

HON'BLE SRI JUSTICE S.V. BHATT

W.P. Nos.17150 OF 2015 AND 2001 OF 2016

COMMON ORDER:

Heard Mr.T.Surya Satish for petitioners, learned Government Pleader for Home and Mr.Gajanand Chakravarthi for respondent No.3.

The parties in both the writ petitions are same. The circumstances and the grounds of challenge are similar. Hence, the writ petitions are disposed of by this common order:

The counsel appearing in the writ petitions have stated that reference to pleadings in W.P. No.17150 of 2015 would be sufficient for disposing of both the writ petitions. The prayers in W.P. No.17150 of 2015 and 2001 of 2016 read thus:

W.P. No.17150 of 2015:

“ writ of certiorari quashing the FIR No 78/2015 dated 05-06-2015 registered on the file of Women Police Station Karimnagar under Section 498A 506 IPC and Section-4 of Dowry Prohibition Act against the petitioners herein, as illegal arbitrary and in violation of the provisions of the Hindu Marriage Act, provision of Section 498-A and Articles 14, 21 of the Constitution of India...”

W.P. No.2001 of 2016:

“... writ of certiorari quashing the D. V. C. No 120 of 2015 pending on the file of the Honble Addl. First Class Magistrate at Karimnagar filed against the Petitioners herein by Respondent No. 2 herein as being illegal, abuse of process of law, not maintainable under law, being outside the purview of Protection of Women from

Domestic Violence Act 2005, and is in violation of the provisions of the Hindu Marriage Act, Articles 14 & 21 of the Constitution of India..”

The averments in W.P. No.17150 of 2015:

The 1st petitioner and the 3rd respondent were married on 29.11.2012 as per Hindu Rites and Customs. Petitioner Nos.2 and 3 are parents, petitioner No.4 is elder brother, petitioner No.5 is sister-in-law, petitioner No.6 is sister and petitioner No.7 is brother-in-law of 1st petitioner. The 3rd respondent, on 05.06.2015 filed complaint against petitioners under Sections 498-A, 506 of IPC. The gist of the complaint is that the petitioners herein harassed 3rd respondent to bring additional dowry of Rs.10,00,000/- and threatened to kill 3rd respondent if their demands are not met and the same is numbered as FIR No.78 of 2015 dated 05.06.2015 on the file of 2nd respondent. The petitioners aver that the 3rd respondent was married to one Bathini Kanaiah s/o.Rajaiah, resident of Nagunuru Village, Karimnagar District and in the evidence of marriage with one Bathini Kanaiah, the petitioners rely on voter I.D. card and also the marriage certificate issued by the Administrative Officer. According to petitioners, the relationship between 3rd respondent and Bathini Kanaiah is not severed through legal process, much less a decree of divorce exists. Therefore, the marriage with 1st petitioner on 29.11.2012 is void and *ab initio*. It is further alleged that the father of 3rd respondent is Head Constable in the Police Department. The sister and brother-in-law of 1st petitioner filed complaint registered as FIR No.78 of 2014 under Sections 504,506 and 509 IPC read with

Section 66-A and Section 66-B of Information Technology Act. The petitioners allege that the marriage between 1st petitioner and 3rd respondent solemnized on 29.11.2012 is null and void as per Section 5 of Hindu Marriage Act, 1955. The 1st petitioner admits that the 1st petitioner filed O.P. No.525 of 2015 on the file of Family Court at Hyderabad to declare the marriage between 1st petitioner and 3rd respondent as null and void. The O.P. is still pending. The petitioners broadly denied the allegations of cruelty or demand for additional dowry from the father of 3rd respondent. The petitioners submit that the basic requirement for filing a complaint under Section 498-A and 506 of IPC pre-supposes valid relationship of husband and wife between complainant and the accused husband. In the case on hand even assuming that the marriage was solemnised on 29.11.2012, the marriage is void and therefore, registering crime impugned in the writ petition is illegal amounts to abuse of process of law and therefore, pray for quashing the FIR.

The 3rd respondent filed petition to vacate the interim order and counter affidavit. According to 3rd respondent, the documents relied on by the petitioners to treat the marriage solemnised on 29.11.2012 is null and void are forged, fabricated and on concocted grounds. The 3rd respondent expresses shock and dismay after looking at the documents relied on by the petitioners. According to 3rd respondent, no case is made out for quashing the DVC.

The 2nd respondent filed counter and also petition to vacate the interim order granted by this Court. According to him, the investigation is in progress and at that stage to avoid enquiry or investigation into the allegations against the petitioners under Sections 498-A and 506 of IPC, the present writ petition to quash the FIR is filed. The 2nd respondent contends that no ground to quash FIR is made out and prays for dismissing the writ petition.

Mr. Surya Satish contends that this Court has ample power and jurisdiction to quash the FIR under Article 226 of the Constitution of India. In the case on hand, he invokes the ground of abuse of process by 3rd respondent and the abuse is correlated to the 1st marriage allegedly solemnised between 3rd respondent and Bathini Kanaiah. He places strong reliance on the Xerox copies of voter I.D, declaration issued by the Administrative Officer and contends that during the subsistence of marriage with Bathini Kanaiah the marriage between 1st petitioner and the 3rd respondent was performed and the marriage between 1st petitioner and 3rd respondent is void. Therefore, once there is no relationship of husband and wife between the 1st petitioner and the 3rd respondent, the maintainability of FIR or a case under the Protection of Women From Domestic Violence Act, 2005 is illegal, amounts to abuse of process of law and liable to be quashed. He

relies on the decision in Smt.Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav ¹.

