

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.6681 of 2014

ORDER:

The petitioner is the sole accused of C.C. No.463 of 2010 on the file of III Additional Munsif Magistrate, Tirupathi, where the learned Magistrate has taken cognizance for the offences punishable under Sections 498-A, 494 and 495 IPC, from the police altered final report dated 19.11.2010 by ordering summons to be issued to the accused by 27.12.2010. In fact, the said police final report originally filed on 18.10.2010 with an observation that the offences punishable under Sections 494 and 495 are cognizable and non-bailable, though the Magistrate is otherwise empowered to take cognizance subject to Section 198 Cr.P.C only in charging the offence punishable under Section 498-A IPC.

2) The learned Magistrate returned the same saying by virtue of A.P State Amendment Act 3 of 1992, the offences punishable under Sections 494 and 495 IPC are cognizable with effect from 15.02.1992. It is therefrom, the final report, by including those Sections, also filed that was taken cognizance, which is outcome of Crime No.77 of 2010 of P.S. M.R.Palli of Chittoor District, which crime is registered pursuant to the private complaint of 2nd respondent—defacto complainant against the petitioner/sole accused for the said offence along with Section 420 IPC in which the accused sought to be prosecuted by referring the complaint to the police for investigation and learned Magistrate referred to police for investigation under Section 156 (3) Cr.P.C, the said private complaint dated 05.05.2010, it is, pursuant to which, the police registered the aforesaid Crime on 04.06.2010.

3) The grounds sought for quashing the said cognizance order in nutshell are that the defacto complainant is not the legally wedded wife of the petitioner/ accused to invoke Section 498-A IPC and the Supreme Court in **Shiva Charan Lal Verma and another vs the State of Mandhya Pradesh**¹ also held that the offences punishable under Sections 494 and 495 IPC no way attract for the very defacto complainant's latches of her having knowledge of wife, children of the accused by then in existence. Apart from that, the defacto complainant is not the first wife to file any complaint for the offences punishable under Sections 494 and 495 IPC, apart from Section 498-A IPC, and thereby registering of the crime, filing of final report and taking of cognizance are unsustainable.

4) A perusal of the FIR and the police final report from the investigation material shows that in the year 1996, the accused D.Sri Hari Rao was a tenant in the house bearing No.D.No.19-7-104-D2, Gopal Raju Colony, Tirupathi, along with his 1st wife Leelaram—LW9 and female child by name Sravya Lekha. Since the de facto complainant—LW.1 was also residing in another portion of same house with her parents viz., LWs.2 and 3, there was acquaintance with accused and moving freely including with the family members of accused. At that time, the accused studying Post-Graduation, and the de facto complainant was studying B.Sc at Mohan Babu College, Rangampeta, Chandragiri Mandal and he used to drop her at her college and were jointly going to the college. Accused was working as a consultant at Anand Scan Center at Mosque Street, Tirupathi at the time of doing Post-Graduation.

¹ 2002 (2) Crimes 177 SC

Later, he purchased the Anand Clinic Center and running the same in the name and style of 'S.V.Diagnostics'. During the year 2001, the accused shifted his family to Bhavani Nagar. There also, the defacto complainant frequently used to visit and meet the accused and they were even participating in functions and the accused, from the close attachment with the defacto complainant, send a proposal for the marriage having assured to take care of her for the remaining life. She, believing his words, intentionally gave consent for marriage, though accused already married and got children, and it is pursuant to which their marriage was solemnized on 01.06.2005 at Purohita Sangam of Tirumala without knowledge of her parents and LW.9—1st wife of accused.

5) Her further averments are that the accused and the father of the de facto complainant are members in Kapil Chit Fund and accused singed as surety to the father of de facto complainant. Later, due to some financial problems, the father of the defacto complainant failed to repay the chit amount and the accused started harassing her and was demanding money to bring from her parents and he was ill-treating her physically and mentally. It is also averred that she filed F.C.O.P. No.96 of 2009 before the Family Court, Tirupati for divorce and maintenance, which is pending.

