

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.3249 of 2017

ORDER:

The present Criminal Revision Case is preferred questioning the order dated 20.11.2017 in C.C.No.77 of 2007 passed by the learned Judicial Magistrate of First Class at Hindupur, whereby and whereunder, the learned Magistrate refused to discharge the accused.

Heard Sri N. Ranga Reddy, learned counsel for the revision petitioner. He would submit that no separate discharge application was filed, but, however, the learned counsel for the complainant before the Court below argued for taking cognizance of the offence punishable under Section 494 IPC. He would also submit that 'saptapadi' is one of the mandatory requirements for proving even the second marriage and, in the absence of the same, certainly, it can be held at this stage that 'saptapadi' has not been performed and there is nothing in that direction in the complaint lodged by the wife of the revision petitioner.

Perused the order under challenge. In the said order, the learned Magistrate referred to the sworn statement, the evidence of PWs.1 to 3 and also the decisions of the Honourable Supreme Court in **Santi Deb Berma v. Smt. Kanchan Prava Devi¹**, **S.M. Dutta v. State of Gujarat²** and **Mohinder Singh v. Gulwant Singh and**

¹ AIR 1991 SC 816

² AIR 2001 SC 3253

others³ in the context of provisions of Sections 200 and 202 of the Code of Criminal Procedure, 1973, and, thereafter, observing that in view of the nature of the legislation and *prima facie* material occurring in the present case, opined that the truth will come out only after a full-fledged trial and, keeping in view, the *prima facie* case, arrived at the finding that the accused cannot be discharged blindly.

In fact, some details ought to have been mentioned by the learned Magistrate from the sworn statement recorded, but, he has referred to the arguments advanced by the learned counsel and the evidence of PWs.1 to 3, where it appears the submission was that the statements made by PWs.1 to 3 were in the nature of hearsay and inadmissible, which he has ruled out.

Now, the point involved is whether the so-called 'saptapadi' was performed or not?

Though, the averment as to performance of 'saptapadi' is not occurring in the complaint, certainly, on account of the same, it cannot be said that the petitioner is entitled to discharge. The matter requires a thorough evaluation in the light of the evidence that would be let in through the witnesses on behalf of the complainant. The sworn statement may give rise to a preliminary impression as to making out a case for the offence punishable under Section 494 IPC. Therefore, it is not a case where the extra-ordinary power of setting aside the order under challenge can be exercised.

³ AIR 1992 SC 1894

Therefore, the present Criminal Revision Case is dismissed.

Miscellaneous Petitions, if any, pending in the present revision case, stand closed.

A. SHANKAR NARAYANA, J

15.12.2017

v v

