

***THE HONOURABLE SRI JUSTICE SAMUDRALA GOVINDARAJULU**

+Cri.P. No.2426 OF 2005

% 26-02-2010

A. Subsh Babu

.....Petitioner/Accused

And:

State of A.P., rep. by Public Prosecutor and another

.....Respondents.

!Counsel for the Petitioner : Sri A. Hanumantha Reddy

Counsel for the 1st Respondent: Public Prosecutor

Counsel for the 2nd respondent: Sri K. Surender

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>Head Note:

? Cases referred:

- 1.2007(1) A.L.D 13 (AP)
2. 1997 Criminal Law Journal 1655
3. 2000(2) A.L.D (Cri) 200 A.P
4. AIR 1988 Supreme Court 835
5. AIR 1972 Supreme Court 2609
6. 2006(3) Supreme Court Cases (Cri) 113
7. AIR 1988 Supreme Court 644
- 8 A.I.R 1954 Madras 947
9. 2002(3) Supreme 168
10. 2004(1) Supreme 355

HON'BLE SRI JUSTICE SAMUDRALA GOVINDARAJULU

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CRIMINAL PETITION NO.2426 OF 2005

Date: 26.02.2010.

Between:

A. Subsh Babu

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HON'BLE SRI JUSTICE SAMUDRALA GOVINDARAJULU

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CRIMINAL PETITION NO.2426 OF 2005

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ORDER:

This petition is filed by the sole accused under Section 482 Cr.P.C., for quashing proceedings in C.C.No.820 of 1996 on the file of Judicial Magistrate of the First Class, (West and South), Ranga Reddy District relating to offences punishable under Sections 494, 495, 420, 417, 498A I.P.C.

Previously, the petitioner filed Criminal PetitionNo.812 of 2001 in this Court for the self same relief and it was withdrawn by the petitioner and the petition was accordingly dismissed by order dated 09.04.2005 by which the petitioner was given liberty to file a fresh petition if he is so advised. After few days thereof, the petitioner came up with the present petition on 09.05.2005 for quashing proceedings in the Criminal case. It is not known for what purpose it was previously withdrawn and on what new grounds the present petition is filed.

It is alleged that the accused cheated the victim woman and her parents by stating that his first wife died after delivering two of his children who are studying by staying in a hostel, even though his first wife by name Sarada is very much alive and living with him at Avanthinagar near Erragadda, and that by making the said false and fraudulent representation, the accused married the victim woman at Yadagirigutta on 09.10.1994, and that the accused collected total amount of Rs.28,000/- from father of the victim woman towards hand loan on the false plea that he was constructing his own house at

Borabanda; and that the accused further demanded Rs.20,000/- from him and threatened the victim and her father with dire consequences by showing his licensed revolver and that several times the accused tried to snatch away gold ornaments from the victim's person by threatening her with dire consequences and that the accused demanded to part with her gold ornaments together with cash of Rs.15,000/- from her parents and that when his additional demand was not fulfilled, the accused threatened the victim and her father by saying that he would wipe out evidence of his marriage with the victim at Yadagirigutta in a Choultry by destroying all photographs and negatives and would walk out of their house. The petitioner/ accused was then working as Sub Inspector of Police in Intelligence Wing of the Police Department at Hyderabad. Truth or otherwise of all allegations in the charge sheet as well as in First Information Report have to be adjudged by the trial Court after both the parties leading their oral and documentary evidence during trial before the lower court.

It is contended by the petitioner's counsel that Section 198(1) proviso (c) of Cr.P.C bars taking cognizance of the case relating to offences punishable under Sections 494 and 495 I.P.C. Proviso (c) to Section 198(1) of Cr.P.C as it is relevant for the purpose of this case reads as follows:-

“Provided that (c) where the person aggrieved by an offence punishable under (Section 494 or Section 495) of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister (or with the leave of the Court, by any other person related to her by blood, marriage or adoption)”.

