

* THE HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.11778 of 2018

%04.12.2018

Between:

Thripuramallu Chiranjeevi Venkatesh .. Petitioner

And

The State of Andhra Pradesh
through S.H.O, K.K.Mitla Police Station
Prakasam District
Rep. by its Public Prosecutor
High Court, Hyderabad, and another .. Respondents

Counsel for the Petitioner : Sri B.Anil Kumar Yadav

Counsel for respondent No.1 : Public Prosecutor (A.P.)
Counsel for respondent No.2 : ---

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> Head Note:

? CITATIONS:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**Criminal Petition No.11778 of 2018****ORDER:**

The petitioner is the accused in C.C.No.180 of 2018 on the file of the learned Judicial First Class Magistrate, Podili, Prakasam District, where the learned Magistrate has taken cognizance for the offences punishable under Sections 497 & 498 IPC which is outcome of Crime No.48 of 2018 of KK Mitla Police Station, Prakasam District from the report of *de facto* complainant.

2. Though notice sent to respondent No.2 is served, he failed to attend; taken as heard.

3. Heard the learned counsel for petitioner and the learned Additional Public Prosecutor representing the respondent No.1-State in the present quash petition seeking to quash the proceedings in C.C.No.180 of 2018.

4. The very registration of the crime for both the offences of non-cognizable, the other crime and the filing of final report in taking cognizance for the offences by the learned Magistrate consequent to it for its pending in summoning the accused are no way sustainable is the core of contention.

5. A perusal of the Andhra Pradesh State amendment to Cr.P.C. in the schedule for the offences under Chapter XX relating to marriage originally standing as non-cognizable for Sections 493 to 498 IPC,

there was by the A.P. amendment by Act 3 of 1992 Sections 494, 495 & 496 IPC and also it appears Section 497 IPC made cognizable. Though the Central Government proposed by Amendment Bill 2 of 2006 to make including the offences under Section 498 from 494 as cognizable the same not came into force by repeal into any enactment so far. Thus, by virtue of the A.P. amendment once Sections 494, 495 & 496 IPC are only amended making as cognizable while retaining Section 493 IPC as non-cognizable equally Sections 497 & 498 IPC and the crime registered under Sections 497 & 498 IPC are both for non-cognizable offences and as per the mandate of Section 155(4) Cr.P.C. where a case relates to two or more offences of which atleast one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable, and so far as Section 155(1) Cr.P.C. is concerned, in a non-cognizable offence the police officer shall enter the substance of the information in a book kept in prescribed form and refer the informant to the Magistrate, and it is only from the order of the Magistrate a non-cognizable case shall be investigated by the police officer under Section 155(2) Cr.P.C. Once such is the case, for both are non-cognizable offences as laid down by the Apex Court in **Tilaknagar Industries Ltd. v. State of A.P.** [Criminal Appeal No.2002 OF 2011 (arising out of SLP (Crl). No. 6917 of 2011)] that in a non-cognizable offence where the police registered the crime directly without permission of the Magistrate and even investigated the entire proceedings no way survives to continue and thereby, the registration

of crime and investigation and filing of final report and taking of cognizance by the learned Magistrate no way survives to continue and it is suffice to quash the proceedings, leave about Section 497 IPC is struck down as unconstitutional by the Constitution Bench expression of the Apex Court in **Joseph Shine v. Union of India** [W.P. (Crl.) No.194 of 2017 vide judgment dated 27.09.2018.

6. Accordingly and in the result, this Criminal Petition is allowed and the proceedings in C.C.No.180 of 2018 on the file of the learned Judicial First Class Magistrate, Podili, Prakasam District are quashed against the petitioner-accused. The bail bonds of the petitioner-accused, if any, stand cancelled.

Miscellaneous petitions pending, if any, shall stand closed.

04.12.2018
MVA

Dr. B. SIVA SANKARA RAO, J

Note: L.R. Copy to be marked

(B/O)
MVA