

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.7929 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.839 of 2017 pending on the file of VI Metropolitan Magistrate, Medchal District, Cyberabad, registered for the offences punishable under Section 498-A IPC and Section 4 of the Dowry Prohibition Act.

The petitioners are A1 to A3. The *de facto* complainant – Smt Konda @ Koti Radhika lodged report with the police alleging that the petitioners subjected her to cruelty for her failure to meet the illegal demand of dowry while asserting that her marriage with one Nagaraju was performed and later obtained divorce in the presence of elders and thereafter, she married the 1st petitioner in the presence of elders in Venkateshwara Swamy Temple at Lalapet since then they are living as wife and husband. When she meted harassment in the hands of the petitioners, she lodged report with the police for the various offences. On the strength of the written report lodged by the 1st respondent, the Station House Officer, Dundigal Police Station, registered Crime No.544 of 2017 for the above offences and issued FIR. Based on the FIR, investigation is taken up by the Sub-Inspector of Police, Dundigal Police Station, examined as many as 8 witnesses, recorded their statements under Section 161(3) Cr.P.C. and filed charge sheet concluding that there is *prima facie* evidence to proceed and filed charge sheet.

The present petition is filed on the ground that the marriage between Nagaraju and the 1st respondent was subsisting as there was no legally valid divorce between them and that the marriage with the 1st petitioner is void under Section 11 of the Hindu Marriage Act as no

conditions were complied as per Section 5 of the Hindu Marriage Act, prayed to quash the proceedings.

The main contention of learned counsel for the petitioners before this Court is that the allegations made in the complaint and the charge sheet coupled with statements recorded under Section 161(3) Cr.P.C., the marriage between the 1st respondent and Nagaraju was performed prior to seven years and blessed with daughter through Nagaraju and there was no legally valid marriage between the 1st petitioner and the 1st respondent and thereby 1st respondent is not entitled to lodged report with the police and hence, cause serious inconvenience besides stigma in the society. Learned counsel for the petitioners draw the attention of the Court to the divorce deed dated 21.11.2011 signed by the 1st respondent and the said Nagaraju in the presence of elders. Based on the document, it is contended that there is no legally valid divorce and in the absence of any divorce, the marriage between the Nagaraju and the 1st respondent is deemed to subsist and thereby she is not legally wedded wife of the 1st petitioner and consequently, the question of subjecting the 1st respondent to illegal demand of dowry does not arise and prayed to quash the proceedings.

The 1st petitioner is the alleged husband, the 2nd petitioner is the alleged mother-in-law and the 3rd petitioner is paternal aunt of the 1st petitioner and sister of the 2nd petitioner. They are related to one another. Section 498-A IPC is clear that when the wife meted out any harassment in the hands of the husband or relatives and they are liable for punishment, if it is in connection with payment of dowry. The 3rd petitioner is no other than the junior paternal aunt of the 1st petitioner and she is the relative within the ambit of Section 498-A IPC, but on the ground that she is not related to A1, the proceedings against her cannot be quashed.

Coming to the marriage between the 1st petitioner and the 1st respondent is invalid and thereby she is not entitled to prosecute the petitioners for the above offences as per the contentions of the petitioner. There is an averment in the charge sheet that the marriage of the 1st respondent with Nagaraju and blessed with daughter, who is aged 7 years by the date of filing complaint and allegedly she obtained divorce from her former husband and later married the 1st petitioner in the presence of the relatives of the petitioners in Venkateshwara Swamy Temple at Lalapet. This fact is supported by the statement of LW1 recorded by the police during investigation. In page 2 of 4th line from the top of the charge sheet, LW.1, the 1st respondent specifically asserted that the said Nagaraju eloped with another women and thereafter they mutually dissolved their marriage by divorce without approaching the Court and in the later part of the statement, she asserted that on 20.10.2016 her marriage was performed in Venkateshwara Swamy Temple at Lalapet and obtained receipt No.173 and the said fact was supported by the statements of LWs.2 and 3 i.e. Smt Ranga Aruna Kumari and Smt Ranga Shivaiah, who are father and mother of LW.1. LW.3 also stated about the dissolution of marriage by mutual consent and marriage of the 1st petitioner with the 1st respondent. Therefore, the statements recorded under Section 161(3) Cr.P.C. consistently pointing out that there was divorce by mutual consent outside the Court.

Learned counsel for the petitioners also drawn the attention of the Court to the divorce deed dated 21.11.2011 whereby both parties dissolved their marriage by mutual consent and reason for obtain the divorce is also mentioned. Learned counsel also drawn the attention of the Court to Clause(6) of the divorce deed which reads as follows:

“ ఇంతటి నుండి మన ఇరువురి మధ్య వున్నా వైవాహిక బంధము రద్దయిన కారణముగా ఇకనుండి మనమధ్య ఏ విధమైన శారీరక, మానసిక, ఆర్థిక, వైవాహిక సంబంధములు లేవనిన్నీ, మన వైవాహిక జీవితమునకుసంబంధించి ఏవేని ఒకరిపై ఒకరికి గల హక్కులు ఉన్నయెడల సదరు హక్కులను ఈ వ్రాతకాలమందు ఇరువురము మనస్ఫూర్తిగా స్వచ్ఛందంగా వదులుకొనుచున్నాము”.

In Clause (5) it is alleged that if any one of the parties to the divorce deed intend to obtain divorce through Court, the other party has to extend cooperation to obtain such divorce. Therefore, taking advantage of Clause (5) of the divorce deed, he contended that there is still subsisting marriage between the 1st respondent and Nagaraju and no divorce was obtained by approaching the Court. But as seen from Clause (6), the marriage with the 1st respondent and Nagaraju was dissolved on 21.11.2011 and merely because there is a clause (5) referred supra, any one of the party can approach the Court for obtaining the divorce and the other party to cooperate with them. It is not a ground to believe that there was no legally valid divorce between the 1st respondent and Nagaraju and whether the said practice of obtaining divorce by custom outside the Court is question of fact. Whether the divorce between the 1st respondent and Nagaraju, former husband of the 1st respondent is dissolved or not is a question of fact to be decided during trial and at this stage, based on agreement of divorce deed, the proceedings against the petitioners cannot be quashed. More particularly, the 1st respondent and her parents and other witnesses consistently stated before the investigating officer in their statements recorded under Section 161(3) Cr.P.,C. though not a substantive piece of evidence, the marriage between the 1st respondent and Nagaraju was dissolved outside the Court. The validity of the said divorce based on custom, if any, prevailing in the community cannot be decided in the present petition since it is a disputed fact. Therefore, at this stage,

based on this contention, the proceedings cannot be quashed against the petitioners.

Accordingly, the criminal petition is dismissed. However, it is left open to the petitioners to raise all these grounds before the trial Court.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

30.07.2018
kvrm

