

* THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.11625 of 2018

%27.11.2018

Between:

Syed Abdul Raheem

.. Petitioner

And

The State of Andhra Pradesh

Rep. by its Public Prosecutor

High Court of Hyderabad, and another

.. Respondents

Counsel for the Petitioner

: Sri T.V.Jaggi Reddy

Counsel for respondent No.1

: Public Prosecutor (A.P.)

Counsel for respondent No.2

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> Head Note:

? CITATIONS:

1. AIR 2000 SC 1650

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**Criminal Petition No.11625 of 2018****ORDER:**

Notice sent to respondent No.2 returned as left without instructions is sufficient service.

2. Heard the learned counsel for petitioner and respondent No.1- State represented by the learned Public Prosecutor and perused the quash petition averments in seeking to quash Crime No.199 of 2018 of Station House Officer, Sattenapalli Town Police Station, Guntur District registered for the offence punishable under Section 494 IPC on the report of respondent No.2-*de facto* complainant against the petitioner-accused for his alleged conducting of second marriage during subsistence of the first marriage in the year 2016 with one Sk. Sameena, D/o. Sk. Sareem of Madgal, Karnataka State.

3. The contentions in the quash petition are that under Muslim personal law the second marriage is not void for personal law permits to marry upto four provided the wisdom of person who marry is to treat all equally. The very wording of Section 494 IPC says whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

4. So, the prerequisite is not mere second marriage, but the second marriage is void by reason of its taking place during subsistence of first

marriage. There is force in said submission because the Apex Court in **Lily Thomas v. Union of India**¹ [MANU/SC/0327/2000] particularly at paragraph No.37 observed as under:

“37. The position under the Mahommedan Law would be different as in spite of the first marriage, a second marriage can be contracted by the husband, subject to such religious restrictions as have been spelled out by Brother Sethi, J. in his separate judgment, with which I concur on this point also. This is the vital difference between Mahommedan Law and other personal laws. Prosecution under Section 494 in respect of a second marriage under Mahommedan Law can be avoided only if the first marriage was also under the Mahommedan Law and not if the first marriage was under any other personal law where there was a prohibition on contracting a second marriage in the life-time of the spouse.”

5. Having regard to the above, once the Muslim second marriage is not void *ab initio* that the husband to conduct as per the personal law that is not prone to prosecution under Section 494 IPC. Therefore, the registration of crime with the said offence no way survives.

6. Accordingly and in the result, this Criminal Petition is allowed and the proceedings in Crime No.199 of 2018 of Station House Officer, Sattenapalli Town Police Station, Guntur District, are hereby quashed. The bail bonds of the petitioner, if any, stand cancelled.

Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

27.11.2018
MVA

Note: L.R. Copy to be marked
(B/O)
MVA

¹ AIR 2000 SC 1650