

THE HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL PETITION No.2827 of 2011

ORDER:

This Criminal Petition is filed under section 482 of Cr.P.C., seeking to quash the proceedings in C.C. No.8 of 2008 pending on the file of the Judicial First Class Magistrate, Parkal.

2. The contention of the petitioners / accused is that the Trial Court ought to have referred the complaint to police for proper investigation instead of taking the burden of investigation. The respondent No.2 by suppressing the divorce of decree filed the present complaint. It is further contended that filing of complaint and taking cognizance of the same by the Trial Court is sheer abuse of process of law.

3. Per contra, the learned Public Prosecutor contended that while first marriage is subsisting, petitioner No.1-accused No.1 with connivance and support of other accused married petitioner No.2-accused No.2. It is further contended that respondent No.2-complainant came to know that accused No.1 is having illicit intimacy with accused No.2 and so she made a complaint which was registered as Crime No.96 of 2007 for the offence under section 498-A IPC and thereafter, petitioner-accused No.1 started harassing the complainant. Thus, there are specific overt acts attributed to the petitioners-accused with regard to the offences punishable under section 494 and 109 IPC.

4. Now, the point that arises for determination is:

“Whether there is any prima facie material to prosecute the petitioners?”

5. A perusal of the record would go to suggest that petitioner No.1-A.1 is the husband of the complainant. A.2 is the lady who is alleged to have married petitioner No.1 while the first marriage with complainant is subsisting. A.3 is the mother, A.4 is brother of petitioner No.1, A.5 and 6 are brothers/relatives and A.7 to A.13 are elders who actively participated and performed second marriage between accused No.1 and 2. It is specifically averred in the complaint that A2 while working as worker in rice mill where A1 is also working and supervising the affairs of rice mill at Odethala village, was having illicit intimacy and immoral relation with A2. When the complainant got knowledge about the same, she made a complaint to the police, Chityala which was registered as Crime No.96 of 2007 for the offence under section 498-A IPC. Thereafter, A1 used to harass the complainant in order to shut her mouth and not to disclose the same to any relatives. Ultimately, there is no other go to the complainant except to protect the matrimonial relation with A1. While the matter stood thus, when physical and mental harassment raised to high tune, complainant prepared to give complaint and having notice of the said complaint, A1 with common intention of other accused have actively participated in the invalid and illegal marriage of A1 with A2, without proper consent or any valid divorce from the complainant.

It is further alleged in the complaint that when the relative ie., A.5 of complainant went to Kotancha temple to perform Swamivari Pooja etc., noticed the said illegal marriage between A1 and A2. Immediately, A5 informed the said matter to the complainant, on which complainant rushed to Kotancha Temple along with her relatives, they noticed the entire process of marriage and on their obstruction, accused persons escaped from the scene of offence.

The petitioner No.1 also filed order in O.P. No.18 of 2005, dated:17.02.2006 which shows it is an exp arte decree of divorce.

6. The question is whether the complainant had knowledge of the exp arte decree or not and purposefully failed to mention the same in the complaint and suppressed the same before the trial.

7. As the matter stood thus, there are specific overt acts attributed to the petitioners; that the elders having knowledge of subsisting first marriage between accused No.1 with complainant, again performed marriage between A.1 and A.2. So, there is prima facie material to prosecute the petitioners-accused for the offence punishable under section 494 and 109 IPC. There is nothing to suggest that complaint given by complainant is abuse of process of the Court, by filing such complaint no prejudice is caused to the petitioners.

8. In the result, there are no merits in the Petition, the Criminal Petition is liable to be dismissed and is accordingly dismissed.

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JUSTICE N. BALAYOGI

Dated:19-02-2018

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