

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

Criminal Petition No.11197 OF 2022

Between:

Padmanabham Mamidi.

... Petitioner

And

The State of Telangana,
Rep. through Public Prosecutor,
High Court for the State of Telangana,
Hyderabad and another

... Respondents

DATE OF JUDGMENT PRONOUNCED: 14.03.2023
Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

K.SURENDER, J

* THE HON'BLE SRI JUSTICE K. SURENDER

+ CRL.P. No. 11197 of 2022

% Dated 14.03.2023

Padmanabham Mamidi

... Petitioner

And

\$ The State of Telangana,
Rep. through Public Prosecutor,
High Court for the State of Telangana,
Hyderabad and another

... Respondents

! **Counsel for the Petitioners:** Sri Tekuru Swetcha

^ **Counsel for the Respondents:** Sri S.Sudershan

Additional Public Prosecutor for R1

Sri Shaik Mastanvali for R2

>HEAD NOTE:

? Cases referred

¹ 2022 LiveLaw (SC) 468

2 1985 SCC OnLine Kar 232

HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.11197 OF 2022****ORDER:**

1. This Criminal Petition is filed to quash the proceedings against the petitioner/Accused No.2 in C.C.No.986 of 2021 on the file of VII Additional Metropolitan Magistrate at Hayathnagar for the offences under Sections 420 and 494 r/w 34 of IPC.

2. The petitioner is added as A2 in the charge sheet filed for the offences under Sections 420, 494 r/w 34 of IPC. The 2nd respondent is the husband of A1. He filed a complaint stating that he married A1-Sangeeta Agarwal on 14.09.1999. Thereafter, in the year 2009, she left him and started living on her own. There are several cases including divorce application, which are pending before the Courts. The divorce application filed by A1 vide FCOP No.501 of 2013, the Family Court granted divorce. However, in appeal vide FCA No.357 of 2017, the said divorce decree granted by the Family Court was suspended and appeal is pending. However, the 2nd respondent came to know that his wife A1 and this petitioner,

who is A2, married on 28.03.2018 at Chikkadpally and the same was registered on 04.01.2019 before the SRO, Chikkadpally. On the basis of the said complaint, the police enquired into the case and filed charge sheet for the reason of this petitioner marrying A1, though her marriage was subsisting with the 2nd respondent.

3. Learned counsel appearing for the petitioner would submit that Section 494 of IPC would be attracted only to a person who marries again during lifetime of husband or wife. The said provision is not attracted to this petitioner since he was not married on the date of marriage with A1. Further, cognizance can only be taken on the private complaint filed under Section 2(d) of Cr.P.C since there is a bar under Section 198 of Cr.P.C. Other grounds are also raised by the learned counsel for the petitioner. Learned counsel relied on the judgment of Hon'ble Supreme Court in the case of Rekha Jain v. The State of Karnataka¹ and also Babu Tayappa Appugol v.

¹ 2022 LiveLaw (SC) 468

Shanta². In the circumstances, prayed to quash the proceedings against the petitioner.

4. On the other hand, learned counsel for the respondents would submit that once the marriage is subsisting, the question of marrying again does not arise. If one enters into such marriage, it would amount to an offence under Section 494 of IPC. Further, having knowledge that divorce obtained by A1 was suspended by this Court, this petitioner married A1 and misrepresented before the SRO, Chikkadpally. For the said reason of misrepresenting before the SRO and obtaining marriage certificate would amount to cheating a public servant and punishable under Section 420 of IPC. For the said reason, the petitioner has to undergo trial to prove his innocence and sought for dismissal of the petition.

5. To attract an offence under Section 494 of IPC, a husband or wife while living, marries another when such marriage would be void by the reason of its taking place during life of such spouse, is punishable. In the present case,

² 1985 SCC OnLine Kar 232

it is not the case of the police that this petitioner was already married by the time he married A1 on 12.08.2018. A person who is single marrying another whose marriage is subsisting is not liable under Section 494 of IPC, but the person whose marriage is subsisting would be liable. Even accepting that A1's marriage was subsisting, the offence under Section 494 of IPC is not made out against the petitioner herein.

6. To attract an offence under Section 420 of IPC, practice of deception is *sine qua non*. In the present case, this petitioner's marriage with A1 was intimated to the SRO, Chikkadpally. Such intimation to the SRO and thereafter obtaining certificate for marriage will not amount to practice of deception by this petitioner who had intimated regarding the marriage with A1. The validity or otherwise of the marriage or whether the marriage was void for the reason of A1's subsisting marriage with the 2nd respondent will not in any manner attract the offence under Section 420 of IPC against this petitioner. Admittedly, there is a marriage and same was intimated to the SRO office. In the event of the marriage being

void, consequent certificate would also become invalid. Mere intimation regarding the marriage which has taken place and which marriage is not disputed will not amount to an offence under Section 420 of IPC.

7. For the aforesaid reasons, the proceedings against petitioner/A2 in C.C.No.986 of 2021 on the file of VII Additional Metropolitan Magistrate at Hayathnagar, are hereby quashed.

8. Accordingly, Criminal Petition is allowed. Consequently, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date: 14.03.2023

Note: LR copy to be marked.

B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.11197 OF 2022

Date: 14.03.2023.

kvs