Mr.Gajanand Chakravarthi contends that the premise on which the writ jurisdiction of this Court is invoked is basing on forged and fabricated documents. This Court in exercise of its jurisdiction under Article 226 first take up the issue whether the documents i.e. voter I.D. card, declaration certificate etc. relied on by the petitioners are true or forged and thereafter record a finding whether grounds are made out for quashing the FIR/DVC. According to the counsel for 3rd respondent, these are primarily matters for enquiry or investigation either before the investigating officer in FIR No.78 of 2015 or before the learned Magistrate in DVC No.120 of 2015 in the Court of Additional First Class Magistrate at Karimnagar. According to him, the voter I.D.card cannot be treated as conclusive proof under Article 226 of the Constitution of India to arrive at a conclusion that there was first marriage between 3rd respondent and one Bathini Kanaiah. If such procedure is adopted, according to him, the rights of 3rd respondent are substantially pre-determined prejudicially under Article 226 of the Constitution of India. He further contends that the 1st petitioner since has filed a petition under Section 11 of the Hindu Marriage Act, the issue for consideration by the Family Court is whether a marriage existed between 3rd respondent and Bathini Kanaiah on

¹ 1988 1 Crimes(SC) 594

the date of conducting marriage with the 1st petitioner. The pleas now introduced, according to him, are matters of investigation and enquiry and the petitioners cannot presume that by reference to voter I.D. card and declaration certificate issued by the Administrative Officer, the marriage between 3rd respondent and Bathini Kanaiah is established. According to him, voters list cannot be treated as conclusive proof of details stated in the voter I.D. card.

The Assistant Government Pleader (Home) substantially reiterated the stand taken by 2nd respondent in the counter affidavit.

I have heard the counsel and perused the record.

Now the point for consideration is whether the petitioners have made out case for quashing of FIR No.78 of 2015 on the file of Women Police Station, Karimnagar and DVC No.120 of 2015 on the file of Additional First Class Magistrate at Karimnagar?

The case of petitioners is that marriage between 3rd respondent and one Bathini Kanaiah was solemnised on 13.11.2010. In support of such assertion the petitioners rely on voter I.D. card and certificate issued by the Administrative Officer of Sri Venkateswaraswami Devasthanam, Sundaragiri. The petitioners contend that the 3rd respondent does not satisfy the requirement of definition of wife and there is no valid, legal and binding marriage between 1st petitioner and the 3rd respondent. Once the relationship of 1st petitioner with 3rd respondent does not satisfy the

definition of wife and the marriage is void, filing complaint under Section 498-A and 506 of IPC read with Dowry Prohibition Act and registering case under Domestic Violence Act are illegal and liable to be set aside. The 1st petitioner filed O.P. No.525 of 2015 under Section 11 of the Hindu Marriage Act to declare the marriage between 1st petitioner and the 3rd respondent as null and void.

Sections 5 and 11 of Hindu Marriage Act read thus:

Section 5: Conditions for a Hindu marriage. —A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:—

(i) neither party has a spouse living at the time of the marriage;

[(ii) at the time of the marriage, neither party—

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity

(iii) the bridegroom has completed the age of ⁴ twenty-one years and the bride, the age of ⁵ eighteen years at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two “

Section 11. Void marriages:- —Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

According to petitioners, the 3rd respondent has a living spouse at the time of marriage with 1st petitioner on 29.11.2012. Section 11 treats a few marriage as void marriages. One of the grounds to treat the marriage as void is that as a spouse living at

the time of marriage. 1st petitioner filed petition for declaration of marriage between 1st petitioner and 3rd respondent as void. The documents now relied on by the petitioners are matters of evidence in O.P. No.525 of 2015. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot ignore the presumption available to voters' list or voter I.D. card and that they are not conclusive but are rebuttal by evidence by a party against whom the documents are relied on.

In the case on hand, the 3rd respondent challenges every one of the documents now relied on by the petitioners as fabricated and forged. This Court is of the view that these circumstances centre around the controversy are matters for investigation by the trial Court or investigating agency but not for quashing cases by exercising its power under Article 226 of the Constitution of India. This Court is also of the view that if the prayer of petitioners is accepted to quash the FIR and the DVC then a decree of nullity in O.P. No.525 of 2015 is passed by this Court by accepting the subsistence of valid marriage between 3rd respondent and one Bathini Kanaiah. As always, it is important to ensure that the Criminal Procedure is not initiated as an abuse or to harass individuals but at the same time while exercising the power to quash the proceedings under IPC, this Court ought not to pre-judge the matters which are primarily in the realm of investigation, enquiry before the Courts dealing with the issues of

subsistence of marriage etc. It is made clear that this Court has not examined the merits of rival contentions. The petitioners are given liberty to move the Court for reliefs including anticipatory or regular bail as and when circumstances warrant. The dismissal of the writ petition ought not to be understood as this Court adverting to any of those aspects which are considered while granting relief by a Court of competent jurisdiction.

The decision relied on by Mr. Surya Satish in Smt. Yamunabai Anantrao Adhav case is distinguishable as in the case on hand there is no conclusive proof that respondent No.3 is having a living spouse at the time of marriage with 1st petitioner.

With the above observations, the writ petitions are dismissed.
No order as to costs.



S.V.BHATT, J

Date: 01.05.2018

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