

HON'BLE SRI JUSTICE K.SRINIVASA REDDY

CRIMINAL PETITION No.6724 of 2022

ORDER:

This petition is filed under Section 482 Cr.P.C., by the petitioners/A3 & A4 to quash the proceedings in C.C.No.211 of 2022 on the file of the learned Judicial Magistrate of First Class, Srikakulam, which was taken cognizance for the alleged offence under Section 494 of the Indian Penal Code.

2) By an order dated 31.03.2022, the learned Judicial Magistrate of First Class, Srikakulam in a petition filed under Section 200 Cr.P.C., took cognizance of the offence under Section 494 of the Indian Penal Code against A1 to A4 and the same is numbered as C.C.No.211 of 2021 on the file of the learned Judicial Magistrate of First Class, Srikakulam.

3) Brief facts of the case are that, the marriage between 2nd respondent-*de facto*-complainant and A1 was performed on 06.05.2007 at Harika Inn Kalyanamandapam, Srikakulam, according to Hindu Rites and Caste Custom in the presence of village and caste elders. At the time of marriage, the parents of *de facto*-complainant gave a cash of Rs.30,00,000/- towards dowry and adorned 20 tulas of gold to A1. After the marriage, both the *de facto*-complainant and

A1 are residing in Hyderabad as A1 was working in TCS Company, Hyderabad. A1 and the *de facto*-complainant went to United States of America during the period of November 2009 to June 2013 and thereafter returned to Hyderabad. Thereafter, the parents of A1 started hatred and aversion towards the *de facto*-complainant because she had not become pregnant even after six years of their marriage. By virtue of the same, they started harassing her by demanding additional dowry of Rs.10,00,000/- and also ill treated her by calling her a barren lady and also demanded her to agree for mutual divorce. Later, A1 went to Germany on his job purpose by leaving the *de facto*-complainant at Hyderabad and after some period, she came to know that A1 has got illicit relationship with A2 she raised dispute before the elders, but in vain. In the year 2018, A1 along with his parents came to Srikakulam to the house of complainant and demanded for additional dowry as well as for mutual divorce. As there is no other alternative, she gave a complaint before the Women Police Station, Srikakulam, against all the accused and the same was registered as a case in Crime No.14 of 2019 for the offences under Section 498-A and 109 of Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

Subsequently, the *de facto*-complainant came to know that, in the month of June 2021, A1 married A2 in Simhachalam, Visakhapatnam District on 23.03.2019 with the active support and instigation of A3 and A4 as per Hindu Rites and Caste Custom. The marriage reception was also photographed and marriage was registered at Sub-Registrar's Office at Gopalapatnam in Visakhapatnam District. A1 and A2 in active collusion with A3 and A4 performed marriage fraudulently and dishonestly.

4) Learned counsel for the petitioners contended that the reasoning given by the learned Magistrate in taking cognizance for the offences under Section 494 IPC is vague.

5) The whole crux of the case is that A1 married A2 with the active assistance of A3 and A4 i.e., the petitioners herein. Surprisingly, the Learned Magistrate has gone to the extent of giving reasoning that the accused have threatened the de-facto complainant for additional dowry and demanded her for mutual divorce, hence the complaint is entitled to be allowed. It is pertinent to mention here that accused are already facing prosecution pursuant to the case in Crime No.14 of 2019 and without taking that aspect into consideration, the Learned Magistrate has resorted in taking cognizance without due diligence.

6) Heard. Perused the record.

7) The present Criminal petition is filed to quash the proceedings in C.C.No.211 of 2022 for the alleged offence under Section 494 of the Indian Penal Code against the petitioners herein i.e., A3 and A4, which had arisen out of a private complaint filed by the defacto complainant in PR No.2440 of 2021 on the file of the learned Judicial Magistrate of First Class, Srikakulam. The learned Magistrate while passing order in the petition opined that the complainant in her evidence/sworn statement which was recorded on 03.01.2022 stated that A1, A3 and A4 threatened her for additional dowry and also demanded her for mutual divorce. Hence, cognizance of the offence is taken on file, under Section 494 IPC against A1 to A4.

Section 494 IPC reads as follows:-

494. Marrying again during lifetime of husband or wife.—Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(Exception) —This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if

such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

8) A perusal of definition of above offence would go to show that offence under Section 494 IPC will be attracted only against the person who marries again during lifetime of being a husband or wife. In the present case, the said accusation can be attributed to A1 only. In respect of the petitioners herein is concerned who are the parents of A2, it is alleged that the A1 and A2 married with the active assistance of petitioners. Hence, viewed from any angle, the offence under Section 494 IPC would not attract as against the petitioners herein and it can be attributable only to the extent of A1 only. Therefore, the reasoning given by the Learned Magistrate is not in accordance with law while taking cognizance and the Learned Magistrate ought to have applied her mind giving proper reasoning and that the same has been done without there being any due diligence.

9) In view of the above facts and circumstances of the case, the order dated 31.03.2022 passed by the Learned Magistrate

in PR-2440 of 2021 is hereby set aside and the matter is remanded back for reconsideration. The learned Magistrate is directed to take cognizance in accordance with law by giving proper reasoning.

10) With the said observation, the Criminal Petition is disposed of.

Miscellaneous petitions, pending if any, in this Criminal Petition shall stand closed.

K.SRINIVASA REDDY, J

06.02.2023
KPV

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