

HIGH COURT OF TRIPURA
AGARTALA

Crl.Petn. 2 of 2024

Smt Sima Roy,
D/o- Lt. Gouranga Ch. Roy,
Kismatkuri, Ishanchandra Nagar
PS: Amtali, West Tripura

---Petitioner(s)

Versus

- 1. Smt. Mithu Roy**
W/o- Sri Nupur Roy,
North Madhyapara Amtali,
PO+PS: Amtali,
West Tripura, 799130.
- 2. Sri Nupur Roy,**
S/o- Lata Narayan Roy,
Amtali, Kuri Pukur, Amtali,
West Tripura, 799130.
- 3. The State of Tripura**

---Respondent(s)

For Petitioner(s)	:	Mr. S. Mahajan, Advocate.
For Respondent(s)	:	Mr. S. Ghosh, Addl.PP. Mr. Ratan Datta, Advocate. Ms. R. Guha, Advocate. Ms. Sudipa Nath, Advocate.
Date of hearing and date of judgment and order :		23.04.2024
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order (Oral)

This is a petition under Section 482 of the Criminal Procedure Code, 1973 for quashing the complaint which was filed by the respondents No.1 against the petitioner and respondent No.2 by striking down her name from the complainant filed under section 494, 114 and 34 of the Indian Penal Code, 1860 subsequently registered vide case number CR 72/2022 which pending before the learned Judicial Magistrate, First Class, Court No.5, Agartala, West Tripura pending till 06.03.2024.

[2] The brief fact of the case is that the Respondent No. 1 being complainant filed a complaint under section 200 for taking cognizance of an offence under section

494, 114 and 34 of IPC against the petitioner and respondent No. 2. Thereafter, the petitioner went on bail. A case was registered vide number CR 72/2022 and is pending before the Ld. Judicial Magistrate First Class, Court No. 5, Agartala, West Tripura till date. The respondent no. 1 examined herself before the Ld. Trial Court u/s 200 of Cr.P.C. The respondent no. 1 thereafter at the stage of evidence, before charge, examined total four (4) witnesses as CWs. The petitioner filed an application for discharging her from case but her application was rejected by the Ld. Trial Court by order dated 15/06/2023 and said order was challenged by the petitioner vide case number Criminal Revision 11/2023 before the Ld. Additional Sessions Judge, Court No. 5 Agartala, West Tripura, which is pending till now. The petitioner is being unnecessarily harassed by the respondent No. 1 and she is making derogatory and abusive statements against the petitioner in various courts and before society about her character and personality, and curtailing her personal liberty by dragging her into litigation unnecessary, and humiliating her day by day. The respondent No. 1 is luring/hampering petitioner's dignity in the society for some false allegation and against her no evidence could be led by the respondent no. 1 in the evidence before charge before the Ld. Trial Court. The evidence is closed before the Ld. trial Court. In compelling circumstances to save Petitioner's glory and dignity being a helpless women, she has filed this case under section 482 of the Cr.P.C before the this Court for quashing the complaint against her, by deleting or striking down her name from the complaint.

[3] It is submitted by Mr. S. Mahajan, learned counsel for the petitioner that before the learned Trial Court the respondent No.1 could not exhibit a single document which can be considered a valid evidence of marriage of the petitioner with the husband (i.e. the respondent no.2 herein). So, when the complaint does not disclose that the petitioner was earlier married and evidence led by the respondent No.1 before the learned Trial Court did not prove that any valid marriage ever contracted or performed between

the petitioner and respondent No.2, in such circumstances dragging the petitioner before the Ld. Trial Court for about two years is injustice to her and curtailing her personal liberty and the misuse of law by the respondent No.1 as such the complainant should be quashed against the petitioner by striking off her name from the complaint.

[4] To support his contention, Mr. S. Mahajan has relied on a judgment of the apex court in ***Lingari Obulamma Vs. L. Venkata Reddy & Ors*** reported in **1979 AIR 848**, where the apex court has observed as follows:

“The short point involved in this appeal is as to whether or not the second marriage contracted by respondent No.1(A-1) with respondent No.4(A-4) was a legally valid marriage. The High Court pointed out that under the Hindu Law, two essential ceremonies of a valid marriage are Datta Homa and Saptapadi i.e. taking seven steps around the sacred fire. The High Court found that there was absolutely no evidence to prove that any of these two essential ceremonies had been performed, and , therefore, the marriage was void in the eye of law. In this view of the matter the High Court held that the conviction under Section 494 IPC could not be sustained.”

[5] He also relied on a judgment dated 21.01.2022 of the apex court passed in ***Criminal Appeal No. 118 of 2022 (Musstt Rehana Begum vs State of Assam & Anr)*** where the apex court has observed as follow:

“12. Evidence was adduced before the Family Court. The second respondent deposed before the Family Court. The Principal Judge of the Family Court at Guwahati, by a judgment dated 20 July 2017, issued a declaration that the divorce which was purportedly granted by the second respondent to her is null and void. The conclusion which has been arrived at by the Principal Judge is extracted below:

“In view of the above discussions it is clear that the talaq pronounced by the respondent No.1 is not as per due procedure, as no reconciliation took place between the parties and as such the talaq is not valid one. It is also found that the respondent has failed to prove that the petitioner was already married to Shoukat Ali, s/o Raja Ali @ Bhaiya Ali when getting married to the respondent.”

