

0HONOURABLE JUSTICE G.SRI DEVI

CRIMINAL PETITION No. 5829 of 2019

ORDER:

The present Criminal Petition is filed by the petitioner/A7 under Section 482 of Cr.P.C., seeking to quash the proceedings initiated against him in S.C.No.17 of 2019 on the file of the V Additional District and Sessions Judge, Kothagudem.

The facts in issue are as under:

The 3rd respondent/complainant (hereinafter referred to as the “3rd respondent”) filed a report against the petitioner/A7 and others inter alia stating that A1 is her husband, A2 is her mother-in-law, A3 is her father-in-law, A4 and A6 are her brothers-in-law and A5 is the wife of A4. It is stated that the marriage of A1 and the 3rd respondent was performed by the petitioner/A7 on 23.11.2011 by concealing the 1st marriage of A1. It is stated that before her marriage, A1 has married to one S.Hajira Yasmeen @ Shakila Banu in the year 2008 at Kurnool and later A1 has taken divorce from his 1st wife on 20.06.2009 as per Muslim law. At the time of marriage, the parents of the 3rd respondent have given an amount of Rs.5.00 lakhs, 10 tulas of gold ornaments, 20 tulas of silver ornaments and household articles worth Rs.2.00 lakhs towards dowry. After the marriage, A1 to A6 took the 3rd respondent to Serilingampally and she started conjugal life with A1. Out of wedlock, the 3rd respondent blessed with a son. It is further stated that A1 to A6 used to harass the 3rd respondent

both mentally and physically by demanding additional dowry of Rs.3.00 lakhs. When the 3rd respondent conceived 2nd pregnancy, A1, A4 and A5 administered local medicine to her with an intention to abort her pregnancy and while she was suffering with stomach pain, A1, A4 and A5 admitted her in Kavitha Poly Clinic, Serilingampally, Hyderabad, where they got aborted the pregnancy without her consent. When the matter of miscarriage was informed to the parents of the 3rd respondent, A1 to A6 got enraged and necked out her demanding to get additional dowry of Rs.3.00 lakhs. Due to unbearable torture, the 3rd respondent went to her parental house and narrated about their harassment. The matter was placed before the elders, who held a panchayat and during the said panchayat, A1 promised that he would look after the 3rd respondent affectionately and she was sent to the house of A1 but A1 to A6 did not change their attitude and continued the harassment and finally drove away her from the matrimonial house demanding to get additional dowry of Rs.3.00 lakhs. Basing on the said report a case in Crime No.25 of 2017 came to be registered and after completion of investigation, police filed charge sheet against the petitioner/A7 for the offence punishable under Section 420 of I.P.C. and other accused for the offences punishable under Sections 498 (A), 313 and 420 of I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act, 1961 before the III Additional Judicial First Class, Magistrate, Kothagudem, who inturn committed the case to the Court of Sessions. On committal, the same

came to be numbered as S.C.No.17 of 2019 and pending before the V Additional District and Sessions Judge, Kothagudem. The present Criminal Petition is filed by the petitioner/A7 to quash the proceedings against him in the above S.C.No.17 of 2019.

Notice sent to the 3rd respondent by "Registered Post with Acknowledgment Due" was returned as un-claimed. Taking it as deemed service in view of the provisions of General Clauses Act, the present Criminal Petition is disposed of after hearing the learned counsel for the petitioner/A7 and learned Additional Public Prosecutor.

Learned Counsel for the petitioner/A7 would submit that the petitioner/A7 is the Government Khazi appointed under G.O.Ms.No.16, dated 06.05.2006 by Minorities Welfare (Wakf-I) Department, Government of Andhra Pradesh. As per Khazi's Act, 1880 it is not necessary that Government Khazi shall only perform marriages of Muslims under Muslim law and it is crystal clear that any Khazi can perform marriage. It is stated that the Government Khazi shall supply Qazzath Siyah form/marriage form to the Kazi, parties to the marriage on their application declaring to be unmarried and to undergo marriage. The filled form and the Nikha Nama, if any, will be re-submitted to the Government Kazi and he shall forward it to the Wakf Board. The Government Kazi has nothing to do with the said process of marriage done by other Kazi. The marriage between the 3rd respondent and A1 was performed on

23.11.2011 at Kothagudem as per Customs and Rites prevailing in Muslim community by Mr. Mohd. Rayees Ahmed, S/o. Faqrudhin, R/o. Kothagudem, under marriage booklet issued by Andhra Pradesh State Wakf Board, Hyderabad, vide No.45193, dated 23.11.2011. The petitioner/A7 had not performed the said marriage. The allegation against the petitioner/A7 that he had concealed the earlier marriage of A1 and performed the marriage of A1 with the 3rd respondent is totally false. Hence, there is no case at all against the petitioner/A7 and the proceedings are liable to be quashed.

Learned Additional Public Prosecutor though opposed the Criminal Petition, but conceded to the fact that as per the documents, the Kazi, who performed the marriage between A1 and the 3rd respondent, and the present petitioner are not one and the same persons.

Admittedly, the petitioner/A7 is Government Khazi and the allegation against him is that he performed the marriage of 3rd respondent with A1 by concealing the 1st marriage of A1 with another woman. The petitioner/A7 is not the relative of A1. The application for issue of marriage booklets and Siyah forms for marriage, clearly disclose that one Mohammed Rayees Ahmed, S/o. Faqrudhin, R/o. Kothagudem, had performed the marriage of 3rd respondent with A1 and not by the present petitioner. In view of these circumstances, continuation of the proceedings against the petitioner/A7 is nothing but an abuse of process of law.

Accordingly, the Criminal Petition is allowed and the proceedings against the petitioner/ A7 in S.C.No.17 of 2019 on the file of the V Additional District and Sessions Judge, Kothagudem, are hereby quashed.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G.SRI DEVI

09.12.2019

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