A.1 and the 2nd respondent whose marriage is performed in 1990 are residing separately with no connections, by taking the three children to her custody and the facts also show she is leading life of her own including with extra marital relation continuing with one Suresh, the husband of Madhavi and A.1 is living with A.2 by undertaking the performance of marriage at Peninsula Lakshminarayana temple. The belated report thereby of said marriage even known to her and made a mention even in the DVC case and earlier report filed by her referred as false by police, again in giving by suppression of facts is nothing but with animosity to wreck vengeance and not to set the law in motion to legitimately pursuing of legal remedy and nothing but abuse of process, more particularly from the suppression of material facts and from the peremptory investigation by police without referring to the record and material investigation with reference to the facts properly.

Having regard to the above, the continuation of proceedings in this case is nothing but abuse of process and not to subserve the ends of justice. Once there is a marriage and there was a relinquishment pursuant to which any entry made in the Service Record cannot be called forgery or forgery for the purpose of

cheating practically but for to say any persuasion of civil remedy for declaration of status as legally wedded wife and subsistence of marriage between the 2nd respondent and A.1 is left open.

Accordingly and in the result, the Criminal Petition is allowed by quashing the proceedings in C.C.No.418 of 2013 pending on the file of the V Addl.Judl.Magistrate of First Class, Nellore, against the petitioners/ A.1 to A.2 and they are acquitted. Their bail bonds shall stand cancelled.

Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Date:13.10.2017
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Dr. B.SIVA SANKARA RAO J,

