

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.193 of 2018

ORDER:

This Criminal Revision Case is filed by the respondents/accused aggrieved by the order dated 07.12.2017 in CrI.M.P.No.113 of 2016 in CrI.A.No.304 of 2015 passed by the V Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, Hyderabad, allowing the petition filed under Section 391 Cr.P.C by the complainant/appellant to receive Aadhar cards of A.1 and A.2 and their two daughters, ration cards and photograph as additional evidence to prove the marriage between A.1 and A.2 during the subsistence of marriage between the complainant and A.1.

2) It is pertinent to note that the complaint given by the complainant to police of WPS, Saroornagar against the accused was registered as case in Crime No.60/2013 for the offences under Sections 498-A, 494 and 506 IPC and after investigation charge sheet was filed against the accused which was taken cognizance by the XIV Metropolitan Magistrate, Cyberabad at L.B.Nagar and registered as C.C.No.167 of 2013.

3) The contention of A.1 and A.2 appears to be that A.1 had the second marriage with A.2 with the consent of complainant and they begot two female children Kumari Poojitha and Kumari Kusuma.

4) The Trial Court acquitted the accused with the observation that the evidence of PWs.1 to 3 was not believable to establish the offence under Section 498-A IPC. Offence under Section 494 IPC is concerned, the

prosecution failed to adduce any oral or documentary evidence to show that A.1 never married A.2 during subsistence of marriage with PW.1. The Trial Court further held there was no evidence on record to establish the offence under Section 506 IPC. Hence the *defacto* complainant filed Criminal Appeal No.304 of 2015 and pending appeal she filed Crl.M.P.No.113 of 2016. The lower Appellate Court allowed the petition observing that it is the endeavour of the appellant to establish the fact that A.1 and A.2 are husband and wife and they married during subsistence of her marriage with A.1. The proposed documents according to her would help prove her case. The accused in their counter categorically admitted that A.1 married A.2 as second marriage and they were blessed with female children. Their only plea was that the marriage was performed with the consent of the petitioner/appellant. In view of the respective contentions, the appellate Court felt, an opportunity should be given to the petitioner/appellant to establish her case in the interest of justice and accordingly allowed the petition.

Hence the instant Crl.R.C.

- 5) Heard arguments of Ms.B.Anuradha, learned counsel for petitioners and Sri M.Srinivas Reddy, learned counsel for 2nd respondent.
- 6) Learned counsel for petitioners/accused vehemently opposed the impugned order and argued that the lower Appellate Court erred in allowing the petition inspite of the contention of the accused that the proposed additional evidence was intended to fill up the lacunae in the prosecution case. Learned counsel further argued that the proposed documents were very much

available with the complainant at the time of trial but for the reasons best known to her, she did not tender them to the police to be filed during the trial. Therefore, at the appellate stage, she cannot be permitted to introduce new documents. Learned counsel thus prayed to allow the CrI.R.C and set aside the impugned order.

7) Per contra, learned counsel for 2nd respondent argued that admittedly A.1 had second marriage with A.2 but his only contention is that the said marriage was performed with the consent of complainant which is a blatant lie. Therefore, to establish that the said marriage was performed during the subsistence of the marriage between the complainant and A.1 and there was no consent of the complainant. The proposed documents were sought to be filed and the lower appellate Court considering the respective contentions has rightly allowed the said petition. He submitted that the proposed documents are not intended to fill up any lacunae but they would serve the purpose and assist the Court to render just decision. He thus prayed to dismiss the petition.

8) Having regard to the respective contentions of both parties, in the considered view of this Court, the lower Appellate Court rightly allowed the petition. Admittedly, A.1 and A.2 married but their contention before the Courts below was that the said marriage was performed with the consent of the complainant which was denied by the complainant. The Trial Court acquitted the accused holding that the evidence of PWs.1 to 3 was not believable to prove any of the charges proved against the accused. Since it is the version of complainant that the second marriage between A.1 and A.2 took place during the subsistence of the valid marriage between her and A.1 and

that she did not give any consent for such second marriage, she has to be given an opportunity to establish her case. Hence the documents such as Aadhar cards and ration cards can be permitted to be adduced in evidence. Needless to say, the accused can put forth their arguments in the appeal that those documents will not improve the case of prosecution.

9) With these observations, this Criminal Revision Case is dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Date: 18.07.2018
scs



U. DURGA PRASAD RAO, J