

(2014) 07 KAR CK 0132
In the Karnataka High Court
Case No : C.R.L.P. No. 720/2010

G. Balakrishna Shashtry and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 417, 465, 468, 471

Citation : (2014) 07 KAR CK 0132

Hon'ble Judges : S.N. Satyanarayana, J

Bench : Single Bench

Advocate : C.V. Nagesh, Sr. Advocate and Raghavendra K.K. for C.V. Nagesh, Associates, Advocates for the Appellant; Keshava Murthy, Addl. SPP, Advocates for the Respondent

Judgement

S.N. Satyanarayana, J.—Accused Nos. 1 to 5 in C.C. No. 2066/1992 pending in the Court of I Addl. Chief Metropolitan Magistrate, Bangalore, have come up in this petition seeking quashing of the aforesaid proceedings initiated pursuant to a chargesheet filed against them in Crime No. 51/1990 for the offences punishable under Sections 498A, 417, 465, 468, 471 and 120B of Indian Penal Code.

2. Admittedly, the aforesaid criminal proceeding is initiated based on the complaint filed by 3rd respondent herein, who claims herself to be the wife of 1st petitioner, accused No. 1 in the aforesaid proceeding. Initially, the complaint was lodged on 09.02.1990, which was registered in Crime No. 51/1990 with Seshadripuram Police Station against 11 persons for the offence punishable under Section 498A of IPC as could be seen from the FIR in the said Crime. It is seen that the matter was referred to investigation and subsequently chargesheet was filed by C.O.D. Police on 22.01.1992, against five persons only who are petitioners 1 to 5 herein. Accused Nos. 1 to 5 in C.C. No. 2066/1992 on the file of I Addl. Chief Metropolitan Magistrate have come up in this proceeding seeking quashing of the same. It is seen that though the offence referred to in the complaint is with reference to Section 498A of IPC, the offences for which

accused Nos. 1 to 5 are sought to be prosecuted are with reference to offences punishable under Sections 417, 465, 468, 471 and 120B of IPC.

3. It is also stated that around same time when the complaint was filed in Crime No. 51/1990, a suit was also filed in O.S. No. 4/1990 for the relief of permanent injunction restraining 1st defendant therein, who is 1st accused in C.C. No. 2066/1992, from entering into an adulterous marriage with 2nd defendant in the said suit, who is incidentally, 2nd accused in C.C. No. 2066/1992. It is seen that the said suit, which was hotly contested between the parties, was dismissed by III Addl. Family Court by its judgment dated 24.11.2009. It is also stated that subsequently an appeal is filed in MFA No. 1335/2010 on the file of this Court. The aforesaid proceeding, which was pending on the file of this Court, came to be dismissed for non-prosecution on 09.04.2012. From 09.04.2012 till this day, no attempt is made by the complainant (respondent No. 3 herein), who is plaintiff in the original suit and appellant in MFA No. 1335/2010, to get the said appeal restored to file in order to pursue her challenge to the order of dismissal of original suit filed in O.S. No. 4/1990.

4. Meanwhile, accused Nos. 1 to 5 in C.C. No. 2066/1992 have come up in this petition seeking quashing of the proceedings. The grounds urged in this petition are that when the complainant has failed to substantiate her alleged marriage with 1st petitioner in a full fledged trial, which has taken place in O.S. No. 4/1990, where sufficient opportunity was available to the plaintiff, 3rd respondent herein, to adduce evidence regarding her alleged marriage with the 1st defendant (1st petitioner herein) and allegation with regard to conduct of 1st defendant in trying to get into an adulterous marriage with the 2nd defendant (2nd petitioner herein) with the assistance of defendant No. 3 (petitioner No. 3 herein) and defendant No. 4 having not been proved and all the issues which were framed in the said suit being answered against the plaintiff (3rd respondent herein), no purpose would be served in conducting one more round of trial in this proceeding to substantiate the very same allegation. One of the grounds raised by petitioners 1 to 5 is that the 3rd respondent - complainant has not only failed to establish her marriage with 1st petitioner, but has also failed to demonstrate that marriage between 1st petitioner and 2nd petitioner is adulterous during the subsistence of the alleged marriage between 1st petitioner and 3rd respondent - complainant. It is further urged that when the original suit by the 3rd respondent herein itself is dismissed, nothing survives for trial in C.C. No. 2066/1992.

5. In this proceeding, though notice is duly served on 3rd respondent, she has remained unrepresented in this proceeding. Heard the learned counsel for petitioner. Perused the judgment passed in O.S. No. 4/1990 with reference to the complaint in Crime No. 51/1990 and statements of the witnesses, which are appended to the chargesheet to substantiate filing of the same against petitioners 1 to 5. On going through the material on record, it is clearly seen that though such serious allegations are made by 3rd respondent - complainant against 1st petitioner and others, she has failed to establish the very same fact

before the trial Court where the suit, O.S. No. 4/1990, filed by her for the relief of permanent injunction against petitioners 1 to 3 herein and another was pending for more than 19 years. Even though she examined herself and five other witnesses, she was not able to substantiate her alleged marriage with 1st petitioner. When 3rd respondent herein has failed to establish her marriage with 1st petitioner, it is obvious that she cannot also maintain a complaint against the petitioners herein on the premise that she is the legally wedded wife of 1st petitioner. When marriage of 1st petitioner and 3rd respondent is not being established in a competent Court of law, then pursuing the complaint by 3rd respondent against petitioners alleging that she is the legally wedded wife of 1st petitioner would not serve any purpose. Therefore, in the facts and circumstances of the case, this Court feel that it is just and necessary that petitioners herein should be relieved of the ordeal of undergoing the trial based on a frivolous complaint filed by 3rd respondent herein claiming herself to be the legally wedded wife of 1st petitioner.

6. In that view of the matter, this Court feel that the present petition is required to be allowed. Consequently, complaint in C.C. No. 2066/1992 pending on the file of I Addl. Chief Metropolitan Magistrate, Bangalore, and registered pursuant to chargesheet filed against them in Crime No. 51/1990 with Seshadripuram Police, Bangalore, for the offences punishable under Sections 498A, 417, 465, 468, 471 and 120B of Indian Penal Code, is hereby quashed.