



*CRL.OP.No.16398 of 2021
and CRL.MP.Nos.8938 & 8939 of 2021*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.01.2023

PRONOUNCED ON : 25.01.2023

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

CRL.OP.No.16398 of 2021

and

CRL.MP.Nos.8938 & 8939 of 2021

K.R.Meenakshi

... Petitioner

Vs.

1. M.Jayanthi

2. P.Mohan Raj

... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C, praying to call for the records in the Complainant pending as C.C.No.785 of 2021 pending on the file of the V Metropolitan Magistrate, Egmore, Chennai, quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.N.R.Elango
Senior Counsel
for Mr.Durai Kannan
For Respondents : Mr.V.Chethana
for R1



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ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.785 of 2021 pending on the file of the learned V Metropolitan Magistrate, Egmore, Chennai.

2. The petitioner herein is the second accused. The case of the first respondent/complainant as it appears from the complaint is that she is the legally wedded wife of the second respondent and her marriage with the second respondent had taken place on 17.01.1983; out of their wedlock, she got two male children by name Kiran Pradeep and Praveen Sandeep, who were born on 03.06.1984 and 25.02.1986 respectively; the second respondent/first accused was having extra marital affair with many women and at their instance, he had committed untold cruelty upon the first respondent and her children; he had driven out of the matrimonial home and left them without providing anything for their maintenance from the year 1989; matrimonial cases were pending between the first respondent and the second respondent and during that course, the second respondent agreed to take back the first respondent and her children to the matrimonial home; by believing his words, the first respondent had withdrawn all the cases; even after that, the second respondent continued his illicit relationship



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with many women and avoided the first respondent and her children. Hence, the first respondent had initiated the proceedings in respect of the properties stand in the name of the second respondent.

2.1. On coming to know this, the second respondent openly challenged that he would spoil the life of the first respondent and her children. The petitioner/second accused was the concubinage of the second respondent, but later, he married the petitioner, even when the marriage between the first and second respondents was in subsistence, the second respondent had married the petitioner/second accused in the year 2008 at Panaiyur Guest House. Subsequent to that, the petitioner had changed her name by changing her initial suiting to the name of the second respondent and the same was published in the Tamil Nadu Government Gazette Publication Part VI-Section 4 published on September 21, 2011.

2.2. The petitioner got conceived through the second respondent and the Seemandham was celebrated in a grand manner at Asiana Hotel at IT Express Way, Chemmenchery, Chennai on 16.10.2011. The second respondent and the petitioner are roaming around publicly by showing that they are lawfully wedded couples. The petitioner and the second respondent had conspired together and



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committed the offence of bigamy and hence, they are liable to be prosecuted for the offence under Sections 493, 494, 120B and 506 (ii) IPC.

3. Heard the learned counsel for the petitioner and the learned counsel for the first respondent and also perused the entire materials available on record.

4. The learned counsel for the petitioner submitted that the first respondent has not given any material to prove that a marriage was convened between the petitioner and the second respondent; so far as this petitioner is concerned, she has to be seen as a victim even though there might be a subsisting marriage between the first and second respondents; even for the sake of argument it is accepted that the petitioner had entered into any wedlock with the second respondent, that could only be an innocent act by the petitioner without having knowledge about the marital status of the second respondent; there is no specific charges framed in respect of the conspiracy or abetment as against the petitioner.

4.1. The first respondent has not seen the ceremonies of the second marriage and she has stated things only through hearsay information; nothing is produced to show that the petitioner and the second respondent are living as husband and wife; only if the second marriage is proved by stating that necessary ceremonies required for a Hindu marriage under law, it can be presumed that a



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marriage had taken place.

4.2. The first respondent has not stated that the petitioner and the second respondent performed a Suyammariyathai marriage or Seerthiruththa Marriage in accordance with Section 7-A of The Hindu Marriage Act, 1955; in order to prove the offence of bigamy, the first respondent/complainant has to prove before the Court that the ceremonies of the marriage had taken place between the petitioner and the second respondent; without proving the ceremonies constituting the marriage, the first respondent cannot say that the petitioner and the second respondent are married and they are liable to be prosecuted. In support of the above contention, the learned counsel for the petitioner cited the following citations:-

1. ***Bhaurao Shankar Lkhande Vs. State of Maharashtra*** reported in (1965) 2 SCR 837
2. ***Kanwal Ram and Others Vs. Himachal Pradesh Administration*** reported in (1966) ISCR 539



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petitioner had described herself as the wife of the second respondent in all the Government records including her PAN Card. It is premature for the petitioner to come to the conclusion that the first respondent cannot show that the materials did not prove the marriage between the petitioner and the second respondent. Further, the petitioner was working in the second respondent's Company and hence, she is aware of the marriage between the first and second respondents. Therefore, she cannot call as a victim by stating that she had married the second respondent without the knowledge about the marital status of the second respondent.

5.2. For the purpose of proving marriage, it is not always necessary to prove the customary marriage and in Tamil Nadu, any marriage between two Hindus can be held in so many ways apart from observing ceremonies. So the first respondent need not prove the marriage ceremonies. In support of the above contention, the learned counsel for the first respondent cited the decisions of the Hon'ble Supreme Court held in ***S.Nagalingam Vs. Sivagami*** reported in (2001) 7 SCC 487, ***Chand Dhawan Vs. Jawahar Lal and others*** reported in (1992) 3 SCC 317, ***Kameela and another Vs. Metrilada*** in Crl.OP.No.18549 of 2018



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and **Sri Anand C @ Anku Gowda Vs. Chandramma** in Crl.OP.No.9849 of 2021.

