IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF OCTOBER, 2019

BEFORE

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

CRIMINAL PETITION No.7129 OF 2018

BETWEEN :

SRI. FAISAL AHMED KHAN
S/O LATE NAZIR AHMED KHAN
AGED ABOUT 50 YEARS
R/AT NO.1630, MUSLIM BLOCK
HUNASUR-571 105
MYSURU DISTRICT ... PETITIONER

(BY SHRI FAISAL AHMED KHAN, PARTY-IN-PERSON)

AND :

1. THE STATE OF KARNATAKA
MAHILA POLICE STATION
MYSURU, REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BENGALURU-560 001

2. SMT. NAZIA ASMA
W/O FAISAL AHMED KHAN
D/O ABDUL GAFAR SHARIFF
AGED ABOUT 35 YEARS
R/AT NO.2339
21ST WEST CROSS
ASHOKA ROAD
LASHKAR MOHALLA
MYSORE-570 004 ... RESPONDENTS

(BY SHRI. S. RACHAIAH, HCGP FOR R-1;
SHRI. S.R. HEGDE HUDLAMANE, ADVOCATE FOR R-2)

. . . .

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO 1. SET ASIDE THE TAKING OF COGNIZANCE OF THE CASE AND QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.923/2012, PENDING ON THE FILE OF THE IV ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, MYSORE. 2. QUASH THE ORDER DATED 10/8/2018, PASSED BY THE IV ADDITIONAL SENIOR CIVIL JUDGE AND JMFC, MYSORE IN C.C.NO.923/2012, ON I.A. FILED BY THE PETITIONER FOR DISCHARGE THAT FOR THE REASONS STATED ABOVE.

THIS CRIMINAL PETITION, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 27.09.2019, COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

ORDER

This is an unfortunate case of an highly harassed husband by abuse of process of law. This petition under Section 482 Cr.P.C. is presented with following prayers:

> *"a) Call for the records in C.C.No.923/2012(Crime No.22/2012 of Mahila Police Station, Mysuru), pending on the file of IV Senior Civil Judge & JMFC, Mysuru and further be pleased to set aside the taking of cognizance of the case and quash the entire proceedings in C.C.No.923/2012 pending on the file of the IV Additional Senior Civil Judge & JMFC, Mysuru;*
>
> *b) Quash the order dated 10/8/2018 passed by the IV Addl. Senior Civil Judge & JMFC, Mysuru, in C.C.No.923/2012 on IA filed by the Petitioner for discharge that for the reasons stated above, in the ends of justice."*

2. Heard Shri.Faizal Ahmed Khan, party-in-person, Smt.K.P.Yashodha, learned HCGP for the State and Shri.S.R.Hegde Hudlamane for complainant – second respondent.

3. Briefly stated the facts of the case are, petitioner is a Mechanical Engineer working in Kuwait, UAE. He married complainant on 21st July 2008 in Mysore. A female child was born to them on 29th April 2009. His wife Nazia Asma(complainant) did not agree to join petitioner to go abroad. In order to save the marriage, he resigned from his job. In September 2011, complainant left the matrimonial home on the pretext of attending her sister's engagement ceremony along with her belongings such as clothes and jewellery. Thereafter, she never returned to the matrimonial home. Subsequently, petitioner got another job in Bahrain. Complainant refused to join him to travel abroad.

Petitioner left for Bahrain alone on 5th February 2012.

4. On 7th April 2012, complainant filed FIR No.22/2012 in Women Police Station, Mysore City alleging harassment and demand for dowry against six accused. Petitioner was shown as first accused and his family members as other accused. After investigation, police filed charge-sheet only against petitioner for offences punishable under Sections 498-A, 506 of IPC and Sections 3 and 4 of Dowry Prohibition Act.

5. Petitioner filed an application under Section 239 Cr.P.C. seeking discharge. By order dated 10th August 2018, learned trial Judge has dismissed the said application. Petitioner, in this petition, has challenged the entire criminal proceedings including the order passed by the learned Sessions Judge on his application filed under Section 239 Cr.P.C.