But, Division Bench of this Court in **Mavuri Rani Veerabhadramma v. State of A.P.**,^[1] took note of the fact that though offence punishable under Section 494 I.P.C as amended in the state of Andhra Pradesh is made

cognizable, there is no corresponding amendment to Section 198 Cr.P.C., and that though investigating agency is entitled to investigate, the Magistrate is precluded from taking cognizance of the said offence on report filed by the police. The Division Bench answered the reference with the following conclusions:-

1. If a complaint is filed under Section 200 of Cr.P.C., for the offence under Section 494 of I.P.C. before a Magistrate, he may take cognizance of the offence or postpone the issue of process either by making enquiry into the case by himself or direct an investigation to be made by the Police Officer or other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground to proceed. If the complaint is referred to the police for investigation and if the police files either the charge-sheet showing that there is *prima facie* material to proceed against the accused or that there is no case to take cognizance of the offence, the Magistrate is empowered to take cognizance of the offence irrespective of the result of the investigation and it amounts to sufficient compliance of Section 198 of Cr.P.C.
2. The police may also receive a complaint for the offence under Section 494 of I.P.C and register a crime. As per the amendment of the schedule, Section 494 of IPC is made cognizable and the police are empowered to investigate the case. But the Magistrate is precluded from taking cognizance of the offence under Section 198 of Cr.P.C on the charge-sheet filed by the police, when a complaint is not presented before the Magistrate for taking cognizance of the offence.
3. If a complaint for the offence under Section 494 of IPC is lodged along with other cognizable offences before the police and if the police files a charge-sheet, the Court can take cognizance of the offence under Section 494 of IPC also along with other cognizable offences by virtue of Section 155(4) of Cr.P.C.

It is contended that having regard to conclusion No.3 arrived at by the

Division Bench, filing of charge sheet by the police and taking cognizance thereof for offence punishable under Sections 494 and 495 I.P.C is in accordance with law. On the other hand, it is contended by the petitioner's counsel that **Mavuri Rani Veerabhadramma** (supra) is in conflict with earlier Bench Decision of this Court in **S. Radhika Sameena v. Station House Officer**,^[2] and that this decision was not referred in **Mavuri Rani Veerabhadramma** (1 supra). The question decided by the Division Bench in **S. Radhika Sameena** (2 supra) is whether a person who married his first wife under the Special Marriage Act, can marry a second wife under Muslim, Law after taking conversion as Muslim attracting liability for offences under Sections 494 and 495 I.P.C. It was answered positively by the Division Bench. There is no contention raised much less decided therein as to whether those offences can be taken cognizance by the Magistrate on report filed by the Police Officer having regard to Andhra Pradesh state amendment making offence punishable under Section 494 I.P.C cognizable and having regard to provision contained under Section 155(2) Cr.P.C. The only discussion in **S. Radhika Sameena** (2 supra) on Section 198 Cr.P.C is as follows:-

“We have considered the aspect whether straightway we should direct the Mahila Court (XXII Metropolitan Magistrate's Court, Hyderabad), whose jurisdiction covers matrimonial offences, to take cognizance of the offence under Section 494 IPC on the basis of the reply affidavit filed by the petitioner. But the law, as we comprehend it to be, does not seem to permit such a course of action in view of the specific language of Section 198(1) of the Code of Criminal Procedure under which, the complaint to the Court, competent to take cognizance of offences punishable under Chapter XX of the Indian Penal Code of which Section 494 constitutes a part – should only be by “ some person aggrieved by the offence” and the exceptions to this incorporated in proviso (c) to sub-section (1) exclude the complaint by anyone else including a court, even a higher Court. At any rte, there appears to be no judicial

precedent in this regard. We, therefore, hold that it is open to the petitioner to file a complaint before the Mahila Court (XXII Metropolitan Magistrate, Hyderabad.”

In that view of the matter, decision of the Division Bench in **Mavuri Rani Veerabhadramma** (1 supra) is holding the field with regard to competency of the police to file charge sheet and competency of the Magistrate to take cognizance of offences punishable under Sections 494 and 495 I.P.C on report filed by the police. Therefore, I find that taking cognizance of the present case by the court below for offences punishable under Sections 494 and 495 I.P.C, is in accordance with law. In view of decision of the Division Bench in **Mavuri Rani Veerabhadramma** (1 supra), previous decision rendered by Single Judge of this Court in **D. Vijayalakshmi v. D. Sanjeeva Reddy**, [3] is no longer good law.

In **V. Revathi v. Union of India**, [4] the Supreme Court while holding that Section 198(2) Cr.P.C is not discriminatory simply because husband alone was given right to prosecute the adulterer and not wife of the adulterer, the Supreme Court further held that philosophy underlying the scheme of Section 198(2) Cr.P.C and Section 497 I.P.C appears to be promotion of social good will between the husband and the wife by permitting them to ‘make up’ or ‘break up’ the matrimonial tie rather than dragging each other to criminal court.

Decision rendered by the Supreme Court in **G. Narasimhan v. T.V. Chokkappa**, [5] on Section 198 Cr.P.C in a defamation case, may not be relevant herein. In any event, it was a decision rendered by the Supreme Court prior to the state amendment on Section 494 I.P.C. in the year 1992 making the same as cognizable.

