

Criminal Petition No.1485 of 2016

ORDER:

The petitioners are the accused 1 to 3 in C.C.No.44 of 2016 on the file of the Judl.Magistrate of First Class, Spl.Mobile Court, Kadapa. The 2nd respondent is complainant. It is from the private complaint dt.02.05.2014 of the 2nd respondent mentioning against 8 accused for the alleged offences u/ sec.420, 468, 120-B, 494 and 406 IPC on 14.02.2012 and 19.08.2013, sworn statement of the complainant recorded on 01.04.2015 in CFR No.4528 of 2014, on 20.04.2015 cognizance order was passed by the learned Magistrate which reads *"Heard and perused the record. The complaint is taken on file for the offences punishable u/ sec.468 and 494 IPC against the A.1 to A.3. Since there is no material against other accused, cognizance is not taken against them. Issue summons to Accused 1 to 3 on payment of process. Call on 16.06.2015."*

2.The quash petition filed is with the contentions that the private complaint averments are untrue and the cognizance taken by the learned Magistrate is untenable and continuation of proceedings on the private complaint are nothing but abuse of process. It is further averred that the learned Magistrate passed the cognizance order mechanically with no reasons much less by application of mind. It is further averred that the marriage of the complainant with A.1 was dissolved by Kula which was accepted by the complainant on 10.02.2012 and thereafter there is no relation of man and wife existing between them and despite it, a false complaint is filed with grudge to harass. After divorce, complainant not paid maintenance amount to the 1st petitioner from the date of award which was awarded in DVC No.6 of 2009 by the learned Addl. JFCM, Kadapa and if the divorce is not true, the complainant has to obey the orders in DVC No.6 of 2009 to pay maintenance. The petitioners being Muslims,

governed by the Muslim personal Law, the offence u/ sec.494 IPC no way attracts as the 1st petitioner married the 2nd petitioner only after kula divorce by the complainant. There is no even any forgery for the purpose of cheating to attract u/ sec.468IPC, the complainant himself signed Talaknama and the alleged forgery is thereby false that too in the presence of elders he signed and thereby quash the proceedings of the private complaint pending against A.1 to A.3.

3. The sum and substance of the private complaint and the sworn statements of the complainant reads that his marriage with A.1 Smt. Chennuru Sajeeda Habeeba was performed on 11.05.2008 in Kadapa under Muslim law and custom. The A.1, at the instigation of her father, filed report against him and his brothers for the offence punishable u/ sec.498-A IPC and u/ sec.3 and 4 of the Dowry Prohibition Act registered by II town Police, Kadapa who after investigation filed chargesheet, the learned Magistrate taken cognizance for the offences in C.C.No.560 of 2009 and the case was ultimately ended in dismissal. She filed DVC No.6 of 2009 where the maintenance was ordered at Rs.1000/- per month to her against him and she also filed C.C.No.134 of 2010 for the alleged defamation of status that was also ended in dismissal. The appeals filed against the judgment in C.C.No.560 of 2009 and the order in DVC No.6 of 2009 were also dismissed.

4. It is averred that the accused created a divorce certificate by forging signature of the complainant and the A.1 therefrom married the A.2 by name Muneeruddin S/o S.Abdul Sattar of Rajampet in the presence of A.6 to A.8-witnesses to the Nikhanama having in full knowledge of marriage between the A.1 and the complainant not dissolved and the complainant cause issued notice to the accused. They gave reply and he issued another notice for which they replied with talak certificate and Kula divorce certificate which on perusal by him the signatures therein, they are as if of

himself but not of him. Now the Court is concerned with A.1 to A.3 from the cognizance taken against them by the learned Magistrate in the private complainant referred supra only for the offences under Section 494 and 468IPC.

5. So far as the offence u/ sec.468 IPC is concerned, it is forgery for the purpose of cheating. A perusal of the Halaknama talak(kula certificate) shows the complainant-Shaik Raheem Basha, put thumb impression also as well as signed which reads that A.1 when asked to give kula divorce, the complainant accepted by giving liberty to her from which there are no connections between them. The private complaint as well as the sworn statement show, the complainant signed in English as '*S Raheem Basha*'. Even on perusal of said signatures to some extent correlates. The Kula divorce was dated 10.02.2012, A.1 married the A.2 as per the certificate issued by the A.P.Wakf Board dt.27.08.2013 was on 19.08.2018 and also entered in the register with No.16/ 13-4. The CrI.A.No.30 of 2011 against the order,dt.20.07.2010 in DVC No. 6 of 2009 was dated 21.09.2012 and the DVC No.6 of 2009 which is prior to said Kula divorce and even the judgment in C.C.No.560 of 2009 acquitting the accused for the offence u/ sec.498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act covered by Cr.No.66 of 2009 was dated 30.09.2010 and there is nothing to show subsequent to 10.02.2012 of the so called Kula divorce any subsistence of relation between the A.1 and the complainant. Even from the private complaint averments, there is no scrap of paper filed to show subsistence of the marital relation between them after 10.02.2012. The only allegation is the so called second marriage between the A.1 and A.2 is taken place while subsistence of marriage between the A.1 and the complainant but it is proved from the quash petition material with Kula divorce certificate that the kula divorce obtained on 10.02.2012 and to say it is a forged and

fabricated document, there are signatures as referred supra that are correlating with that of private complaint and the sworn statement of the complainant. Thus in the absence of showing who forged much less the purpose of cheating, the offence under Section 468 IPC no way attracts even.

6. Having regard to the above, the proceedings in C.C.No.44 of 2016 cannot survive to continue.

7. In the result, the Criminal Petition is allowed by quashing the proceedings in C.C.NO.44 of 2016 on the file of the Judl.Magistrate of First Class, Spl.Mobile Court, Kadapa. The accused are acquitted and their bail bonds shall stand cancelled.

8. Consequently, miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

Date:28.11.2018
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Dr. JUSTICE B. SIVA SANKARA RAO

