

THE HONOURABLE Dr.JUSTICE B. SIVA SANKARA RAO

Criminal Petition No.7165 of 2017

ORDER :

The petitioners are the A.6 to 8 of S.C.No.242 of 2017 on the file of the Principal Asst. Sessions Judge, Narsaraopet, Guntur District. The same is outcome of P.R.C.No.11 of 2016 on the file of the 1st Addl.Judl.Magistrate of First Class, Narasaraopet, which is outcome of Cr.No.21 of 2013 of Narasaraopet I Town Police Station registered from the report of the 2nd respondent/defacto-complainant Anisetty Anusha which is in continuation of her written police report covered by Crime No.102 of 2012 dt.14.06.2012 which she earlier presented to police. The allegation is that the A.1 Godala Shaik Shavali, one of the sons of A.2-Godala Abdul Khayum and A.4-Smt. Godala Jasmin, along with A.3-Godala Seshavali, A.5 Shaik Chand Basha, A.6 Shaik Bashirunnisa W/ o A.1 Shaik Shavali, A.7-Shaik Mahaboob Baig and A.8-Shaik Khairunnisa w/ o Mahaboob Baig(A.7) of Kurnool Town are the accused persons. A.1 married the defacto-complainant on 26.04.2012 under Special Marriage Act, as referred in her earlier complainant dt.14.06.2012 of Cr.No.102 of 2012. The defacto-complainant's father Rajasekhar is an employee in APGV Bank and mother Miss Naseema is advocate in Narasaraopet. The defacto-complainant completed her M.S.degree in USA and came back to India and is working as Assistant Manager in L&T, Chennai, since 01.07.2010. The A.1 who is a colleague of her at L&T, Chennai, a year before the report, induced her stating in love with her and wants to marry and he

cannot live without her even she informed as without consent of her parents and his parents, it is not possible to marry him. However, he came to Narsaraopet with his maternal uncle Chand Basha-A.5 and requested her parents, her maternal grandmother, maternal uncle and other relatives and convinced them to perform the marriage and the defacto-complainant's parents informed the same to the parents of A.1, the A.2 and A.4 supra, who readily agreed for the proposal, however saying they would not attend the marriage and only after marriage they will take to their house. It is from their consent, the marriage was performed at Narsaraopet under the Special Marriage Act, registered by the Sub Registrar office, Narsaraopet. The couple, after marriage, spent ten days in Narsaraopet. Thereafter they went to Chennai and started living there since 14.05.2012 and during that period, her parents presented gold ornaments and also cash towards dowry meeting his demand. It is her averment that before coming to Chennai he began to show his real colours by subjecting her to cruelty and harassing to meet additional dowry of 25lakhs and her mother-in-law-A.4 used to call her everyday to meet the demand and her father-in-law-A.2 used to abuse her including over phone for not meeting additional dowry. Shekshavali and his maternal uncle tortured the defacto-complainant for meeting additional dowry. While so, on 12.06.2012, when A.1 and the defacto-complainant were at the house in Chennai, her father-in-law Godala Abdul Khayum-A.2, mother-in-law-Godala Jasmin-A.4, maternal uncle-Chand Basha-A.5 came at 5.30a.m. with knife and iron rods and

abused the defacto-complainant in filthy and A.4 caught hold of her tuft and A.2 beat her with iron rod, however, she could manage to escape but his uncle tried to stab her while the A.1 tried to caught hold her, A.4 slapped her. It is on gathering of the neighbours to her cries, they went away by threatening with dire consequences to do away with her. It is as per their nefarious plan hatched, the incident took place and her husband is also hand in glove with them. Later they suddenly changed their colours and compromised with her by promising her to look after well during investigation in crime vide Cr.No.102 of 2012 registered against them on her report and she believing his words went to Chennai to lead marital life in third week of July,2012 from the closure of above crime but the accused again insisted her to resign the job with nefarious plans, but she was unable to digest that she stood in her performance at the top of the year 2012 among the other employees. After August, 2012, all the 5 accused began to demand additional dowry of 25lakhs and her husband's brother Shavali-A.3 who also demanded with a threat to kill along with her in-laws and they abused in filthy saying they are factionists. A.1, in November, 2012 went to Dubai and all of a sudden without intimation and he came back to Hyderabad and joined as a Senior Design Engineer at B.E. aerospace, Hyderabad and then they shifted to Hyderabad and in February,2013 all of a sudden, A.1 stated that his mother was hospitalized with kidney operation at Narayana hospitals, Bangalore and on 07.02.2013 by pretending to go to Bangalore, assuring her that he would come back on 11.02.2013, left

