

HONOURABLE DR. JUSTICE B. SIVA SANKARA RAO
CRIMINAL REVISION CASE Nos.1186 & 176 of 2018 &
3254 of 2017

COMMON ORDER:

Among the three revisions CrI.R.C.No.1186 of 2018 concerned is filed by Pooja Sharma D/o Mahesh Kumar Sharma and wife of Shailendra Sharma, Mahesh Kumar Sharma and Ramesh Kumar Sharma who are shown as proposed accused in the application filed by Ravi Shankar Sharma no other than divorced husband of Pooja Sharma vide FCOP.No.231 of 2011 order dated 16.09.2015 by the Judge Family Court, Hyderabad. The revision is arisen out of the appellate Court order in DV Appeal No.318 of 2016 (learned I Additional Metropolitan Sessions Judge, Hyderabad) where the impugment is against the order of the learned III Metropolitan Magistrate, Hyderabad, in S.R.No.486 of 2016 dated 10.03.2016. Said application is filed by Ravi Shankar Sharma supra against the present revision petitioners as respondent Nos.1 to 3 of whom Pooja Sharma is the petitioner in DVC.No.148 of 2012 against Ravi Shankar Sharma and others. That application in SR.486 of 2016 filed referring to Section 340 Cr.P.C. in requesting the Court by Ravi Shankar supra to prosecute Pooja Sharma, Mahesh Kumar Sharma and Ramesh Kumar Sharma respectively in alleging they forged Ex.D1 so called list of articles presented at the time of marriage and there was a dispute regarding the alleged list was a forged and fabricated in the proceedings covered by DVC.No.148 of 2012 and an expert opinion was sought for found that it is not genuine and a fabricated document and the DVC.No.148 of 2012 disposed of subsequently by granting relief of Rs.5,000/- costs against respondents with a

direction not to interfere with her life and Rs.5,00,000/- towards compensation and Rs.1,00,000/- towards return of articles with joint and several liability and respondent No.1-husband of her was directed to pay a monthly maintenance of Rs.5,000/- from the date of order i.e., 21.01.2016 payable by 10th of every month. It is impugning the same DV Appeal No.173 of 2016 was filed and the learned I Additional Metropolitan Sessions Judge disposed of the same on 31.10.2017 while not disturbing the monthly maintenance of Rs.5,000/- per month on R.1 of DVC by its confirmation, reduced Rs.5,00,000/- compensation to Rs.1,00,000/- for the so called domestic violence and also set aside the amount of Rs.1,00,000/- towards return of articles. Against that order of granting compensation and maintenance respectively modified by the appellate Court, both aggrieved filed 2 revisions viz., Crl.R.C.Nos.3254 of 2017 & 176 of 2018. Before going to those revisions, now coming back to Crl.R.C.No.1186 of 2018 in the factual background supra in seeking to prosecute by invoking Section 340 Cr.P.C. the order of the learned III Metropolitan Magistrate dated 10.03.2016 reads that "This Court has no jurisdiction to take cognizance of the offences mentioned in the petition and to conduct enquiry under Section 340 Cr.P.C., hence returned." The Appellate Court order against said return docket order dated 10.03.2016 is by setting aside the order of the learned Magistrate and by remanding the same for fresh consideration with observations particularly from Paras 5 to 10 that Ex.D1 opinion shows some signatures printed through some printing device and over written with a writing instrument from the expert opinion of Ex.P8 so called receipt which compared with S1 to S18 standard

signatures, Q1 to Q3 disputed signatures thereby Ex.P8 cannot be relied to ascertain articles mentioned therein presented. The unnumbered petition filed under Section 340 Cr.P.C. seeking to conduct a preliminary enquiry regarding the so called forgery of Ex.P8 it referred the expression of the Apex Court in **K.T.M.S. Mohd. Vs. Union of India**¹, from the wording of Section 195 Cr.P.C. it is open to the Court, before which the offence was committed to prefer a complaint for prosecution of the offender and Section 340 Cr.P.C. prescribes procedure as to how that complaint may be preferred and the application filed would not have been returned by the Court below but for disposal on merits. Having regard to the above, remanded the matter. Same is the present impugnement.

2. The contentions impugning said lower appellate Court remanded the matter setting aside trial Magistrate orders in the petition seeking the so called enquiry to file a complaint, invoking Section 340 Cr.P.C. by the Magistrate concerned, said order as unsustainable as per the revision petitioners Pooja Sharma, Mahesh Kumar Sharma and Ramesh Kumar Sharma respectively and that order is supported by the revision 1st respondent-petitioner therein Ravi Shankar Sharma supra.

