



Crl.R.C(MD)Nos.798 & 799 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.03.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)Nos.798 & 799 of 2016

1.Crl.R.C(MD)No.798 of 2016:-

S.Padmanabhan ... Revision Petitioner/
Appellant/Accused No.1

Vs.

Pappa ... Respondent/
Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the Judgment dated 04.08.2016 made in Crl.A.No.32 of 2012 on the file of the learned Mahila Court (Fast Track Court), Nagercoil, Kanyakumari District, confirming the Judgment dated 14.03.2012 made in C.C.No.92 of 2005 on the file of the learned Judicial Magistrate No.2, Nagercoil, Kanyakumari District.

For Petitioner : Mr.M.Jegadeesh Pandian

For Respondent : Mr.T.Selva Kumaran



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2.Crl.R.C(MD)No.799 of 2016:-

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Viji

... Revision Petitioner/
Appellant/Accused No.2

Vs.

Pappa

... Respondent/
Respondent/Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the Judgment dated 04.08.2016 made in Crl.A.No.33 of 2012 on the file of the learned Mahila Court (Fast Track Court), Nagercoil, Kanyakumari District, confirming the Judgment dated 14.03.2012 made in C.C.No.92 of 2005 on the file of the learned Judicial Magistrate No.2, Nagercoil, Kanyakumari District.

For Petitioner : Mr.M.Jegadeesh Pandian

For Respondent : Mr.T.Selva Kumaran

COMMON ORDER

Both the revisions have been filed to set aside the Judgment dated 04.08.2016 made in Crl.A.Nos.32 and 33 of 2012 on the file of the learned Mahila Court (Fast Track Court), Nagercoil, confirming the Judgment, dated 14.03.2012 made in C.C.No.92 of 2005 on the file of the learned Judicial Magistrate No.2, Nagercoil.



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2.Both the revisions, arising out of the single trial, were taken up together and disposed of by this common order.

3.Both the petitioners are arraigned as Accused Nos.1 and 2 in the private complaint lodged by the respondent herein for the offence punishable under Section 494 of I.P.C.

4.The crux of the complaint is that the first accused got married to the respondent on 09.09.2001. After their marriage, she meted out harassment at the hands of the entire family members of the first accused. However, she tolerated their harassment and gave birth to a girl baby on 05.07.2003. Thereafter, there was a continuous demand for dowry and harassment, due to which, she was driven out from the matrimonial home. The first accused filed a petition for restitution of conjugal rights in H.M.O.P.No.49 of 2003 on the file of the Principal Sub Court, Nagercoil and he had undertaken to arrange a separate house from the in-laws. The respondent believing his words went to his house. Again, the first accused was residing in the very same house along with all in-laws. Therefore, she refused to live with him. Subsequently, the first accused had withdrawn his petition for restitution of conjugal rights



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and demanded huge dowry from the respondent. Therefore, the respondent lodged a complaint before the Superintendent of Police, Nagercoil at Kanyakumari District and the same was forwarded to the file of All Women Police Station, Nagercoil and registered the F.I.R in Crime No.11 of 2005 as against the petitioner and other in-laws. While pending investigation, the petitioner got married the second accused on 21.01.2005 at Thirunandhikarai Nandeeswara Temple in the presence of other accused persons. When the first marriage was very much subsistence, the act of the accused was covered under the penal provisions of Section 494 of I.P.C. On receipt of the said complaint, the trial Court had taken cognizance for the offence under Section 494 of I.P.C r/w 109 of I.P.C as against all the accused persons.

5. On the side of the respondent, she had examined P.W. 1 to P.W.6 and marked Exs.P.1 and P.18 and on the side of the accused, they had examined D.W.1 and D.W.2 and marked Exs.D.1 and D.2. The respondent produced material object M.O.1.



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6. On perusal of the oral and documentary evidence, the trial Court found the petitioner/Accused No.1 guilty for the offence punishable under Section 494 of I.P.C and found the petitioner/Accused No.2 guilty for the offence punishable under Section 494 r/w 109 of I.P.C and the first accused was convicted for the offence under Section 494 of I.P.C and sentence him to undergo two years Rigorous Imprisonment and imposed a fine of Rs.1,000/- and in default to undergo one month Simple Imprisonment and the second accused was convicted for the offence under Section 494 r/w 109 of I.P.C and sentenced her to undergo two years Rigorous Imprisonment and imposed a fine of Rs.1,000/- and in default to undergo one month Simple Imprisonment. In so far as the other accused, they were acquitted from all the charges. Aggrieved by the same, the petitioners/Accused Nos.1 and 2 have preferred separate appeals before Appellate Court. The Appellate Court by separate Judgment dismissed both the appeals, confirming the conviction and sentence imposed by the trial Court. Aggrieved by the same, the present revisions.



