

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.8677 of 2011

ORDER:

This petition is filed, by the petitioners, seeking for quash of the order, dated 22.07.2011, passed in CrI.M.P.No.2396 of 2007 by the Additional Judicial Magistrate of First Class at Huzurabad, by virtue of which the court took cognizance of the case for the offences under Sections 494, 290, 323, 506 r/w 109 IPC based on the protest petition filed by the *de facto* complainant.

2. Heard the counsel for the petitioners and the Public Prosecutor appearing, for the 1<sup>st</sup> respondent as well as the counsel appearing for the 2<sup>nd</sup> respondent.

3. The facts of the case are that a complaint was filed by the 2<sup>nd</sup> respondent stating that her marriage was performed with A1 and they lived together and enjoyed their marital life. Dowry was given at the time of marriage. After marriage, A1, at the instigation of A3, developed *mala fide* intention and started harassing the complainant. The complainant lodged a criminal case against him and his family members, who harassed for additional dowry. Thereafter, A1 filed a divorce petition viz., O.P.No.27 of 2004 on the file of the Court of Senior Civil Judge, Manthani, and the same is pending for trial. Meanwhile, at the instigation of A2 and family members i.e., A3 to A40, who are related to A1 and A2, abetted A1 to get married for

second time. On 28.04.2005, A1 married A2, with the instigation and active participation of relations of A1.

4. These being the allegations, the counsel for the petitioners submits that a quash petition was filed before this court in CrI.P.No.3929 of 2005, which was dismissed by order, dated 19.07.2006, giving liberty to the petitioners therein to seek appropriate remedies after charge sheet is filed.

5. The counsel for the petitioners now submits that the charge sheet is now filed in this case, referring the case as false and after that a protest petition is filed by the complainant and cognizance was taken by the court, without there being any basis. He also submits that A1 married A2, after the divorce was granted by the court in O.P.No.27 of 2004 and that the complainant remained *ex parte* in the said OP and this complaint is filed subsequent to the decree that was granted in O.P.No.27 of 2004. Hence, the offence under Section 494 IPC does not get attracted.

6. The counsel for the 2<sup>nd</sup> respondent argues that the 1<sup>st</sup> petitioner got married without even waiting for the statutory period provided for the appeal.

7. The counsel for the petitioners relies on a judgment of the Supreme Court reported in *Krishna Gopal Divedi vs. Prabha Divedi*<sup>1</sup>, wherein the facts are that the husband got married after obtaining *ex parte* divorce decree against the wife.

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<sup>1</sup> AIR 2002 SC 389

The court held that, in such circumstances, the husband cannot possibly be convicted under Section 494 IPC even though *ex parte* decree of divorce was later set aside.

8. The counsel for the petitioners submits that in this case even if the 1<sup>st</sup> petitioner did not wait for the statutory period, it cannot be said that he committed an offence under Section 494 IPC, as there was a decree of divorce granted by a competent court, by the date of his second marriage. Even in the case dealt with by the Supreme Court, the marriage between the accused and the complainant stood revived by virtue of setting aside the *ex parte* decree, but the court did not consider that the same would form a ground for prosecuting the husband for the offence under Section 494 IPC. The facts of this case also stand on par with the *factual* situation dealt with by the apex court.

9. The allegations, so far as the offences under Sections 290, 393, and 506 IPC are concerned, seem to be baseless and seem to have been invented only for the purpose of drawing some support to the case of the complainant.

10. Hence, in view of the above, this court opines that the proceedings against these petitioners need to be quashed.

11. With the above observations, the Criminal Petition is allowed and the order, dated 22.07.2011, passed in

Crl.M.P.No.2396 of 2007 by the Additional Judicial Magistrate of First Class at Huzurabad, is hereby quashed.

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

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T. RAJANI, J

September 10, 2018  
LMV