In **Manisha Das (DR) v. State of U.P.**, [6] the Supreme Court quashed the complaint filed by father of second wife allegedly on her behalf but against her express desire stated in her sworn statement in view of the proviso (c) to Section 198 (1) Cr.P.C on the ground that she was a major and

that she married on her own free will and she was living happily and peacefully thereafter and that initiation of prosecution by her father in such circumstances was improper. This decision was rendered having regard to special facts prevailing in that case. There was no reference to the A.P. state amendment of the year 1992 in that decision.

Secondly, it is contended by the petitioner's counsel that aggrieved party i.e., for offences punishable under Sections 494 and 495 I.P.C i.e., Bigamy is the first wife and not the second wife/*defacto*-complainant who is the second wife. Reliance was placed on **Smt Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav**,^[7] of the Supreme Court and **In re P. Kondiah**,^[8] of the Madras High Court on this aspect. In the former decision, the Supreme Court was considering right of the second wife for maintenance under Section 125 Cr.P.C when the first wife of the husband was living. It has absolutely no relevance herein. In the latter decision of the Madras High Court, it was held that marriage of the accused with the second wife when first wife is living and when marriage with the first wife is subsisting, is *ab initio void* and that if there is no legal and valid marriage, she cannot be said to be the wife of the accused and that if there is no legal and valid marriage, she cannot be said to be the wife of the accused and hence cannot have any grievance and cannot be a person within the scope of Section 198 Cr.P.C for the purpose of filing complaint under Section 494 I.P.C. If it is a case of offence punishable under Section 494 I.P.C alone, then there is every possibility of applying ratio of the Madras decision. But, in the present case not only Section 494 IPC but also Section 495 IPC is invoked by the prosecution. Section 495 I.P.C deals with a case where offence of Bigamy is committed having concealed from the person and whom the subsequent marriage is contracted, the fact of former marriage. Therefore, Section 495 IPC forbids contracting second marriage by suppression of the first marriage. In such a case, the 2nd wife alone is the aggrieved party. Therefore, it cannot be said that the second wife cannot be termed as aggrieved party for the purpose of Section 198(1) Cr.P.C for maintaining a report/complaint for offences punishable under Sections 494 and 495 I.P.C. In any event, **In re P.**

Kondaiah (8 supra) has no relevance now in the state of Andhra Pradesh, having regard to **Mavuri Rani Veerabhadramma** (1 supra)

It is thirdly contended by the petitioner's counsel that marriage of the accused with the victim in this case who is stated to be second wife of the accused, is *void ab initio*, she cannot claim herself to be a legally wedded wife who can invoke offence punishable under Section 498A IPC. In **Shivcharan Lal Verma v. State of M.P.**,^[9] it was held by the Supreme Court that when marriage of the accused with the deceased was during subsistence of valid marriage between the accused and his first wife, was null and void, conviction of the accused for offence punishable under Section 498A IPC for harassing the deceased who committed suicide is not sustainable in law.

In **Reema Aggarwal v. Anupam**,^[10] the Supreme Court observed:-

“The question as to who would be covered by the expression ‘husband’ for attracting Section 498A does present problems. Etymologically, in terms of the definition of “husband” and “marriage” as given in the various Law Lexicons and dictionaries – the existence of a valid marriage may appear to be a *sine quo non* for applying a penal provision.”

Admittedly, the victim in this case is second wife of the petitioner who is said to have married her by suppressing the fact of his first wife living. Therefore, *prima facie* marriage between the petitioner and the second respondent is void and therefore, it cannot be said that the alleged harassment or cruelty meted out by the petitioner towards her attracts penal provision under Section 498A I.P.C.

It is lastly contended by the petitioner's counsel that there is no property involved in this case and that therefore, penal provisions under Sections 417 and 420 IPC have no application herein. The said contention does not stand to scrutiny because definition of cheating contained under Section 415 IPC is attracted in case of damage or harm to the person in body, mind, reputation or property.

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- [1] 2007(1) A.L.D 13 (AP)
 - [2] 1997 Criminal Law Journal 1655
 - [3] 2000(2) A.L.D (Cri) 200 A.P
 - [4] AIR 1988 Supreme Court 835
 - [5] AIR 1972 Supreme Court 2609
 - [6] 2006(3) Supreme Court Cases (Cri) 113
 - [7] AIR 1988 Supreme Court 644
 - [8] A.I.R 1954 Madras 947
 - [9] 2002(3) Supreme 168
 - [10] 2004(1) Supreme 355