HONOURABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.36972 of 2013

ORDER:

Heard the petitioner, who appeared as party-in-person, and the learned Government Pleader for Home.

The prayer sought in the writ petition is as under:

> "… to issue an appropriate writ, order or directions more particularly one in the nature of writ of Mandamus directing the 4th respondent CID to register a fresh complaint, investigate, prosecute and to punish the responsible persons for producing fake divorce certificates in the writ petitions W.P.No.12834 of 2000 and W.P.No.9698 of 2001, as the police concerned is not investigating the registered cases and one matter kept pending without any progress since ten years i.e., Crime No.258 of 2003 of Women Police Station, South Zone, Hyderabad."

The present writ petition is filed against the alleged fake divorce certificates dated 14.08.1999 and 23.09.1999 filed in W.P.No.9698 of 2001 by the petitioner's mother-in-law – Ms. Zahid Farzana. The said certificates are alleged to have been issued by the 7th respondent herein.

The specific case of the petitioner is that he filed W.P.No.11821 of 2001 complaining about the above said fake divorce certificate dated 14.08.1999 issued by the 7th respondent and also another fake divorce certificate dated 23.09.1999 filed in W.P.No.9698 of 2001. The said writ petition was dismissed on 07.11.2001. However, liberty was given to the petitioner to prefer a private complaint before the jurisdictional Magistrate for appropriate action under the provisions of the Code of Criminal Procedure, 1973. As per the orders of this Court, the petitioner filed complaints on different dates and the same were registered vide Crime Nos.97 and 98 of 2002 on the file of Charminar Police Station, Hyderabad, Crime No.56 of 2002 on the file of Hussaini Alam Police Station, Hyderabad, and Crime No.258 of 2003 on the file of Women Police Station, South Zone, Hyderabad.

As far as Crime No.56 of 2002 is concerned, it was registered against the 7th respondent herein for issuing a false divorce certificate dated 10.08.2000 showing that divorce was taken place on 06.01.1999, but no such divorce was registered with respondent No.7. In fact, the 7th respondent has not presided over the divorce process, as required under the provisions of the Qazi Act, 1880. In fact, till the date of the filing of the writ petition, the petitioner never pronounced Talaq and never paid any Meher amount. On 05.01.1999, the petitioner's wife along with her male relatives forcibly entered into his house and obtained signatures on some papers and some blank papers containing revenue stamps and the same were furnished to the 7th respondent. The 6th respondent also issued another divorce certificate dated 17.08.2000 basing on the alleged fake divorce certificate dated 10.08.2000 issued by the 7th respondent. In all, there are three divorce certificates on record with different dates filed in this Court in W.P.Nos.12834 of 2000 and 9698 of 2001. In W.P.No.9698 of 2001, this Court passed orders on 08.10.2001 directing the 1st respondent therein to consider the complaint of the petitioner dated 27.04.2001 and on investigation, if any administrative instructions are warranted, the 1st respondent therein shall issue administrative instructions to the appropriate police station. It is also stated that the police is not investigating into the registered cases filed against issuance of fake divorce certificates. If any investigation is conducted, the respondent police will be held responsible and answerable to the Courts. Hence, the police closed the three registered cases without any investigation and one case in Crime No.258 of 2003 on the file of the Women Police Station, South Zone, Hyderabad, was still pending. In those circumstances, finding no other alternative, the petitioner filed the present writ petition seeking a direction to the 4th respondent to register a fresh crime, investigate and prosecute the responsible persons for producing such fake and fabricated divorce certificates.

The Inspector of Police and Station House Officer of Women Police Station, Charminar (South Zone), Hyderabad, filed a counter affidavit on behalf of the 5th respondent since she was authorized to do so.

