

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.7228 of 2011

ORDER:

This criminal petition is filed, seeking for quash of the proceedings in CC.No.513 of 2017, against the petitioners, who are A1 and A2, on the file of the III Metropolitan Magistrate, Cyberabad, L.B. Nagar. The offence alleged is under Sections 498-A and 506 of the Indian Penal Code.

2. Heard the counsel for the petitioner, the learned Public Prosecutor, appearing for the first respondent and the counsel for the second respondent.

3. The facts, briefly, as per the complaint are that the marriage of the complainant was performed with one Venu Gopal and she had three children i.e. one son and two daughters out of the wedlock. After their birth, the husband of the complainant died due to ill health and thereafter, she was living by doing tailoring and embroidery work. Through Amma Marriage Bureau, her younger brother performed her marriage with the first petitioner/A1 and residing at Hayathnagar. The first petitioner told her family members that he was married, his wife died and cheated her. She understood that he got two wives previously and when she asked him about the previous marriages and questioned him about cheating, he started abusing her, beat her children and threatened to kill them. Due to A1, they are suffering mentally and physically. The first wife of A1 forcibly sent her and her children away from the house and first wife of A1 is staying with A1 and both of them are threatening to kill her children. After

marriage with A1 in the year 2005, he looked after her well for about three months and thereafter, with the help of his first wife, started harassing her children and sent them out of the house and threatening them.

4. These being the allegations levelled in the complainant, the counsel for the petitioner submits that in DVC.No.1 of 2006, which was filed by the *de facto* complainant against the first petitioner, she contended that there was no marriage between the first petitioner and herself and that they are living under one roof and she also specifically averred that the first petitioner postponed the marriage on one pretext or the other. The counsel also relied on a decision of the Supreme Court in SHIVCHARAN LAL VERMA v. STATE OF MADHYA PRADESH¹ wherein the Supreme Court observed that there may be considerable force in the argument of the counsel for the appellant so far as conviction under Section 498A IPC is concerned, since his marriage with the victim for the **second** time, during the subsistence of valid marriage itself was null and void, the same having been performed during the subsistence of valid marriage with Kalindi.

5. Hence, in view of the above, in this case, the offence under Section 498A IPC would not be attracted to either the first petitioner or the second petitioner but the allegations in the complaint that both of them threatened to kill her and her children are very specific and hence, the offence under Section 506 IPC stands attracted.

¹ 2002 (0) SCJ ONLINE (SC) 986

In the light of the above, the criminal petition is allowed in part quashing the proceedings in CC.No.513 of 2017, against the petitioners, who are A1 and A2, on the file of the III Metropolitan Magistrate, Cyberabad, L.B. Nagar, insofar as the offence under Section 498A IPC is concerned and dismissed insofar as the offence under Section 506 IPC is concerned. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

September 14, 2018
DSK

T. RAJANI, J