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7.The learned counsel appearing for the petitioners in both the revisions would submit that in order to convict a person under Section 494 of I.P.C., one has to prove the factors i) he was already a married man 2) at the time of the second marriage his first wife shall be alive and 3) both the marriages shall be solemnized in accordance with customary rites and ceremonies of either party thereto. However, in the present case on hand, there is absolutely no evidence to show that the marriage was solemnized in accordance with the customary rites and ceremonies. No one has spoken that the second marriage was solemnized between A.1 and A.2 in accordance with Hindu rites and ceremonies. P.W.2 deposed that he did not witness the alleged marriage, dated 21.01.2005. Therefore, no corroborating evidence of the victim in order to prove the charge under Section 494 of I.P.C. No independent witness was examined by the respondent. All the witnesses are interested witnesses and as such, the conviction is liable to be set aside.

8.The learned counsel appearing for the petitioners would further submit that P.W.2 had never seen the tying of Thali and there is no Thirumangalyam. Therefore, without Thirumangalyam, no marriage can be solemnized and as such, the



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respondent failed to prove the second marriage in accordance with law. Further, P.W.2 deposed that in their caste, marriage was performed during auspicious day and time. On the date of the alleged marriage, the auspicious time is between 09.30 a.m., and 10.30 a.m. However, the alleged marriage happened between 11.30 a.m., and 12.30 p.m. Therefore, there was no marriage solemnized between A.1 and A.2. He further submitted that the first accused is in the street since nobody is caring for him. While in his employment, he sustained grievous injuries on his head and as such, he is not in sound mind. The second accused had absolutely no knowledge about the first marriage that exists between the first accused and the respondent herein. Therefore, the second accused, who is being the alleged second wife, had no knowledge about the first marriage and as such, no charge is made out as against the second accused.

9.Per contra, the learned counsel appearing for the respondent would submit that after wedlock, the respondent gave birth to a female child. Thereafter, the first accused had driven out the respondent from the matrimonial home. He harassed the respondent with the hands of other-in-laws. In order to escape from



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the said clutches of law, the first accused filed a petition for restitution of conjugal rights believing his words and undertaking again the respondent, joined with him. Unfortunately, again he tortured her with other in-laws and as such, she was driven out from the matrimonial home. While being so, the first accused got marriage with the second accused on 21.01.2005. In fact, all the family members of the first accused along with family members of A.2 participated in the marriage. The parents of the first accused had knowledge about the subsistence of the first marriage and got married to the second accused. Therefore, the second accused had full knowledge about the first marriage and its existence and got married to the first accused. Hence, the Courts below rightly convicted the accused Nos.1 and 2 and it is does not warrant any interference by this Court and prayed for dismissal of both the revisions.

10.Heard the learned counsel appearing on either side and perused the materials available on record.



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11.The respondent lodged the complaint for the offence punishable under Section 494 r/w 109 of I.P.C as against 12 accused persons on the allegation that the first accused got married to the second accused while the first marriage between the first accused and respondent is very much in existence. The second accused had knowledge about the first marriage and its existence and got married the first accused in the presence of other accused persons, namely A.3 to A.12. Therefore, the trial Court had taken cognizance for the offence under Section 494 r/w 109 of I.P.C against all the accused persons.

12.The respondent was examined as P.W.1. She deposed that she got married to the first accused on 09.09.2001 and gave birth to a female child. Thereafter, there was a demand of dowry from the accused and his family members. Therefore, she was driven out from the matrimonial home. Thereafter, the first accused filed a petition for restitution of conjugal rights and on an undertaking given by him, the respondent joined with the first accused. However, the same circumstances prevail over and as such, the respondent was driven out from the matrimonial home. Subsequently, the first accused had withdrawn the restitution of



