

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE NO.3364 OF 2018

ORDER:

This revision is arising out of order, dated 25.10.2018 passed in CrI.M.P.No.618 of 2018 in C.C.No.194 of 2018 by the Judl. Magistrate of I Class, Special Mobile Court, Nizamabad.

2. The revision petitioners are A1 and A2, who have filed a petition under Section 239 Cr.P.C. pleading for their discharge from the offences punishable under Sections 494 and 498-A IPC.

3. The case of the petitioners is that the 1st petitioner-A1 has married the de facto complainant about 52 years back. The de facto complainant left the company of A1 in the year 1989 due to differences between them. It is the further case of the petitioners that the de facto complainant is living separately from the 1st petitioner for the past 28 years. It is further stated that the de facto complainant has not filed any documentary proof for the offence punishable under Section 494 IPC. The complaint lodged by the de facto complainant does not contain the ingredients of the offences punishable under Sections 498-A, 323, 506 and 494 IPC. The offences under Sections 498-A, 323 and 506 IPC are barred by limitation under Section 468 Cr.P.C.. The trial Court has taken cognizance only for the offences punishable under Sections 498-A and 494 IPC by deleting the offences punishable under Sections 323 and 506 IPC. The petitioners have filed a petition under Section 239 Cr.P.C. pleading for discharge from the offences punishable under Sections 498-A and 494 IPC, but the trial Court dismissed the said application. Aggrieved thereby, this revision is preferred.

4. Heard the arguments of the learned counsel for the petitioner, learned Public Prosecutor and perused the material on record.

5. The question that arises for consideration in this revision is: 'Whether the order passed by the trial Court in a petition filed under Section 239 Cr.P.C. for discharge of the petitioners-A1 and A2 from the offences punishable under Sections 498-A and 494 IPC is in accordance with law?'

6. The main submission of the learned counsel for the petitioners is that the 1st petitioner and the de facto complainant have been residing separately for the last 28 years and there was no relationship between them. As such, there was no possibility of petitioner committing any offence against the de facto complainant, much less, the offence punishable under Section 498-A IPC. It is further submitted that the offence punishable under Section 494 IPC is not proved by any documentary evidence by the prosecution nor any witnesses have stated about the same. At the most, there may be a live in relationship between the 1st petitioner and the 2nd petitioner, which does not amount to offence under Section 494 IPC. It is further submitted that Ex.P1-complaint lodged by the de facto complainant, charge sheet and the statement of witnesses do not reveal that the offences under Sections 498-A and 494 IPC are made out to charge the accused for the said offences. It is further submitted that 1st petitioner is an employee, aged about 56 years, working as Senior Assistant in TSNPDCL, Nagaram Power House, Nizamabad. In view of vague allegation made against him, he is entitled for discharge from the offences punishable under Sections 498-A and 494 IPC.

7. On the other hand, learned Public Prosecutor submits that as per the contents of Ex.P1, there are allegations to the effect that there was an altercation took place on 03.03.2017 in the afternoon at 2.30 P.M. and one of the elders have also stated the same thing in 161 Cr.P.C. statement. It is further submitted that there are questions of fact, which have to be decided by the trial Court on receiving evidence. The question whether the ingredients of Sections 498-A and 494 IPC are present in this case or not are to be decided only after receiving the evidence and at this stage, the accused cannot be discharged for the said offences.

8. A perusal of the order passed by the trial Court reveals that L.W.8-Investigating Officer made discrete enquiries about the second marriage of A1 with A2, but no documentary evidence could be collected as the period of second marriage exceeded minimum 20 years. Except the oral evidence of witnesses, there is no other evidence available about second marriage of A1 with A2.

9. Learned counsel for the petitioners submits that in the light of the observations of the trial Court in para 11 of the order, the offence under Section 494 IPC is not made out and therefore, the petitioners may be discharged for the said offence.

10. In the light of the submissions made by the learned Public Prosecutor and the observations made by the trial Court in the order, there is testimony of the witnesses in respect of second marriage, which is a question of fact to be decided on receipt of evidence by the trial Court. Therefore, at this stage, this Court cannot go into the merits

of the case as to whether there was second marriage or not, basing on the material available on record.

11. The order passed by the trial Court in para 11 reveals that there is no documentary proof for the offence punishable under Section 498-A IPC. As per the report of the Investigating Officer, there is only oral evidence available. When there is oral evidence available for the proof of bigamy under Section 494 IPC, the petitioners are not entitled for discharge from the said offence. Therefore, there is no illegality in the order passed by the trial Court in dismissing the petition filed for discharge. However, in view of the fact that the 1st petitioner-A1 is a Government employee and it is also submitted that the 1st petitioner is being harassed by the de facto complainant for share in the property and the 1st petitioner is going to retire soon, the trial Court is directed to dispose of the main case as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

12. With the above observation, the Criminal Revision Case is disposed of. Miscellaneous petitions, if any pending in this revision shall stand closed.

GUDISEVA SHYAM PRASAD, J

DATED: 10-12-2018

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