6. After the case has been taken cognisance, on the side of the petitioner, two witnesses have been examined as PW1 (first respondent) & PW2 (son of the first respondent) and they have been examined in chief and the case is pending for their cross examination. PW1 being the legally wedded wife of the second respondent, cannot be an eye-witness for the marriage that was alleged to have taken place between the petitioner and the second respondent. She has stated in her evidence that the petitioner and the second respondent had married on 12.01.2008 at Mona Dream House, Panaiyur Guests House. According to her knowledge, the marriage was held by exchanging garlands and tying Thali.

7. The petitioner was working at the second respondent's Company by name Diamond Engineering Company. PW2, who is the son of the first and second respondents, is working in the very same Company and he has given direct evidence that his father and the petitioner/second accused had married. In all family functions and Company functions, the petitioner and the second respondent participate as husband and wife. In the year 2017, his father had celebrated his 60th marriage ceremony at Thirukadaiyur with the petitioner. Lot of documentary evidence have been produced in support of the evidence adduced



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by PW1 & PW2.

8. In accordance with Section 7 of The Hindu Marriage Act, Hindu Marriage can be solemnised in accordance with the customary rites and ceremonies by the parties. But in the State of Tamil Nadu, an amendment was brought and Section 7-A has been added. Section 7-A of the Hindu Marriage Act reads as under:-

“7-A. Special provision regarding suyammariyathai and seerthiruththa marriages. - (1) This section shall apply to any marriage between any two Hindus, whether called suyammariyathai marriage or seerthiruththa marriage or by any other name, solemnized in the presence of relatives, friends or other persons-

(a) by each party to the marriage declaring in any language understood by the parties that each takes the other to be his wife or, as the case may be, her husband; or

(b) by each party to the marriage garlanding the other or putting a ring upon any finger of the other; or

(c) by the tying of the thali.”

9. Section 7-A dispenses the marriage ceremonies as vital for solemnisation of a marriage. The type of marriage, which is contemplated under Section 7-A is still a Hindu marriage, but it is called in Tamil Nadu as



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Suyammariyathai marriage or Seerthiruththa marriage. Even though the petitioner has not stated that the marriage between the petitioner and the second respondent is a Suyammariyathai marriage or Seerthiruththa marriage, she had stated that the marriage had taken place by observing the formalities like tying Thali and exchanging garlands. The said type of marriage is recognised as a valid marriage in Hindu Law. In ***S.Nagalingam***'s case (cited supra), the Hon'ble Supreme Court has held as under:-

“18. Section 7-A applies to any marriage between two Hindus solemnised in the presence of relatives, friends or other persons. The main thrust of this provision is that the presence of a priest is not necessary for the performance of a valid marriage. Parties can enter into a marriage in the presence of relatives or friends or other persons and each party to the marriage should declare in the language understood by the parties that each takes the other to be his wife or, as the case may be, her husband, and the marriage would be completed by a simple ceremony requiring the parties to the marriage to garland each other or put a ring upon any finger of the other or tie a thali. Any of these ceremonies, namely, garlanding each other or putting a ring upon any finger of the other or tying a thali would be sufficient to complete a valid marriage. Sub-section (2)(a) of Section 7-A specifically says that



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notwithstanding anything contained in Section 7, all marriages to which this provision applies and solemnised after the commencement of the Hindu Marriage (Tamil Nadu Amendment) Act, 1967, shall be good and valid in law. Sub-section (2)(b) further says that notwithstanding anything contained in Section 7 or in any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Hindu Marriage (Tamil Nadu Amendment) Act, 1967, or in any other law in force immediately before such commencement or in any judgment, decree or order of any court, all marriages to which this section applies solemnised at any time before such commencement, shall be deemed to have been valid. The only inhibition provided is that this marriage shall be subject to sub-section (3) of Section 7-A. We need not elaborately consider the scope of Section 7-A(3) as that is not relevant for our purpose.”

10. The decisions of the Hon'ble Supreme Court relied on by the learned counsel for the petitioner is not applicable to the State of Tamil Nadu, which recognises other form of marriage in view of the amended Section 7-A. Yet another decision of this Court relied on by the learned counsel for the petitioner in ***P.Nandakumar & others Vs. Lalitha*** reported in ***2015 SCC OnLine Mad 14167*** deals with the marriage, which is said to have taken place at a temple. In



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the said case, the wife had only alleged that the marriage had taken place between her husband and the second wife at a Temple. So, the Court had said that without elaborating the process by which the marriage had taken place and proving the same, the Court cannot hold that the factum of marriage is proved. Apart from the oral evidence of PW1 & PW2, a lot of other documentary evidence have been produced to support the oral evidence. Hence, it is for the trial Court to appreciate the same and arrive at a conclusion whether the first respondent had proved the factum of marriage between the petitioner and the second respondent.

11. Since the petitioner is not a stranger and she was working as an employee at the second respondent's Company, it could *prima facie* presume the knowledge on her part about the marital status of the the second respondent. the charge of conspiracy or abetment as against the petitioner. Even though the charges have not been appropriately framed for conspiracy or abetment, the trial Court can take a call at any stage of the proceedings to alter the charges in accordance with the materials available.

12. The petitioner had filed this petition solely on the ground that the ceremonies of the marriage between the petitioner and the second respondent



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was not not proved and that the petitioner could not have the knowledge about the marital status of the second respondent. Such a contention can be put to test only after the witnesses were cross-examined and the complainant could adduce all oral evidence and produce all the documentary evidence. Hence, I do not find any reason to cause an interference at this stage.

13. In the result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are also closed.

25.01.2023

Index: Yes/No

Speaking / Non Speaking Order

Neutral Citation Case: Yes/No

kmi

To
The V Metropolitan Magistrate,
Egmore, Chennai



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R.N.MANJULA, J

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