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conjugal rights petition in H.M.O.P.No.49 of 2003 on the file of the Principal Sub Court, Nagercoil. When the first marriage was very much subsistence, he got married to the second accused on 21.01.2005. However, he did not even whisper a word about the knowledge of the second accused about the subsistence of the first marriage between the first accused and the respondent. In support of her case, the other relatives were examined as P.W.2 to P.W.6. They also corroborated the evidence of P.W.1 and did not even whisper about the knowledge of the second accused in respect of the first marriage between the first accused and the respondent. Even then, both the Courts below convicted the second accused for the offence punishable under Section 494 r/w 109 of I.P.C. When a person is to be punished for abetment of an offence, separate charge stating that she is prosecuted for abetting such an offence and that the act abetted has been committed should have been framed. The charge against the second accused ought to have been framed as one for an offence punishable under Section 494 r/w 109 of I.P.C.



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13.In the case on hand, the trial Court framed charge as against the second accused under Section 494 r/w 109 of I.P.C. Unless she is proved to have agreed to the marriage with the knowledge of the subsistence of the earlier marriage between the first accused and the respondent, she cannot be convicted for the offence under Section punishable 494 r/w 109 of I.P.C. There is absolutely no evidence to that effect imputing direct knowledge to the second accused regarding the subsistence of the first marriage between the first accused and the respondent herein. Therefore, the conviction under Section 494 r/w 109 of I.P.C as against the second accused cannot be sustained and it is liable to be set aside.

14.In so far as the first accused is concerned, all the witnesses categorically deposed that the first accused got married the second accused on 21.01.2005. The ground raised by the first accused was that the second marriage was not solemnized in accordance with Hindu rites and essential ceremonies. It is seen from the evidence of P.W.2, who is eyewitness to the second marriage, revealed as follows:-



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“இந்தமுறைப்படி சுப்பிரமணியன் பத்மநாபனின் பெரியப்பா தாலியை எடுத்து பத்மநாபனின் கையில் கொடுத்தார். பத்மநாபனின் கையில் கொடுத்த உடன் பத்மநாபன் விஜியின் கழுத்தில் ஆஜர் எதிரியின் கழுத்தில் தாலியைக் கட்டினார். மின்னர் விளக்கை சுற்றி முன்று முறை போண்ணும், மாப்பிள்ளையும் வந்தார்கள். பிறகு சாப்பாட்டு அலுவல்கள் எல்லாம் செய்து கொண்டு இருந்தார்கள். நான் வெளியில் வந்து விட்டேன். மின்னர் தான் விஜியிடம் என் மாமன் போண்ணுக்கு, ஏற்கனவே பத்மநாபனுக்கு திருமணம் ஆகியுள்ளது. தற்போது என் மாமன் போண்ணுக்கு ஏற்கனவே பத்மநாபனுக்கு திருமணம் ஆகியுள்ளது. தற்போது இரண்டாவது திருமணம் செய்துள்ளார். கூட இருந்த சிலர் திருநந்திக்கரை ஊரைச்சேர்ந்தவர்கள் நின்று கொண்டிருந்தார்கள்.”

15.P.W.3 and P.W.4 are also eye witnesses to the second marriage between the first and second accused and they corroborated the evidence of P.W.2. Therefore, the respondent proved her case beyond any doubt in order to convict the first accused for the offence punishable under Section 494 of I.P.C. Hence, this Court finds no infirmity or illegality in the conviction and sentence imposed by the Courts below.



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16. Accordingly, Crl.R.C(MD)No.798 of 2016 is dismissed and the conviction and sentence imposed by the Courts below are confirmed. The trial Court is directed to take appropriate steps to secure the petitioner/Accused No.1 in order to serve the remaining period of sentence.

17. Crl.R.C(MD)No.799 of 2016 is allowed and the Judgment made in Crl.A.No.33 of 2012 on the file of the learned Mahila Court (Fast Track Court), Nagercoil, Kanyakumari District, confirming the Judgment dated 14.03.2012 made in C.C.No.92 of 2005 on the file of the learned Judicial Magistrate No.2, Nagercoil, Kanyakumari District, are set aside. The petitioner/accused No.2 is acquitted. Bail bond if any executed by the petitioner/accused No.2 shall stand cancelled and a fine amount if paid is ordered to be refunded to the petitioner/accused No.2 forthwith.

30.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To

- 1.The Mahila Court (Fast Track Court),
Nagercoil,
Kanyakumari District.
- 2.The Judicial Magistrate No.2,
Nagercoil,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

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Order made in
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