13 The above judgment clearly shows that whether (i) the appellant had a prior subsisting marriage with another person; and (ii) the second respondent had obtained a valid divorce was in issue before the Family Court. The finding of fact as between the appellant and the second respondent is that the appellant did not have a subsisting prior marriage when she married him. The judgment of the Family Court was questioned in MAT Appeal No 47 of 2017. A Division Bench of the High Court dismissed the appeal for non-prosecution on 20 June 2019, having noted that on the previous occasion on 27 May 2019, no one had appeared on behalf of the second respondent in those proceedings. The order of the High Court continues to hold the field. Yet, the impugned judgement has held that the factum of the subsisting marriage of the appellant is a contentious matter and has declined to quash the criminal complaint against the appellant.

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15 The precedent of this Court clarifies that in certain circumstances, the High Court is entitled to consider other materials before exercising its powers of quashing under

Section 482 of the CrPC. In the present case the appellant and the second respondent were parties to the decision of the Family Court. No contentious material or disputed issues of evidence arise. In the above backdrop, allowing the criminal proceeding to proceed for an offence under Sections 494 and 495 of IPC would constitute an abuse of the process. As between the appellant and the second respondent the issue as to whether she had a subsisting marriage on the date on which she entered into a marriage with the second respondent is the subject matter of a conclusive finding of the Principal Judge of the Family Court which has attained finality. Explanation (b) to Section 7(1) of the Family Courts Act 1984 expressly confers the Family Court with jurisdiction to determine the matrimonial status of a person.”

[6] In **Rathnamma & Ors vs. Sujathamma & Ors** reported in **AIR 2020 SC**

541 where the apex court has observed as follows:

7.....It is also held that there is no evidence of performance of necessary marriage ceremonies in terms of Section 7 of the Hindu Marriage Act, 1955, therefore, mere registration of an agreement of marriage is not sufficient to prove marriage.....

12. One of the issues framed was whether the plaintiff is wife of Hanumanthappa. Since the entire claim of the plaintiff is based upon her marriage with Hanumanthappa, the burden of proof as to any particular fact lies on the person who wishes the Court to believe in its existence is the established principle of law. This Court in *Varada Bhavanarayana Rao v. State of A.P.*², held that in terms of Section 102 of the Evidence Act, 1872³, the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. It was held as under:-

“15. That being the position, the question on which of the contending parties the burden of proof would lie has to be decided on the relevant provisions of the Evidence Act. Section 101 of the Evidence Act provides that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. Section 102 provides that the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side. Section 103 provides that the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the burden of proof of that fact shall lie on any particular person.”

13. We find that the High Court has committed illegality in holding that since the defendants have denied marriage, it cannot be asserted by the defendants that the marriage of the plaintiff with 2 AIR 1963 SC 1715³ for short the “Evidence Act” Hanumanthappa was not a valid marriage. The plaintiff has led evidence to the effect that the marriage was solemnized in the office of Sub-Registrar vide Ex.P/1. Ex.P/1 has been rightly found to be not a certificate of registration of marriage under the Special Marriage Act, 1954 and that there is no evidence that any ceremony has taken place. In the agreement of marriage (Ex.P/1), it is only stated that both parties are of same caste and with the permission and consent of both of their fathers, they have entered into this agreement of marriage. This type of marriage is not recognized in law as Section 7 of the Act contemplates that the marriage can be solemnized in accordance with customary rites and ceremonies of either party thereto and where such rites and ceremonies include the Saptapadi, the marriage becomes complete and binding when the seventh step is taken.

[7] In **Popoluar Muthiah vs. State of Tamil Nadu** reported in **2006 0 Supreme**

(SC) 564, where the apex court has observed as follows:

31. In respect of the incidental or supplemental power, evidently, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammled by procedural restrictions in that

(i) power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(ii) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor.

(iii) It is, however, beyond any doubt that the power under Section 482 of the Code of Criminal Procedure is not unlimited. It can inter alia be exercised where the Code is silent where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists.

Thus, counsel for the petitioner prayed to allow the criminal petition by setting aside the criminal proceedings before the court below.

[8] Mr. Ratan Datta, learned counsel appearing for the husband-respondent No.2 submits that the petitioner and the husband-respondent No.2 are admittedly in relation and subsequently they gave birth to a child but they are not married as alleged. Since no marriage ceremony was solemnized as required under Section 7 of the Hindu Marriage Act, the present case in hand does not attract the provision of Section 494 of the IPC. He also contended that both the petitioner and the respondent No.2 are adult and in live-in relation for the last several years and in the light of the Law of the land, it is not an offence under Section 494 of IPC and prayed to allow the criminal petition.

