

(2011) 04 AP CK 0033

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 7124 of 2008

A. Sreenivasa Rao and Others

APPELLANT

Vs

The State of A.P. and Another

RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Constitution of India, 1950 — Article 20(2)

Criminal Procedure Code, 1973 (CrPC) — Section 125, 300, 498A

Citation : (2011) 3 DMC 537

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : D. Madhava Rao, for the Appellant; Public Prosecutor for Respondent No. 1 and K. Ananda Rao, for the Respondent

Final Decision : Allowed

Judgement

K.G. Shankar, J.—There is no representation for the 2nd Respondent-wife. The Petitioners are Accused Nos. 1 to 5 in D.V.A. No. 18 of 2007 on the file of the III Additional Chief Metropolitan Magistrate, Hyderabad. The 1st accused is/was the husband of the 2nd Respondent. Alleging that A-1 to A-5 committed matrimonial offences, the 2nd Respondent/wife laid D.V.A. No. 18 of 2007.

2. As there is prior litigation between the parties, the 2nd Respondent laid M.C. No. 175 of 2003 seeking for maintenance from the 1st Petitioner herein. She was indeed successful in obtaining an order from the Court granting maintenance in her favour. It would appear that the order has become final.

3. While so, the 2nd Respondent laid C.C. No. 226 of 2003 on the file of the XIII Additional Chief Metropolitan Magistrate (Mahila Court), Hyderabad. She made allegations against the Petitioner herein in C.C. No. 226 of 2003 u/s 498-A and other matrimonial offences. The case had ended in acquittal. The judgment was pronounced on 30.4.2007.

4. In the interregnum, the 1st Petitioner/husband laid O.P. No. 366 of 2004 on

the file of the Family Court, Hyderabad seeking the dissolution of his marriage with the 2nd Respondent by divorce on the ground of cruelty on the part of the wife. The learned Judge, Family Court, Hyderabad granted divorce in favour of the Petitioner through orders in O.P. No. 366 of 2004 on 5.5.2006.

5. It may be noticed that D.V.A. No. 18 of 2007 itself was filed after the 1st Petitioner obtained divorce from the 2nd Respondent. Sri. Ashish Samanth, learned Counsel for the Petitioners contended that laying of D.V.C. No. 18 of 2007 is tantamount to double jeopardy as the Petitioners were acquitted on identical allegations in C.C. No. 226 of 2003 and that the Petitioners cannot be proceeded against again in D.V.A. No. 18 of 2007. I do not agree with this contention of the learned Counsel for the Petitioner for the reason that the protection envisaged by the Article 20(2) of the Indian Constitution as well as by Section 300 Code of Criminal Procedure, which is a protection against the double jeopardy would apply if both the proceedings are criminal in nature, whereas the proceedings in D.V.A. No. 18 of 2007 cannot be considered to be criminal proceedings. Like proceedings u/s 125 Code of Criminal Procedure, perhaps the proceedings under Domestic Violence Act are quasi-criminal proceedings. However, they are not criminal proceedings as such to fall within the mischief of Article 20(2) of the Indian Constitution or u/s 300 Code of Criminal Procedure.

6. At the same time, by the time the D.V.A. No. 18 of 2007 was laid in 2007, the marriage between the 1st Petitioner and the 2nd Respondent already stood dissolved by the Family Court, Hyderabad through a decree in O.P. No. 366 of 2004. When there was no jural relationship of man and his wife between the 1st Petitioner and the 2nd Respondent by the date of filing of D.V.A. No. 18 of 2007, the case in D.V.A. No. 18 of 2007 prima-facie is not maintainable. Added to it, the 2nd Respondent is silent as to the dates when the alleged violations under the Domestic Violence Act have occurred. Viewed in this angle, the 2nd Respondent is not entitled to proceed against the Petitioner under the provisions of the Domestic Violence Act.

7. I wholly agree with the contention of the learned Counsel for the Petitioners that the proceedings in D.V.A. No. 18 of 2007 are not maintainable in view of the divorce between the 1st Petitioner and the 2nd Respondent having been granted by a competent Civil Court. Proceedings against the Petitioners herein are quashed in D.V.A. No. 18 of 2007 on the file of the III Additional Chief Metropolitan Magistrate, Hyderabad.

8. The Criminal Petition is, accordingly, allowed.