In the said counter affidavit, it is stated that the petitioner filed a private complaint before the XXII Metropolitan Magistrate, Hyderabad, under Section 190 Cr.P.C., against his wife – Sameena Ghouse for the offence under Sections 494 and 420 IPC. The said complaint was referred to police under Section 156(3) Cr.P.C. On such reference, a case in Crime No.258 of 2003 dated 24.11.2003 was registered for the offence under Sections 494 and 420 IPC. In the said complaint, the petitioner stated that he got married with the accused (petitioner's wife) on 20.12.1996 as per Muslim law in the presence of well-wishers and elders in Shalimar Garden Function Hall, Nampally, Hyderabad. The marriage was an arranged one. However, the accused filed a suit before the Family Court, City Civil Court, Hyderabad, vide O.S.No.166 of 2001 to declare that there is no relationship of husband and wife between the petitioner and herself due to divorce on 06.01.1999 and sought permanent injunction restraining the petitioner from interfering with her marriage to be performed on 20.12.2001 with some other person. The accused contracted second marriage on 20.12.2001 without divorce. Therefore, the second marriage of the accused was illegal and against Muslim Law, since the petitioner never divorced his wife. However, the family Court dismissed the said suit on 05.12.2002. The petitioner also prayed the Family Court to try the accused under Sections 494 and 420 IPC for causing wrongful loss to him. Apart from Crime No.258 of 2003, the petitioner also filed another complaint before the XII Metropolitan Magistrate, Hyderabad, against the accused and the same was referred to the police. Pursuant thereto, a case in Crime No.98 of 2002 for the offence under Sections 420, 468 read with 156(3) Cr.P.C. was registered by the Charminar Police Station. After investigation, a chare sheet was filed before the concerned

Court. The same was taken on file vide C.C.No.292 of 2002 and the said case ended in acquittal on 24.10.2003 since the petitioner failed to prove his case against the accused. The petitioner also filed another complaint before the II Metropolitan Magistrate, Hyderabad, against the 7th respondent and the same was registered as Crime No.56 of 2002. Subsequently, the said case ended in acquittal on 15.03.2005 vide C.C.No.207 of 2002. In those circumstances, the petitioner submitted a letter dated 08.10.2012 to the Additional Commissioner of Police (Co-ordination), seeking a direction to the Women Police Station to arrest the accused and file charge sheet in Crime No.258 of 2003. The said complaint was forwarded to the Women Police Station for compliance. However, even before issuance of letter dated 08.10.2012, on 04.10.2012, the then Inspector of Police, South Zone, addressed a letter to the Deputy Commissioner of Police, South Zone, Hyderabad, stating that the case was referred to be "action dropped" in the month of January, 2004 itself. On 24.01.2013, the petitioner furnished two addresses where his wife might be available and requested the police to arrest her. As Crime Nos.56 and 57 of 2002 ended in acquittal, letter dated 18.02.2013 was addressed to the Public Prosecutor, Criminal Courts, Nampally, Hyderabad, seeking opinion as to whether police can arrest his wife or not. On 15.03.2013, a petition was also filed under Section 173(viii) Cr.P.C. before the XV Additional Chief Metropolitan

Magistrate, Nampally, Hyderabad, seeking permission to re-open the case for further investigation. In fact, the said aspect was also informed to the petitioner.

The petitioner again lodged another complaint on 01.04.2013 before the then A.P. Lokayukta, Hyderabad, stating that though Crime No.258 of 2003 was registered, there was no progress in the case. The Registrar of the said Institution forwarded the said complaint to the Commissioner of Police through letter dated 01.06.2013 and the same was endorsed to the Assistant Commissioner of Police, Charminar, on 18.06.2013 for submitting a report. The said letter was received by the Women Police Station on 18.07.2013. Pursuant to the said letter, on 22.07.2013, a letter was addressed to the In-charge, Khazath Office, Shah-ali-banda, Hyderabad to provide the copies of affidavit and divorce executed by the petitioner for taking up further investigation. The 7th respondent through letter dated 24.07.2013 furnished the necessary documents which disclose that the petitioner has given divorce to his wife by pronouncing the word 'Talaq' thrice in the presence of the witnesses vide Talaqnama dated 06.01.1999 on which the petitioner and his wife subscribed their signatures. Therefore, the certificate of divorce dated 10.08.2000 issued by the 7th respondent reveals that the petitioner has given divorce to his wife and dissolved her conjugal rights as per the submission of the affidavit dated 06.01.1999 duly notarized on 10.08.2000. In fact, the 6th respondent also issued a divorce certificate dated 17.08.2000 certifying that the divorce was taken place between the petitioner and his wife. Thereafter, the petitioner addressed another letter dated 23.05.2001 to the Inspector of Police, Humayumnagar Police Station, stating that he divorced his wife on 06.01.1999 and he has no further relationship with her. He also stated that what all he filed against Kusheed Pasha are false and he will not file any petitions against him and that he will never harass any of his ex-in-law's family members and relatives. Therefore, based on the evidence, the Commissioner of Police submitted a detailed report dated 30.07.2013 to the Registrar of the then A.P. Lokayukta, Hyderabad, stating that the allegations leveled by the petitioner do not require any action.

