

**THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR**

**CRIMINAL PETITION No.1768 of 2019**

**ORDER:**

This Criminal Petition under Section 482 of Code of Criminal Procedure (Cr.P.C.) is filed by accused seeking quashment of C.C.No.669 of 2015 pending on the file of learned Special Judicial First Class Magistrate for Prohibition and Excise, Guntur. The said criminal case alleges offence under Section 494 I.P.C.

2. Respondent No.1 is State represented by learned Assistant Public Prosecutor. Respondent No.2 is *de facto* complainant. Despite notice being served, none entered appearance for respondent No.2.

3. Sri Naga Praveen Vankayalapati, learned counsel appearing for petitioner and learned Assistant Public Prosecutor appearing for respondent No.1/State submitted arguments.

4. Facts leading to the presentation of the present criminal petition are as mentioned below:

a. On a written information lodged by respondent No.2 – Smt. Kilari Subhadra Devi, Crime No.57 of 2015 was registered at Pattabhipuram Police Station. After due investigation, the

Sub-Inspector of Police filed charge sheet as against the accused for an offence under Section 494 I.P.C. and nine witnesses were listed in proof of the case. The allegations are that on 18.04.1991 the marriage between accused and respondent No.2 was solemnized according to Hindu Rites and Customs. Accused is employed in Panchayat Raj Department. During their marital life they were blessed with a female baby on 05.10.1993. On several occasions the woman and her family members had given several amounts to the accused to enable him to commence business in coal and for learning computer courses. Subsequently, the spouses shifted their matrimonial home to Bangalore where accused started working in a company. They lived at Bangalore during the year 2004. When the woman intended to continue her job as a data operator, disputes arose between spouses and she had filed a maintenance case and he had filed a divorce case. There was intervention of elders and the accused withdrew his case. Because of the disputes spouses fell apart and the married lady reached her parents' house in the year 2007 and has been living with them.

b. Charge sheet further alleges that the married lady/*de facto* complainant/respondent No.2 learnt that her husband had married another woman by name Nidamanuri Mohanajyothi and they lived at Tenali, Ongole, Hyderabad and Bangalore and during their wedlock they gave birth to three children by name Lasya, Darsan Venkata Sai, Geethika and their births were registered at Nursing Home, Tenali, Tenali Municipality and Darsan Venkata Sai is studying LKG in Chaitanya Techno School and the man and his second wife and children lived in Door No.2-37-26 in Burripalem Road, Tenali. It is further alleged in the charge sheet that during the course of investigation, the investigating officer could not collect any documents or photographs indicating the alleged second marriage of the accused with the other woman by name Nidamanuri Mohanajyothi. Several persons named by the *de facto* complainant could not also be examined as they were never available. It is with those allegations the charge sheet was laid.

5. To sustain the allegations made in the charge sheet, the witnesses examined are *de facto* complainant/LW.1. List Witness No.2 is to say about seeing the accused with his second

wife at Tirupati where the accused introduced the other woman as his second wife. List Witness Nos.3 and 4 are to speak about the matrimonial differences that arose between the accused and the *de facto* complainant/his wife. List Witness No.5 is to say about accused and his second wife living in his house as tenants. List Witness No.6 is to say about herself working in the house of accused at Tenali where the accused and his second wife were living. List Witness No.7 is to speak about the children of accused born through the second marriage studying in school. List Witness No.8 is the one who registered F.I.R. and conducted investigation and List Witness No.9 is the Sub-Inspector of Police who filed charge sheet.

6. Institution and initiation of such criminal prosecution is challenged in this criminal petition by the accused alleging that the case is false and he is falsely implicated. That even according to the charge sheet, there is no evidence collected to establish the alleged second marriage. The entire criminal record failed to furnish even the date of marriage that allegedly took place between the accused and the other woman. Learned counsel appearing for petitioner argued that there is absolutely no material available on record to prove solemnization of second

marriage and continuance of such proceedings could not be in the interest of justice and is clear abuse of process of Court.

7. Learned Assistant Public Prosecutor representing the State submits that the allegations mentioned in the charge sheet *prima facie* disclose accused indulged in second marriage and the quality of evidence is a matter for determination at the trial and it is not a case for quashment and sought for dismissal of petition.

8. The offence alleged against the accused is under Section 494 I.P.C., which reads as mentioned below:

**“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.”

9. The first schedule to Code of Criminal Procedure shows that the said offence is non-cognizable, bailable and is triable by Magistrate of the First Class.

