

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.196 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.175 of 2017 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 C.C of plaint and affidavit in O.S.No.1651/2013 on the file of I Additional Senior Civil Judge, Ranga Reddy District, wedding invitation, Xerox copy of ration card 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 complainant/appellant gave a complaint to police of WPS, Saroornagar against the accused registered as case in Crime No.60/2013 for the offences under Sections 498-A, 494 and 506 IPC and after investigation filed charge sheet 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 observations 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 ever married A.2 during subsistence of marriage with PW.1. The Trial Court further found that there was no evidence on record to establish the offence under Section 506 IPC.

a) Therefore the *defacto* complainant filed Criminal Appeal No.304 of 2015 and pending appeal she filed CrI.M.P.No.175 of 2017. 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 and the proposed documents according to her would help prove her case. The appellate Court thus felt that 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 CrI.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 her. The Trial Court acquitted the accused holding that the evidence of PWs.1 to 3 was not believable to prove any of the charges brought against the accused. Since it is the case 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 C.C of plaint and affidavit and its annexures in O.S.No.1651/2013 on the file of I Additional Senior Civil Judge, Ranga Reddy District 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