6. Shri.Faizal Ahmed Khan, petitioner/party-in-person urged following grounds in support of this petition:

- that complainant was married with one Asif Ali Farooqi, on 29th August 2003, prior to marrying him on 21st July 2008;
- that Asif Ali Farooqi had filed M.C. No.1710/2006 in the Court of Principal Family Judge, Bengaluru seeking restitution of conjugal rights. It stood transferred to the Family Court at Mysore and re-numbered as M.C. No.244/2007;
- that an interim order was passed on 5th August 2006 in M.C. No.244/2007 against complainant from re-marrying. However, suppressing this fact and in violation of Court order, complainant got married with petitioner in July 2008;
- that complainant also initiated criminal proceedings under Sections 12, 18, 19, 20, 21 and 22 of Prevention of Women from Domestic Violence Act, 2005 in C.Mis. No.69/2012 on the file of Principal

I Civil Judge and JMFC, Mysore. In the order dated 5th December 2016, the learned Trial Judge has recorded in paragraphs No. 38 and 39 thereof that Ex.R7 had proved that complainant had married for the third time and rejected the petition with costs;

- that complainant also initiated proceedings in C.Mis.No.526/2014 under Section 125 Cr.P.C. seeking maintenance. While tendering her evidence in the said proceedings she has admitted in the cross-examination that she was earlier married and her marriage was registered in the office of the Sub-Registrar, Channapattana;
- that petitioner filed O.S. No.55/2015 on the file of Judge, Family Court at Mysore seeking a declaration that his marriage with complainant was null and void. By judgment and decree dated 6th October 2018 the Family Court has declared petitioner's marriage with the complainant as null and void;

- that complainant has married for the third time with one Asrar Ahmed and delivered a baby after marrying him;
- that complainant challenged the order dated 5th December 2016 passed in C.Mis. No.69/2012 in Criminal Appeal No.256/2016 in the Court of IV Additional Sessions Judge, Mysore. The learned Appellate Judge while dismissing the said appeal with costs on 16th September 2017 has recorded a finding that complainant(P.W.1) has admitted that petitioner was working in Kuwait, UAE three years prior to the date of filing of the petition on 27th April 2012. It is also recorded that as per complainant's sworn statement (Ex.P112) her relation came to an end with the petitioner on 3rd August 2011;
- that though complainant's relation came to an end in August 2011, complainant with malafide intention got registered FIR No.22/2012 on 7th April 2012

alleging commission of offences under Sections 498A and 506 of IPC against six accused by filing a false complaint. Police after investigation have filed charge-sheet only against petitioner;

Petitioner, party-in-person urged that in the light of the sequence of events narrated above, the entire complaint averments are false and accordingly prayed for allowing this petition.

7. Opposing the petition, Shri.Hegde Hudlamane, learned Advocate for the complainant submitted that the complaint contains specific overt-acts against petitioner and others. However, police have filed charge-sheet against petitioner, which *prima facie* establishes that petitioner has harassed the complainant. He contended that marriage between petitioner and the complainant is not in dispute. All contentions urged by petitioner are subject to proof and therefore, trial is necessary. Accordingly, he prayed for dismissal of this petition.

8. Learned HCGP also argued opposing the petition.

9. I have carefully considered rival contentions and perused the records.

10. Undisputed facts of the case are, petitioner was married with complainant in July 2008. Even after her marriage with the petitioner, complainant was defending the petition for restitution of conjugal rights filed by her previous husband Asif Farooqi. Within about three years after marriage, her relation with petitioner came to an end in August 2011 as per her own admission recorded by the learned Sessions Judge in paragraph No. 14 of his order in Criminal Appeal No. 256/2016. There is yet another judicial finding that complainant had contracted into third marriage with one Asrar Ahmed and given birth to a child. The order also discloses that complainant initiated proceedings under the Domestic Violence Act ('DV Act' for short) in April 2012. The learned Sessions Judge has also recorded that it was proved by Ex.R7 that

complainant had married for third time and ultimately, dismissed the petition. The Criminal Appeal filed thereon has also been dismissed with costs.

11. Not being satisfied, complainant initiated proceedings under Section 125 Cr.P.C. in the year 2014. (C.Mis.No.526/2014) seeking maintenance for her and the child. The said petition has also been rejected so far as complainant's claim was concerned.

12. Having thus suffered in the hands of complainant, petitioner also filed a private complaint in PCR No.1085/2016 alleging *inter alia* that complainant had suppressed her earlier marriage with Asif Ali Farooqi and when questioned about the same, she has filed the instant false complaint. Thereafter, she has married for the third time. With the said allegations, petitioner sought action against complainant and three others for commission of offences punishable under Sections 120A, 120B, 107, 108, 494, 496 read with Section 34 IPC. The learned Magistrate referred the case for investigation

under Section 156(3) Cr.P.C. Accordingly, FIR No.149/2016 has been registered on 11th August 2016 in Narasimharaja Police Station, Mysuru City. Records further disclose that complainant and other accused unsuccessfully challenged the said FIR before this Court in Criminal Petition No.1182/2017.