The Sub-Inspector of Police, Begumpet Police Station, Secunderabad, addressed letter dated 27.03.2001 to the officer in-charge, State Wakf Board, to verify the genuineness of the divorce certificate issued by the 7th respondent i.e., whether it is valid or not and further as to whether the 7th respondent is a part of the 6th respondent or not. The Inspector of Police, Charminar Police Station, based on the complaint lodged by the petitioner, registered a case in Crime No.98 of 2002 for the offence under Sections 420 and 468 IPC and issued notice dated 24.06.2002 to one Mir Mohal Khader Ali, O/o Quazzath, Shariyath Panah Balda, Hyderabad, asking to attend the police station for investigation. In fact, based on the evidence collected during the investigation, final report dated 20.08.2002 was filed and the same ended in acquittal vide C.C.No.292 of 2002 dated 24.10.2003 by the II Metropolitan Magistrate, Hyderabad. In the said orders, the learned Magistrate held that the complainant had not taken any steps neither for production of original documents before the Court nor did he take steps to send divorce certificate (Ex.P6) with the admitted official seals and signatures of the officials to decide whether it is genuine or not. Therefore, the accused was found not guilty for the offence under Sections 420 and 468 IPC and she was acquitted.

It is further mentioned in the counter affidavit that O.S.No.166 of 2001 filed by the wife of the petitioner (accused) was dismissed on 05.12.2002 by the Family Court, Hyderabad, on the ground that neither the accused has filed any evidence affidavit nor present in spite of the matter being posted for dismissal. However, the petitioner was regularly attending the said proceedings. Therefore, the petitioner in the affidavit filed in support of the writ petition falsely stated that the suit was dismissed on the findings of false divorce certificate. In fact, the petitioner un-successfully filed W.P.Nos.12834 of 2000 and 11821 of 2001 and the same were dismissed. That apart, even the mother of the petitioner's wife also lodged a complaint dated 27.04.2001 against the petitioner stating that her daughter separated from the petitioner on the ground of harassment and as the concerned police have not registered any crime, she filed W.P.No.9698 of 2001 and W.A.No.1771 of 2001 and sought appropriate directions to the police. Subsequent to the disposal of W.P.No.9698 of 2001, the petitioner filed C.C.No.377 of 2002 before the II Metropolitan Magistrate, Hyderabad, against the mother of the accused. This Court by order dated 23.01.2002 passed in WAMP.No.3827 of 2001 in WA.No.49 of 2002 admitted the divorce certificates dated 17.08.2000 and 10.08.2000 of Wakf Board and Qazi are bogus and forged documents, which led to filing of C.C.No.377 of 2002. However, the said WAMP.No.3827 of 2001 was filed seeking to implead the Head Qazi of the 7th respondent as respondent No.6 in W.A.No.49 of 2002. A Division Bench of this Court also granted leave by order dated 23.01.2002, but not as stated in C.C.No.377 of 2002.

It is also stated in the counter affidavit that due to the persistent requests made by the petitioner, Crime No.258 of 2002 was re-opened and further investigated into. During the course of investigation, two police constables were deputed on 09.07.2013 and 19.07.2013 to visit the places where the wife of the petitioner would be available. During the said visits, it was revealed that the wife of the petitioner got married to another person and living abroad with her husband since five years and the petitioner also got another marriage and living with his wife and the father of the petitioner's wife was no more. Based on further investigation and collected evidence, a final report dated 24.12.2013 under Section 173 Cr.P.C., was filed before the XV Metropolitan Magistrate, Nampally, on the ground of lack of evidence after giving notice to the petitioner. In the said final report, it was stated that the petitioner neither turned up to Women Police Station, South Zone nor produced any witnesses relating to the case for the past nine years and he went to abroad for his livelihood. After lapse of nine years, the petitioner submitted a letter under Right to Information Act, 2005, regarding the stage of the case. Therefore, the Inspector of Police furnished information to the petitioner stating that the case was referred as 'action dropped'. Thereupon, the petitioner approached the Additional Commissioner of Police, Hyderabad, representing that the Inspector of Police furnished false information to him and requested to give directions to the concerned to arrest his wife.