Bangalore by sending her to Narsaraopet having dropped her at bus stand, however he was sending messages showing affection on her over phone. On 11.02.2013 when she asked him to come back, he stated that he would not be able to come as his mother-A.4 was still in hospital. However, all of a sudden on 11.02.2013 she came to know of their nefarious plan in arranging second marriage to A.1 and the marriage was performed and reception was held at international Function Plaza, Kurnool, dt.11.02.2013 but suppressing that fact, A.1 came to Narsaraopet to her birthday on 12.02.2013 as if coming from Bangalore but he came from Kurnool. It is later she came to know and when questioned about his second marriage, he even saying it is at the instigation of his parents, brother and uncle and for the sake of dowry he married, even though he was willing to leave his second wife and come back with her in case her parents arranges him a dowry of 25lakhs. For her refusal to give any further amounts and for questioning, he grew wild, caught hold of her neck and tried to squeeze her neck forcibly and on her cries when her mother, maternal aunt, maternal uncle came there and relieved from his clutches and he also threatened all of them with dire consequences saying he is a Kurnool factionist and his family members would see her end. As her life is completely ruined by the A.1 and the other accused supra, she is constrained to file a complaint to take action.

2. From which the crime 21 of 2013 was registered for the offences punishable u/ sec.498-A, 417, 494, 506 r/w 34IPC and under Sections 3 and 4 of the Dowry Prohibition Act. The police

after investigation by examination of the defacto-complainant, her parents, other relatives and neighbours etc., as many as 12 in number, filed the final report. The learned Magistrate has taken cognizance from the police final report from the offences supra and allotted P.R.C.No.11 of 2016 and committed the case to the Court of Sessions.

3. The Gist of the chargesheet almost by repetition of the facts shows established from the investigation allegedly made attempt on her life. The quash petition averments in nutshell are that there is no allegation either from the FIR or from the investigation material against the petitioners-A.6 to A.8 who are second wife of A.1 and her parents including for any abatement of offence u/ sec. 494 IPC and the police investigation is mechanically done but not really by examining any witnesses much less by application of mind of any facts more particularly for the alleged offence no way attracts section 494IPC for which it has to be shown the first marriage is valid and the second marriage contracted also valid and none of the ingredients made out, hence the quash proceedings.

4. Notice ordered to the 2nd respondent, one is returned as no such addressee for the address at Prakashnagar, Narasaraopet and the other at Yerramsetty towers, Narsaraopet, intimated but not claimed held as sufficient service, hence taken as heard the defacto-complainant and also heard the learned counsel for the petitioners-A.6 to A.8 and also heard the learned Public Prosecutor for the 1st respondent-State.

5. The Apex Court in *Gopal Lal Vs. State of Rajasthan*¹ held that to attract the offence u/ sec.494IPC, the accused spouse must be shown contacted first marriage and while its subsistence contacted the second marriage and both marriages are valid. The other judgment placed reliance is two Judge Bench expression of the Apex Court in *A.Subhash Babu Vs. State of Andhra Pradesh*² in which case, it is observed that a woman with whom a second marriage is contracted by suppressing the factum of former marriage is aggrieved person within the meaning of Section 198 CrPC and can maintain a complaint for the offence u/ sec.494 and 495 IPC from the concealment of earlier marriage by the husband in marrying the defacto-complainant. It is further observed that Section 494 IPC does not restrict right of filing a complaint to first wife only within the meaning of “aggrieved person” for the reason of even second wife can also be within the expanded meaning of aggrieved person for the miseries inflicted on such second wife arising out of fraud perpetrated upon her by the accused. It is reiterated of due performance of the ceremonies of both marriages, requires under personal law. It is also considered the scope of Sections 155(2), 198(1)(c) and the amendment in schedule-1 by the Andhra Pradesh Act 2/ 1992 making Section 494 and 495 IPC cognizable in the State of Andhra Pradesh from which police can investigate said offence u/ sec.156(1) CrPC without authorization from the Magistrate concerned under Section 155(2)

