

THE HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No.9515 of 2011

ORDER:

This petition is filed by the petitioner under Section 482 of Cr.P.C., seeking to quash the proceedings in C.C.No.153 of 2010 in C.A. No.8982 of 2011 on the file of learned III Additional Judicial Magistrate of First Class, Tirupati.

2. The contention of the petitioner/accused No.1 is that, the Trial Court failed to observe that the present complaint is verbatim of an earlier complaint in C.C. No.55 of 2001. Admittedly, the complaint in C.C. No.55/2001 was lodged after 33 years of alleged commission of offence which entail a bar for continuation of prosecution. It is the further contention of the petitioner that the Trial Court failed to appreciate that on an earlier occasion, it refused to prosecute the petitioner under section 494 IPC. That the earlier instance under C.C. No.55/2001, the respondent No.2 /complainant deposed about the alleged marriage of petitioner, but no charge was levelled under section 494 IPC and held that the prosecution failed to establish the ingredient of offence under section 498-A r/w 109 IPC and equally failed to establish the second marriage, as such, petitioner was acquitted. The second complaint on the same allegation is not maintainable.

3. Per contra, the Counsel for respondent No.2-complainant contended that there is no charge under 494 IPC in earlier C.C.

No.55/2001 and hence, the second complaint for the same offence is maintainable.

4. The learned Assistant Public Prosecutor contended that in C.C. No.55/2001, the Trial Court considered the offence under 494 IPC and consequently held that no offence is made out under section 494 IPC and hence, the present complaint is not maintainable on the same ground and further it is not a protest petition.

5. Now, the point that arise for determination are:

- (i) *Whether there is any prima facie material to prosecute the petitioner? and*
- (ii) *whether the second complaint on the same ground can be sustained?*

6. A reading of the material available on record would go to show that the marriage between the respondent No.2/complainant and petitioner / accused No.1 was solemnised on 25.9.1997. As per the allegations in the complaint, earlier, basing on the complaint of respondent No.2 in Crime No.22/2000 for the offences under section 498-A, 506 and 109 IPC, a case was registered in C.C. No.55/2001. In the said case, charges for the offence under section 498-A and 506 IPC against A1 and under section 498-A r/w 109 IPC against A2 to A4 are framed and no charge for the offence under section 494 IPC.

7. Even though there is no charge, evidence was let in with regard to the offence under 494 IPC. Ex.P.4-true copy of receipt issued by Executive Officer, Kanipakam Temple, dated:26.7.2000 was secured by the investigating officer during the course of investigation and after thorough investigation in C.C. No.55/2001 held that, there is no sufficient evidence to prove the second marriage between A.1 and A.2. However, when there is no charge for 494 IPC, there is no necessity for going in deep. But it is the evidence of PW.1 against her husband / accused No.1 that when she went to the house of A.1 on 14.5.2000, she questioned him for having married A.2 for which A.1 made galata and beat her and driven her out of the house. Therefore, she went to police station and lodged a complaint stating that she came to know that A.1 married A.2 at Kanipakam Temple on 9.3.2000 and on the date of complaint ie., 14.5.2000, there was a delay which is not properly explained by PW.1 and investigating officer.

8. In support of the contention of respondent No.2 / complainant that second complaint for the offence under section 494 IPC is maintainable when there is no charge or trial in respect of 494, the learned Counsel for respondent No.2 placed reliance of our own High Court in the case of NAZAR ALI MURAD ALI MANDANI Vs. STATE OF TELANGANA, THROUGH STATION HOUSE OFFICER, WARANGAL¹, wherein the High Court of Judicature at Hyderabad held that,

¹ 2017 (3) ALT (CrI.) 61 (A.P.)

“Second FIR is not by the same person and there are additional facts even thereby the second FIR is not a bar particularly from the expression of Upkar Singh supra. Further, the Apex Court in Surendra Kaushik v. State of U.P. (12) 2013 (2) ALT (Crl.) 1 (SC) = (2013) 5 SCC 148 also held that, merely because same appellant lodged FIR against certain persons alleging forgery and fabrication of documents etc., that would not debar any other aggrieved person from subsequently seeking by report or even approaching Magistrate by complaint and it is referring to police for investigation under section 156(3) and the second FIR thereby not liable to be quashed therefrom unless it is shown of two FIRs outcome of same incident and even then to read second FIR only with a value of section 161 of Cr.P.C in filing the final report if at all also with reference to earlier investigation material. In fact, in Upkar Singh supra second complaint in regard to same incident filed to register as a counter complaint not prohibited by clarifying T.T. Antony supra and referring to Rammohan Garg v. State of U.P. (13) (1990) 27 ACC 438. Even same person not satisfied with the earlier investigation filed protest and that can even be referred to police for investigation u/sec.156(3) registration of second FIR and its investigation no way a bar”.

In the present case, admittedly, the same complainant who is the respondent No.2 by name T. Jayanthi, W/o T. Radha Reddy, filed a complaint in C.C. No.55/2001 for the same offence under section 498-A, 506 r/w 109 IPC. The said C.C.55/2001 was ended in acquittal. There was a discussion with regard to second marriage and even though there is no charge, there is a finding that the complainant failed to establish the second marriage. The decision relied upon by the Counsel for respondent No.2, cited supra, has nothing to do with the present matter.

9. The present FIR-complaint was filed in the month of October, 2005 ie., five years after the complaint in Crime

No.22/2000 which was tried as C.C.No.55/2001. The complainant also filed M.C.No.12/2000 against A.1, wherein maintenance was granted to her. Admittedly, the allegations in C.C.No.55/2001 and in the present C.C.No.153/2010 are one and the same. There are no fresh or additional facts alleged in the complaint with regard to harassment or the allegations of second marriage are not known and they are the same allegations. More so, it is not a protest petition as held by the Supreme Court for consideration. Second complaint by the same person and the same allegations against the same person is not maintainable. More over the present complaint is filed after five years in Crime No.22/2000 which was tried as C.C.No.55/2001 is clear abuse of process of Court and caused harassment and prejudice to the petitioner.

10. Therefore, Accordingly, the proceedings in C.C.No.153 of 2010 in C.A. No.8982 of 2011 on the file of learned III Additional Judicial Magistrate of First Class, Tirupati are quashed.

11. In the result, the Criminal Petition is allowed.

Miscellaneous Petitions, if any, pending in this Petition shall stand closed.

JUSTICE N. BALAYOGI

Dated:22-02-2018

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