

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.11199 OF 2018

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C by the petitioners 1 to 9, who are A1 to A9 of Crime No.231 of 2018, dated 21.08.2018 on the file of Nalgonda II Town Police Station, which is outcome of the report of 2nd respondent/de facto complainant. It is in seeking to quash the said FIR registered for the offence punishable under Section 494 r/w 34 IPC, the present petition is filed.

2. The contentions of the learned counsel for the petitioners are that there was a decree of divorce in O.P.No.1743 of 2015 on 09.04.2017, granted by the Judge, Family Court, City Civil Court, Hyderabad, against the 2nd respondent which was no doubt ex parte and expiry of the appeal time, on 10.07.2017, the so called second marriage between petitioners 1 and 2 was performed and it is not an offence and for the said contention, he placed reliance on the expression of the Kerala High Court Division Bench in Denny Pazhoor v. Greeta Sunitha Vincent¹, where, they referred Section 15 of the Hindu Marriage Act (for short 'the Act') and Section 57 of the Indian Divorce Act. It speaks as the case on hand relates to the Hindu as per the very wording of Section 15 of the Act that after expiry of the appeal time from the decree of divorce, where appeal not presented or appeal presented but dismissed, it shall be lawful for either

¹ 2018 SCC Online Kerala 3921

party to the marriage to marry again. Though from the very wording of Section 15 of the Act and the analogy taken, once there is an ex parte set aside application filed by the 2nd respondent, admittedly, by the time, the so called second marriage between petitioners 1 and 2 performed on 10.07.2017, the analogy of pending appeal equally applies to the pending application as Section 15 of the Act, nowhere says mere filing of appeal not sufficient and there must be stay equally, once there is an ex parte decree set aside application without even stated pending, he could not have been undergone the so called ceremony of marriage. So far as the role of the other petitioners/ A3 to A9, if not or not concerned it is a matter for investigation.

3. It is submitted that the 1st petitioner/ A1 was arrested by the Police and his remedy is left open to seek for regular bail. So far as other petitioners/ A2 to A9 are concerned, police are directed to complete investigation and file final report and pending investigation not to arrest petitioners/ A2 to A9. This order will not prevent the Police to secure their presence for the purpose of investigation.

4. Accordingly, the Criminal Petition is disposed of. All the defences of the petitioners are left open.

5. Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 27.11.2018
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