¹ (1979) 2 SCC 170

² (2011) 7 SCC 616

police can investigate said offence u/sec.156(1) CrPC without authorization from the Magistrate concerned under Section 155(2) or 156(3)CrPC and the learned Magistrate can even take cognizance on the receipt of police final report in the form of chargesheet u/sec.173 r/w 190 CrPC. It is made clear that after the A.P. Amendment 1992, Section 198(1)(c) CrPC cannot be interpreted in isolation even if it was not amended along with Section 494 and 495 IPC. It is observed that bar must u/ sec.195(1)CrPC gets lifted with the State of A.P. amendment thereby the police can investigate without authorization of the learned Magistrate and from the police final report, the learned Magistrate can take cognizance of the offences. It is also observed that even a second wife, though such marriage from validity of the first marriage if at all is void, can invoke Section 498-A IPC for allegation of cruelty.

6. Having regard to the above for the offence within the State of Andhra Pradesh, the registration of the crime on the report the defacto-complainant-the first wife and the police final report and taking cognizance therefrom by the learned committal Magistrate including for the offence u/ sec.494 IPC is not a bar, leave about the factum of the other offences some of which once cognizable even and non-cognizable offence if any one of them no way comes in the way to take cognizance along with cognizable offences.

7. Coming to the decision of the Apex Court, placed reliance in *Preeti Gupta Vs. State of Jharkhand*³, it is observed that though exaggerated version of small incident should not be reflected in the criminal complaints, there is a social responsibility with obligation to maintain social fibre of family life particularly in genuine cases of dowry harassment when same is a matter of serious concern thereby the allegations are to be scrutinized with care and circumspection especially with husband's relatives who were living in different cities and never visited or rarely visited the matrimonial home of the complainant. It is observed that the power u/ sec.482 to be exercised carefully and cannot be exercised to stifle legitimate prosecution but Court's failing to use the power for advancement of justice can also lead to grave injustice and for that conclusion referred the expressions in *State of Karnataka Vs. L.Munuswamy*⁴ saying the Court is entitled to quash the proceedings when comes to conclusion of allowing the proceedings to continue would be an abuse of process of Court and ends of justice requires that the proceedings ought to be quashed. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution and ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the legislature. Same was quoted with approval in *Madhu Limaye Vs. State of Maharashtra*⁵ by three Judge Bench and in *Madhavrao Jiwajirao Scindia Vs. Sambhajirao*

³ 2010 7 SCC 667

⁴ (1977) 2 SCC 699

⁵ (1977) 4 SCC 551

Chandrojirao Angre⁶. It also quoted with approval the guidelines of the Apex Court in State of Haryana Vs. Bhajan Lal⁷. No doubt, from these expressions, where it is an abuse of process, the proceedings can be quashed.

8. Here the part-II CD filed shows the statements of witnesses regarding the alleged harassment and demands for additional dowry. So far as the first marriage is concerned, it is between Hindu bride and Muslim Groom covered by the Special Marriage Act by registration of the marriage. The second marriage woman is a Muslim though Muslim personal law permits for grant of more than one wife to treat all equally and it is not a case of the second wife and her parents who are the petitioners herein of had he disclosed about his first marriage, she could not marry. Whether, to this case on hand, Section 494 IPC attracts or not is a matter for discussion and thus pre-mature for the Court at this stage to discuss ultimate merits by pre-judging, but for perusal of the investigation material prima facie. It is thus a matter for consideration before the trial Court so far as the offence u/sec.494IPC concerned. So far as the other offences covered by the cognizance order of the learned Magistrate concerned, from the very material, there is no offence attracts against any of the A.6 to A.8.

9. Having regard to the above and in the result, the Criminal Petition is partly allowed by quashing the cognizance order of the learned Magistrate against the A.6 to A.8- the petitioners herein

⁶ (1988) 1 SCC 692

⁷ (1992) Supp (1) SCC 335

for the offences punishable u/ sec.498-A, 417, 307 and 506 r/w 34IPC and Sec.3 and 4 of the Dowry Prohibition Act, but for the offence u/ sec.494IPC for a matter of appreciation particularly from the trial from any charge to be framed.

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

Dr. B. SIVA SANKARA RAO, J

Date:08.11.2017
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