[9] In course of his argument, Mr. Ratan Datta, learned counsel for the husband-respondent No.2 has shown to this court a duplicate ration card which is a government document which reveals that the respondent No.1 (complainant) and respondent No.2 as wife and husband.

[10] Ms. R. Guha, learned counsel appearing for the complainant-respondent No.1 submits before this Court that they are facing day-to-day humiliation and undergoing trauma for the behavior of the respondent-husband. She is taking care of their 2(two) children and she is aged about 55 years. Her daughter is about 22 years of age yet to be married. Her male child is not so mature and is suffering from several health issues and prays that the 2nd respondent-husband and petitioner herein be sent to jail.

[11] According to Ms. Guha, the marriage of the petitioner and the respondent No.2 can be established by the Bank Passbook where the petitioner was reflected as the wife of the respondent No.2. She placed before the court a copy of the bank pass-book of the petitioner herein and prayed to dismiss the petition.

[12] Heard learned counsel for the respective parties.

[13] On perusal of the documents (i.e. copies of the ration card and bank passbook) placed before this court, which show the name of the petitioner and the accused person under the capacity of husband and wife. It is not for this court to draw any inference and give a finding that both the accused persons before the trial court are husband and wife. Admittedly, the accused person (the petitioner, Smt. Sima Roy) and the respondent No. 2 (Sri Nupur Roy) are adult and they are living together. Owing to the emotional bondage that has been built up due to their live-in relationship there is every possibility of incorporating their names in their social status (Bank pass-book, ROR, ration card) as husband and wife. This court is of the view that such act of incorporating their names for social status cannot be treated as both are married husband and wife under the law.

[14] Moreover, after bare reading of the judgments cited above, this court is of the view that none of them are relevant to the present context of the case. A through reading of the above judgments makes it clear that a full-fledged trial had taken place and judgment were passed before the matters were challenged before the apex court. Under these circumstances, it would not be apt for this Court to entertain the present case in hand under Section 482 of the Cr.PC. as it is at premature stage.

[15] To say, even in the criminal proceedings if an accused person admits his guilt, criminal procedure envisages for proceeding with the trial in accordance with law to protect Article 21 and other rights conferred under Constitution of India upon its citizens and only after trial, final orders would be passed either acquitting or convicting the guilty.

[16] To deal with the case, it is apposite to extract herein below Section 494 of IPC which reads as under:

*494: Marrying again during lifetime of husband or wife:-
Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.*

[17] Hindu marriage cannot be performed without Saptapadi (i.e. the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), for which it is apposite to refer to the Section 7(2) of the Hindu Marriage Act, 1955 which reads as follows:

7. Ceremonies for a Hindu Marriage- (1)...
(2) Where such rites and ceremonies include the Saptapadi (that is the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

[18] It is pertinent to note that to take the cognizance and punish the accused persons herein, it is necessary that their relation of marriage and their marital status needs to be established as contemplated under Section 7 of Hindu Marriage Act, 1955. Thereafter, an inference can be drawn under Section 494 of IPC and, if guilt is proved, punishment can be awarded. In view of the above in the present case to draw an adverse inference against the accused person before the trial court (i.e. the petitioner and the husband) on the file of CR 72/2022 before the trial court to take cognizance under Section 494 of the IPC, it becomes necessary that allegation and the offence be proved beyond reasonable doubt. In the present case, since the allegation is above valid marriage, the requirement under Section 7 of Hindu Marriage Act, 1955 needs to be established and thereafter cognizance under Section 494 of the IPC is to be taken.

[19] The counsel for the complainant has not paced any authentic document to show that the marriage has taken place between the accused person and the respondent no.2. No such particular has been given to this Court to *prima facie* consider the case

except making bald allegation. At the same time, the petitioner and the respondent no.2 have categorically accepted that they are not married but they are living together and it is not an offence. The disputed question of facts cannot be decided by this Court under Section 482 of the CrPC without examining proper evidence. Since the matter is pending before the trial court, this Court is not in a position to entertain the present criminal petition and also to give finding in favour of either party.

[20] But at this stage, it is premature litigation before this court to draw any conclusion about the marital status of the accused persons. This court is not expressing any opinion upon the contentions made by the complainant to say that the case of the complainant is correct. At the same time, this court is not expressing any opinion that both the accused persons are not married. At present, copies of the bank pass-book and the ration card are having no evidentiary value before this Court to draw any conclusion. Since the present litigation is at premature stage to decide and under the above circumstances, a trial under the criminal procedure needs to be conducted by the competent Court and appropriate orders be passed. In view of the above observation, the present criminal petition is liable to be dismissed.

[21] The court below before after giving reasonable opportunity to both the parties shall decide the matter as expeditiously as possible. Till the criminal proceeding is concluded, this Court grants protection to the accused persons by directing all concerned not to take any coercive steps against them.

[22] In view of the above, the instant criminal petition stand dismissed. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

JUDGE

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