6) Heard learned counsel for petitioner and learned public prosecutor representing the 1st respondent—State and the notice sent to the 2nd respondent to the said address of the police final report and the address mentioned in her private complaint,

returned as 'address in-complete'. Since, it is a sufficient service, taken as heard.

7) From a perusal of the report averments supra, the defacto complainant intentionally gave consent for the marriage with the accused, though he got married and having child, since both are residing in two different portions of same premises for a long time prior to her marriage with the accused and the acquaintance, ripped into a love affair from his proposal of marriage and from the so called undertaking to take care of her the remaining life, he married her on 01.06.2005.

8) According to her acquaintance with the accused, he along with his wife was residing since 1996 in the rented premises. It is clear that the Accused got first wife and the marriage is in subsistence. Once such is the case, there are no ingredients to attract the offences punishable under Sections 494 and 495 IPC, though these are made cognizable offences by A.P. Amendment Act supra, it is for the reason that during subsistence of a marriage, again performing another marriage is an offence of bigamy and once such is the case, she is also one of the co-accused along with the accused and she cannot be a defacto complainant, but for, if at all, such complaint is by 1st wife.

9) Further, even the offence under Section 495 IPC is concerned, it is outcome of solemnization of formerly marriage from which the subsequent marriage conducted with her does not amount to solemnization including from her very report of even by 1996 he got wife and child out of valid wedlock and she married on knowing the same in 2005, even in her say that from his

assurance to take care of her the remaining life, thereby the ingredients of Section 495 IPC also no way attract.

10) Even coming back to Section 494 IPC, what Section 198 (c) speaks is where the person aggrieved by an offence punishable under Section 494 or Section 495 IPC is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister, or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.

11) Even taken that the defacto complainant case falls under any other person of Section 198 Cr.P.C so far as the offence under Section 494 IPC is concerned, for not a first wife, it is not a case of she already married the accused and there is second marriage she conducted, there is no leave of the Court specifically contemplated, thereby from referring to police for investigation, police after completion of investigation filed the final report and taking cognizance by the learned Magistrate for the offences punishable under Sections 494 and 495 IPC and Section 196 Cr.P.C, was not amended and even taken of the subsequent amendment to Schedule of Cr.P.C, making Sections 494 and 495 IPC as cognizable, there is no locus to the defacto complainant to maintain the complaint under Section 198 Cr.P.C. So far as the offence under Sections 495 IPC is concerned, the ingredients are no way attracting equally for Section 494 IPC, from what is discussed supra, suffice to say that taking of cognizance for the offences punishable under Sections 494 and 495 IPC by the learned Magistrate are liable to be quashed.

12) So far as the offence under Section 498-A IPC is concerned, no doubt the wording is speaking of a married women subjecting her to cruelty. From the very report, there is a marriage but for to say being performed during subsistence of earlier marriage, thereby, she became wife by virtue of a void marriage. The petitioner contended in the quash petition that there is a divorce petition pending and she is not a legally wedded wife because of subsistence of first marriage of accused.

13) When order copy is not before the Court, leave about how far the said order copy takes away the right of the defacto complainant subsistence of the prosecution herein. No doubt, the petitioner referred to above the expression of the Apex Court in Shiva Charan Lal' case (supra), the said judgment is also not before this Court to discuss further as to what are the facts therein. Apart from that the further fact to be considered here is the accused and the defacto complainant are well aware that the accused had already a married wife living and he married the defacto complainant and it is with her consent, then whether any obstacles that applies to him to join, still that she is not the wife or either wife of a void marriage otherwise, and it is a matter to be decided during trail.

14) Having regard to the above, the Criminal Petition is allowed in part by quashing the cognizance order in respect of the offence punishable under Sections 494 and 495 IPC, leaving it open to avail all the defences available to the accused so far as the cognizance of the offence under Section 498-A IPC concerned, and it is for the trial Court, if not framed, to frame appropriate charges

after hearing, subject to other merits for the said offences and in the event of framing of such charge, if not discharged, to conduct trial.

15) Miscellaneous petitions, pending if any in this Criminal Petition shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date:15.09.2017
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