3. There is no force in the contention of said Ravi Shankar Sharma that the revision is not maintainable, what the expression placed reliance of **K. Sudhakaran vs. State of Kerala**² is impugning once there is remedy of appeal direct filing of the revision won't lie. Here it is not the case. Appeal already maintained and against that appeal, revision filed is sustainable.

¹ AIR 1992 SC 1831

² 2009 (4) SCC 168

4. Section 195 Cr.P.C. prescribes the procedure by filing a private complaint. Section 340 Cr.P.C. for the offences affecting administration of justice where the Court felt necessary in the ends of justice can file a complaint by itself invoking the procedure contemplated by Section 340 Cr.P.C. The Constitution Bench expression of the Apex Court in **Iqbal Singh Marwah Vs. Meenakshi Marwah**³ observed that Court is not bound merely because any party asked to invoke Section 340 Cr.P.C. and file private complaint through its Officer before concerned Magistrate unless found as expedient in the interest of justice so as to undertake the enquiry contemplated by the procedure to be followed under Section 340 Cr.P.C. subject to satisfying the compliance of Section 195 Cr.P.C. Same is even reiterated by another recent past expression of the Apex Court in **Prem Sagar Manocha vs State (Nct Of Delhi)**⁴.

5. Having regard to the above, there is nothing to interfere with the impugned order of the lower appellate Court in directing the Magistrate to pass an order rather than saying it has no jurisdiction. No doubt lower appellate Court in remanding the matter only observed to dispose of the application vide SR.No.486 of 2016 according to law. It did not even direct to take cognizance or to file complaint but for to consider whether it is expedient to do so or not. Leave it as it is a party cannot compel the Court. However even coming to the facts the so called document is not a document forged in the Court precincts in the Court proceedings but outside. Once such is the case, if at all aggrieved, said Ravi Shankar Sharma got his own option to maintain private complaint

³ (2005) 4 SCC 370

⁴ 2016 CrL.J. 1090

subject to limitation law and other limitations if any as observed in **Iqbal Singh** supra.

6. With these observations rather than dismissal Crl.R.C.No.1186 of 2018 is disposed of.

7. Now coming to Crl.R.C.Nos.176 of 2018 & 3254 of 2017 respectively, there is a concurrent finding of fact about the domestic violence caused against her by the Courts below but for any warrant the compensation for return of articles claimed by the lower appellate Court and reduced the compensation for domestic violence awarded of Rs.5,00,000/- by the learned Magistrate to Rs.1,00,000/- by the appellate Court. In this regard, there is nothing to interfere on the said appellate Court's finding.

8. Now coming to the maintenance amount impugment, even admittedly she married one Shailendra Sharma on 09.02.2016. The order in DVC.No.148 of 2012 was 11 ½ months prior to that i.e., on 21.01.2016. To dispute the date of marriage 09.02.2016 and to say earlier to that she married one Shailendra Sharma, said Ravi or his mother and brother did not produce any document. Once such is the case, the so called marriage of her was raised only pending DV Appeal.No.173 of 2016 and not before. Even under Crl.M.P.No.891 of 2017 additional evidence receive petition filed that was allowed only 3 documents filed and none of the documents viz., FCOP.No.231 of 2011 order or judgment in CC.No.184 of 2013 or the so called marriage photo any way establish date of so called marriage other than on 09.02.2016.

9. The contention that she suppressed the factum of second marriage, thereby dis-entitled to the maintenance or compensation amount even outcome of concurrent findings of fact is untenable

including from the expression placed reliance on **S.P Chengalvaraya Naidu vs Jagannath**⁵. In fact there is suppression of fact therein before the trial Court. Here it is not the case, undisputedly her so called marriage was after disposal of the DVC case as also held supra there is no suppression at all thereby much less to disentitle the reliefs already granted with concurrent finding of facts.

10. Having regard to the above, whatever the observations in FCOP.No.231 of 2011 practically a consent outcome in not awarding interim maintenance under Section 24 of Hindu Marriage Act or permanent alimony under Section 25 of Hindu Marriage Act not a bar to the awarding of maintenance and that too at Rs.5,000/- per month awarded that is confirmed with concurrent finding of fact by the Courts below, for this Court while sitting there is nothing to interfere but for to confine liability of payment of maintenance from the order in DVC.No.148 of 2012 dated 21.01.2016 at Rs.5,000/- per month to the date of her marriage with Shailendra Sharma on 09.12.2016 for only 11 ½ months and not beyond.

11. With these observations, Crl.R.C.Nos.176 of 2018 & 3254 of 2017 are disposed of.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 21.01.2019
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⁵ 1994 1 SCC 1