

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.7862 of 2018

ORDER:

The petitioner is the sole accused in C.C.No.208 of 2018 on the file of the learned XV Additional Chief Metropolitan Magistrate, Hyderabad, taken cognizance and pending registered for the offences punishable under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, which is outcome of the report of respondent No.1-*de facto* complainant (no other than the wife of petitioner-accused out of marriage dated 01.06.2007) in Crime No.346 of 2017 of Women Police Station, D.D, Hyderabad, registered for the said offences and later in the course of investigation transferred to Women Police Station, Charminar, Hyderabad, where re-registered as Crime No.3 of 2018 and from the investigation filed the final report. Impugning the said cognizance order of the Calendar Case proceedings, the accused filed the present petition in seeking to quash the same.

2. The contentions in the quash petition are that respondent No.1 had two sons from earlier marriage and in the marriage with petitioner of June, 2007 they blessed with female child. The petitioner used to work abroad and respondent No.1 used to visit him there and they lived happily for five years and later differences developed and the petitioner pronounced divorce on 23.11.2010 and issued notice to her including in newspaper on 09.12.2010 and thereafter, she did not even contact him. It is alleged of he did not provide maintenance and he

was demanding Rs.10.00 lakhs additional dowry and he contends the same as untrue and he is innocent. She again married one Sk. Mohammed Kaleemuddin on 19.08.2015, it cannot thereby be said he was subjected to any harassment or ill-treatment in their period of wedlock and it is not even disclosed any demand for additional dowry during subsistence of their marriage. Hence, to quash the proceedings.

3. Notice sent to the *de facto* complainant returned as unclaimed is sufficient service.

4. Heard and perused the material on record.

5. The marriage of respondent No.1-Smt. Khasida Khatoon, D/o. late Haji Khan was performed with Sk. Mohammed Kaleemuddin and the QAZI of Bara Mahal issued the marriage certificate. However, it is not the certificate issued by the Wakf Board and the so-called Talaq notice dated 09.12.2010 reads that it is informed to the public particularly to respondent No.1 by the petitioner that due to her continuous disregard, misbehaviour and bad language, on 23.11.2010 before witnesses given Tripple Talaq and deleted from wedlock and the same entered in Shariyath Panah Balda, Shah Ali Banda and for Maher and maintenance of Iddat period Rs.35,000/- deposited in the office of Qazath Panah Balda Shah Ali Banda so to collect. There is no any acknowledgment filed regarding service of notice, leave about a small Urdu news item in this regard and the certificate of Talaq said to have been issued by the 8th Head Qazi, Shariyat Panah Balda dated

25.11.2010 certified that on 23.11.2010 before witnesses given Tripple Talaq by the petitioner to his wife-respondent No.1 and Talaqnama entries as per rule taken in the office; hence, certificate of Talaq issued. There is nothing even mentioned who are the witnesses, before whom the so-called Tripple Talaq pronounced either in the certificate of Talaq or in the Talaq notice or in the small Urdu paper no wide circulated publication which is material even and the Talaq certificate was not issued by the Wakf Board. From the F.I.R. it shows marriage in subsistence and from the investigation it also shows the marriage in subsistence in filing the final report and taking of the cognizance. Once such is the case, though the accused is entitled in the quash proceedings to file the documents which must be of impeccable accuracy to rely, however, because of the defects pointed out supra, there is no conclusive proof of the Tripple Talaq pronounced and by registered notice intimated for no acknowledgment filed much less any second marriage say undergone. Further, any such material not even filed during investigation before the Investigating Officer to consider by enquiring into the genuineness or otherwise.

6. Having regard to the above, though it can be disposed of by left open any such defence during trial to consider, this Court feels to subserve the ends of justice, to direct the police to conduct further investigation with reference to the facts as to any divorce between the petitioner and respondent No.1 by pronouncement of any Tripple

Talaq before any witnesses and consequent to it there was any fresh marriage to respondent No.1 with another person and the alleged acts of cruelty are relatable subsequent to the so-called fresh marriage to say as false are relatable prior to the so-called pronouncement of Talaq and whether there is any acknowledgment in sending notice in proof of it. The petitioner is directed to submit said material within one (1) week from the date of receipt of a copy of this order to the Investigating Officer for further investigation and to file supplementary charge sheet or referred report consequent to it within one (1) month there from. In the meantime, there shall be stay of further proceedings in C.C. No.208 of 2018 on the file of the learned XV Additional Chief Metropolitan Magistrate, Hyderabad. It is made clear that if no material furnished by the petitioner with proof by attending before the Investigating Officer and co-operate with investigation, the stay ceases its force without any further reference. Needless to say after one (1) month the trial Court can proceed with the matter to decide on own merits.

Miscellaneous petitions pending, if any, shall stand closed.

27.11.2018
MVA

Dr. B. SIVA SANKARA RAO, J