

THE HON'BLE SRI JUSTICE P. KESHA RAO
CRIMINAL REVISION CASE NO. 2384 OF 2013

ORDER:

Heard the learned counsel for the petitioner as well as the learned counsel for respondent No.1.

2. The present Criminal Revision Case is filed against the orders passed in Criminal Revision Petition No.26 of 2012 dated 25.10.2013 on the file of the Court of the IV Additional Sessions Judge, Kakinada, in setting aside the orders passed in C.C.S.R.No.3262 of 2008 dated 25.11.2011 and directing the V.Additional Judicial Magistrate of First Class, Kakinada to conduct fresh enquiry and dispose of the same in accordance with law.

3. The facts in brief are that originally respondent No.1 herein filed a complaint on 23.6.2003 against one Y. Madhan Mohan for the offence under Sections 417 and 420 IPC on the ground that suppressing his first marriage, he married her. Pursuant to the said complaint, C.C.No.354 of 2003 came to be registered. On trial, by orders dated 3.11.2006, the said Y.Madhan Mohan was acquitted for the offence under Section 420 IPC but he was convicted under Section 417 of IPC. Aggrieved by the said orders, the said Y.Madhan Mohan carried the matter in appeal vide CrI.A.No.291 of 2006. The said

appeal was allowed on 13.7.2007 acquitting him for the offence under Section 417 IPC also. Against the said judgment, neither the State has filed any appeal nor the complainant has filed any revision, thereby the said judgment has become final. Subsequent to that, respondent No.1 herein filed a complaint against the petitioner on 27.8.2007 vide C.C.S.R.No.3262 of 2008 on the file of the Court of the V.Additional Judicial Magistrate of First Class, Kakinada for the offence under Section 193 IPC. The said complaint was dismissed by order dated 25.11.2011. Aggrieved by the said orders, respondent No.1 filed CrI.R.P.No.26 of 2012 on the file of the Court of the IV.Additional Sessions Judge, Kakinada. After hearing, the learned Additional Sessions Judge, Kakinada, allowed the said Criminal Revision Petition by setting aside the orders passed in C.C.S.R.3262 of 2008 dated 25.11.2011 and directed the lower Court to conduct fresh enquiry into the matter and to dispose of the same in accordance with law. Aggrieved by the said orders, the present Criminal Revision Case is filed.

4. Section 193 IPC contemplates punishment for false evidence, which reads as under:

193. Punishment for false evidence. --
Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial

proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine,

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

5. As far as punishment under Section 193 of IPC is concerned, as per Section 195 of Cr.P.C., the competent Court should lodge a complaint and by inviting a finding thereon, the accused can be prosecuted.

6. In the case on hand, respondent No.1 is not competent to file a private complaint for the offence under Section 193 of IPC.

7. Per contra, learned counsel for respondent No.1 supported the impugned orders.

8. Having heard both the counsel and from the perusal of the material on record, it is revealed that in the earlier round of litigation by respondent No.1 herein against Sri Y.Madhan Mohan, the case ended in acquittal vide CrI.A.No.291 of 2006 for the offence under Section 417 and 420 of IPC. Though respondent No.1 herein was the complainant, she has not challenged the said judgment by way of filing either revision or

the State has filed an appeal against the said acquittal. Therefore, the said judgment has become final.

9. Be that as it may, respondent No.1 herein, on the ground that the petitioner herein who is examined as PW6, gave a false evidence in the said case, filed a complaint against the petitioner. From a further perusal of the material on record, it is revealed that the petitioner was declared hostile, thereby her evidence was not even considered by the Court below. Therefore, there cannot be any cause of action for respondent No.1 to lodge a complaint against the petitioner herein. However, she filed a private complaint on 27.8.2007 for the offence under Section 193 of IPC against the petitioner herein. Learned V.Additional Judicial Magistrate of First Class, after hearing, dismissed the said complaint vide C.C.S.R.No. 3262 of 2008 on 25.11.2011. Respondent No.1, against the said orders, filed CrI.R.P.No. 26 of 2012 before the IV Additional Sessions Judge, Kakinada. Learned Additional Sessions Judge, after hearing, was pleased to allow the said Criminal Revision Petition by order dated 25.10.2013 in setting aside the impugned orders therein and remanded the matter back to the lower court to conduct fresh enquiry into the matter and dispose of the same in accordance with law. When there is an inherent defect in lodging a private complaint for the offence

under Section 193 IPC by respondent No.1 herein, this Court is of the opinion that learned Additional Sessions Judge ought to have dismissed the Criminal Revision Petition. However, the learned Additional Sessions Judge has held that the contentions raised by the parties shall be considered only after a full fledged enquiry by taking cognizance of the offence by the trial Court. By recording the said observation, the matter was remitted back to the trial Court to conduct a fresh enquiry into the matter and to dispose of the same in accordance with law.

10. In that view of the matter, without expressing any opinion, this Court deems it appropriate to concur with the finding given by the lower revisional Court, as, by virtue of the impugned orders no prejudice is caused to the petitioner herein except facing the enquiry before the trial Court. However, when there is an inherent defect in lodging the complaint itself, no useful purpose would be served in remanding the matter back to the trial Court. As such, the impugned order in the present Criminal Revision Case does not withstand and the same is liable to be set aside.

11. Accordingly, the Criminal Revision Case is allowed in setting aside the orders passed in CrI.R.P.No.26 of 2012 dated 25.10.2013 on the file of the Court of the IV.Additional Sessions Judge, Kakinada.

Pending miscellaneous petitions, if any, shall stand closed.

P. KESHAVA RAO,J

Date: 12.9.2018

KPM