10. Chapter XIV of Code of Criminal Procedure provides for conditions requisite for initiation of proceedings. Section 198 Sub-Section (1) proviso (c) Cr.P.C. provides that for a prosecution of an accused for an offence under Section 494 I.P.C. it shall be initiated by a complaint made by the aggrieved person namely the wife or on her behalf by her father, mother and other relations mentioned therein. Section 2(d) of Code of Criminal Procedure defines a ‘complaint’ showing that a complaint shall be made to a Magistrate and it does not include a police report. Thus, a complaint is different from police report. In terms of Section 198 of Code of Criminal Procedure, prosecution for the offence under Section 494 I.P.C. could be initiated only by a complaint filed before the learned Magistrate. In the case at hand, the proceedings that were initiated before learned Magistrate were not out of a complaint filed before him.

The case emerged on a police report. On these suppositions, one could say that the very initiation of prosecution is incorrect and against law. However, State of Andhra Pradesh passed Act 3 of 1992. By virtue of that, entry relating to Section 494 I.P.C. as mentioned in Schedule-1 of Code of Criminal Procedure at Column Nos.4 and 5 certain changes were brought in. This amendment made the offence under Section 494 I.P.C. cognizable and non-bailable. Be it noted that in terms of Section 2(c) of Code of Criminal Procedure, a cognizable offence means a case in which a police officer is entitled to arrest accused without any warrant issued by the Court. Be it also noted that Section 198 Cr.P.C. was not amended for Andhra Pradesh State. A plain reading of these provisions give an impression that Section 198 Cr.P.C. bar still holds good and therefore a prosecution for an offence under Section 494 I.P.C. could be done only by a complainant through her complaint and not by way of a police report/charge sheet. It seems this view was followed in ***B.Parvathi v. State of Andhra Pradesh***<sup>1</sup>. However, these aspects were clarified and law was laid down by the Hon'ble Supreme Court of India in ***A.Subhash Babu v.***

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<sup>1</sup> 2020 (2) ALT (Cri) 141

**State of A.P.<sup>2</sup>** At para No.46 of the judgment, their Lordships have laid the law that by virtue of the said amendment for State of Andhra Pradesh carried out in the first schedule of the Code of Criminal Procedure, the bar contained in Section 198 Cr.P.C. for the offence under Section 494 I.P.C. gets lifted. In that view of the matter, one could say that prosecution in this State for an offence under Section 494 I.P.C. is possible either by a complaint or by a police report.

11. Coming to the facts of the present case at hand, even after complete investigation of the case the investigative officer himself had mentioned that he was unable to collect any evidence about solemnization of second marriage. It is undisputed that none of the listed witnesses in the charge sheet is a witness to the second marriage. The material on record does not indicate even the date on which the second marriage was solemnized and the place at which it was solemnized and the persons who solemnized it. The charge sheet is absolutely silent about the form of marriage and the ceremonies that were observed in solemnizing the alleged second marriage. Thus, everything that is relevant for proving a second marriage is

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<sup>2</sup>(2011) 7 SCC 616

absent in the case. However, the evidence collected intended to demonstrate the second marriage by some other evidence such as that there were children born to the accused through second wife and that they were living like wife and husband to the knowledge of others and that the school records and birth registers would show accused as father of those children. It is on such material the prosecution wanted to prosecute the accused. Thus, the question is whether there is legal evidence to continue the prosecution and if there is no legal evidence whether that could be said to be a prosecution to meet the ends of justice. In similar fact situation, after a very detailed analysis of statute and the binding precedent, the learned Judge of this Court in **B.Parvathis's** case (supra 1) held that in a prosecution for an offence under Section 494 I.P.C. the factum of the second marriage has to be established with acceptable legal evidence and that the factum of second marriage was to be proved with such evidence showing that the solemnization of it was in accordance with particular customs or ceremonies and further the prosecution had to adduce evidence that the first marriage and second marriage are valid marriages solemnized as per the ceremonies prevailing in the community. When the charge sheet failed to show and when the evidence collected failed to

show solemnization of second marriage and the form of its solemnization and the ceremonies that were performed, then it is a case of absence of *prima facie* case and absence of legal evidence. That obligates the Court to quash the case. The facts at hand are squarely governed by the ratio laid therein. The submission of the learned counsel for petitioner that in the absence of any legal evidence the case is liable to be quashed shall be approved. In the considered opinion of this Court, any further prosecution of this accused for the offence under Section 494 I.P.C. is not in the interest of justice.

12. In the result, this Criminal Petition is allowed. Criminal proceedings as against the petitioner/accused - Sri Kilari Jaggarao, S/o. Late Venkateswarlu in C.C.No.669 of 2015 on the file of learned Special Judicial First Class Magistrate for Prohibition and Excise, Guntur registered for the offence under Section 494 I.P.C. stand quashed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

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**Dr. V.R.K.KRUPA SAGAR, J**

Date: 14.08.2023

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