It was further stated in the report that the petitioner also approached Legal Services Authority representing that his wife has taken divorce by producing fake divorce certificate and got second marriage by cheating him and disturbed his career for about more than eight years and requested to take necessary action. In response to the same, it was submitted by the Legal Services Authority that a letter has been submitted to this Court to accord permission to re-open the case under Section 173 Cr.P.C., for further investigation and after receiving the instructions, the case was re-opened and investigated into. During the course of investigation, it was revealed that the petitioner's wife got married another person and living with him in abroad for the past five years and the petitioner also got married another woman and living with her. It is also stated that the opinion of the legal officer was obtained wherein he opined that in spite of giving so many opportunities, the petitioner failed to prove his *prima facie* case by placing any tangible material before the investigating officer in support of his case. In those circumstances, a final report was filed referring the case as "lack of evidence" vide SR.No.5931 dated 26.12.2013. In these circumstances, it is incorrect to state that the police have not investigated into the complaint lodged by the petitioner.

As far as the allegation in C.C.No.292 of 2003 with regard to issuance of fake divorce certificate is concerned, the learned II Metropolitan Magistrate held that the petitioner did not seek steps either for production of original documents before the Court nor did he take steps to send the alleged fake divorce certificate (Ex.P6) with the admitted official seals and signatures of the officials to decide whether it is genuine or not. As such, the petitioner failed to prove the offence under Sections 420 and 468 IPC against the accused beyond reasonable doubt.

In reply to the counter affidavit filed on behalf of the 5th respondent, the petitioner filed a reply affidavit denying the averments made therein and contended *inter alia* that Crime No.258 of 2003 was closed as "lack of evidence" without investigation and without issuing any notice to the petitioner to produce further evidence apart from repeating some of the averments made in the affidavit filed in support of the writ petition.

Having heard the petitioner, who appeared as party-in-person, and the learned Government Pleader and from a perusal of the affidavits filed in support of the writ petition and the counter affidavit, it is revealed that there are too many disputed questions of facts, particularly, Crime No.258 of 2003 registered against the petitioner's wife by Women Police Station, South Zone, Hyderabad, relating to issuance of notice to the petitioner to produce further evidence and the police never investigated into the case in spite of filing evidence with Family Court order and recording his statement under Section 161(3) Cr.P.C. In fact, the police closed the case as "lack of evidence" after a period of ten years one month. The police also made a false statement that they made a request before the concerned Court for re-opening of the case under Section 173(viii) Cr.P.C. Therefore, it was proved that the respondent police kept the matter pending as long as possible.

On the other hand, though an opportunity was given to the petitioner to produce the original evidence before the investigating officer, he failed to furnish the details. That apart, the petitioner also has not taken any steps to prove the signatures on the fake divorce certificate (Ex.P6) with that of the admitted official seals and signatures of the officials of the 7th respondent in C.C.No.292 of 2003 as to whether they are genuine or not. The petitioner having made a serious allegation against his wife as well as the 7th respondent, the burden lies on him to prove the said allegations. However, the petitioner failed to take appropriate steps in C.C.No.292 of 2003 to prove that Ex.P6 was a fake divorce certificate. The petitioner ought to have taken appropriate steps either to send the original documents issued by the office of the 7th respondent filed before the Court or the fake divorce certificate (Ex.P6) to a hand writing expert. Having failed in C.C.No.292 of 2003, the petitioner cannot agitate the very same issue in Crime No.258 of 2003. Even otherwise, after a thorough investigation, when a final report was field under Section 173 Cr.P.C. on 24.12.2013 in Crime No.258 of 2003 on the file of the XV Metropolitan Magistrate, Nampally, Hyderabad, referring the case as “lack of evidence”, and when the petitioner has got objections, he has neither taken any steps nor filed any protest application. This also indicates that the petitioner has not taken appropriate steps to re-open the matter for further investigation. However, on the requisitions made by the petitioner, re-investigation was conducted during which period the petitioner has not cooperated with the investigating agency. On the other hand, the further investigation revealed that the petitioner went to abroad for his livelihood and after a lapse of nine years he submitted a letter under Right to Information Act, 2005, regarding the stage of the case. At that stage, the Inspector of Police furnished information to the petitioner about referring the case as “action dropped”. Even then also, the petitioner has not taken any steps. This fact amply proves the negligence on the part of the petitioner. That apart, from the pleadings, it is also revealed that the petitioner has not lodged any complaint with the Crime Investigation Department (CID). Therefore, the question of seeking a direction to the 4th respondent to register a fresh complaint, investigate the same on the basis of alleged fake divorce certificate may not arise.

In these circumstances, this Court is of the opinion that there are no merits in the writ petition and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHAVA RAO, J

Date:27.01.2020.
ES

HONOURABLE SRI JUSTICE P. KESHAVA RAO

WRIT PETITION No.36972 of 2013

Date:27.01.2020

ES