13. Petitioner's application under Section 239 Cr.P.C. seeking discharge has been dismissed by the learned trial Judge by recording that presence of accused as on the date of incident and whether marriage is void, cannot be considered at the stage of discharge.

14. A conspectus of facts narrated by the petitioner and the undisputed facts which can be gathered from the records lead to an irresistible inference that though complaint is filed alleging commission of offence under Section 498A IPC, it is, in fact the petitioner who has suffered an untold misery in the hands of the complainant.

15. It cannot be gainsaid that disclosure of a previous subsisting marriage causes immense mental pain and agony to a husband.

16. Complainant has, though unsuccessfully, driven the petitioner to various Courts unabatedly. It started with complainant initiating proceedings under the provisions of DV Act followed by proceedings under Section 125 Cr.P.C. Judicial findings have been recorded by the learned Trial Magistrates in both proceedings with regard to complainants' conduct. Learned Magistrate adjudicating proceedings under DV Act has recorded that as per Ex.R7, complainant's marriage with her third husband was proved. This finding has been affirmed by the learned Sessions Judge while dismissing the appeal.

17. Suffice to note that records unequivocally disclose that complainant was respondent in a matrimonial case for restitution of conjugal rights initiated by her first husband when she got married with the petitioner. She

has admitted this fact in proceedings before the learned Magistrate in proceedings under Section 125 Cr.P.C.

18. This is a classic case in which a complainant by initiating criminal proceedings under Section 125 Cr.P.C and Section 498A IPC against the petitioner has abused the said provisions.

19. It is alleged in the complaint that:

- petitioner, his mother and sisters were assaulting the complainant;
- that petitioner and his sister demanded Rs.6,00,000/- to purchase a car failing which they threatened that she would be divorced;
- that petitioner and his family members insulted her by calling her as 'call girl';
- that they threatened to kill the complainant by pouring Kerosene if immovable property was not given;

- that she was not permitted to speak to her family members on phone;
- that on 03.08.2011 her husband confined her in a room and other accused namely Faizal, Anjum, Shejan Begum and Afzar dragged her to the kitchen, poured kerosene and attempted to set her ablaze. However, she escaped and locked herself in a room. Later Anjum told her that though she has escaped the attempt, she would be burnt the next time and left for Mysore;
- that later Faizal attempted to hang her to a fan (sic. Ceiling fan) and caused injuries to her;
- that Faizal tried to make her fall from a Motor Cycle in which she sustained injuries and her father got her treated in Mysore;
- that on 13.03.2012, in a Panchayath arranged in her house, her father and complaint were abused and threatened to be killed. As a result, her father suffered mental set-back.

20. It is relevant to note that though the complaint contains the allegations recorded above, there is interpolation with regard to the date 03.08.2011, on which date she was allegedly confined in a room and attempt was made to kill her by pouring kerosene. Further, it is stated that Faizal made an attempt to hang her to a Ceiling fan. In the following sentence, it is stated that Faizal made her fall from a motor cycle and tried to kill her. The two allegations that Faizal attempted to hang the complainant and thereafter made her fall from the motor cycle contradict each other. If Faizal had really attempted to hang her, how did she escape from his clutches? No details are forthcoming in this behalf. However, even if it is assumed that the said allegation were true, it is not understandable why she sat on Faisal's motor cycle.

22. Thus, the Complaint is full of unbelievable and self contradicting allegations. The first allegation of demand

for Rs.3,00,000/- is said to have been made jointly by petitioner and his family members. The second allegation regarding demand of money to purchase a car is alleged jointly against petitioner and his sisters. Thus all allegations in the complaint are omnibus in nature and in the least, made jointly with other accused and there are no specific against the petitioner.

23. After investigation, admittedly police have not filed charge-sheet against accused No.2 to 6 namely Shahjahan Begum, Afzal Ahmed Khan, Parveez Ahamed, Anjum Nazeer and Siddique. Neither the prosecution nor the complainant have placed any other material which may suggest commission of any of the alleged criminal act/s by the petitioner. Therefore, it can be safely concluded that allegations against petitioner are designed to harass him .

24. In the light of the above discussion, this petition merits consideration and deserves to be allowed. Hence, the following:

ORDER

(a) Petition is ***allowed***.

(b) Criminal Proceedings in C.C.No.923/2012 arising out of Crime No.22/2012 pending on the file of IV Additional Senior Civil Judge, & JMFC, Mysuru, are quashed.

(c) Second respondent is directed to pay a cost of Rs.25,000/- (Rupees Twenty Five Thousand) to the petitioner.

25. In view of disposal of this petition, I.A. No.3/2019 does not survive for consideration and the same is disposed of.

Sd/-
JUDGE

SPS