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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21/10/2024

Pronounced on : 16/12/2024

CORAM

THE HONOURABLE MR.JUSTICE **G.ILANGOVA**

Crl.A(MD)No.74 of 2015

M.Ravichandran : Appellant/Complainant

Vs.

1.Mariyayee @ Jothi
2.Balamurali
3.Senthilkumar
4.Pappa @ Pabby
5.Arumugam Naickar Kothanar
6.Chinnathambi Naickar : Respondents/Accused

Prayer: Criminal Appeal filed under section 378 of the Criminal Procedure Code, against the order of acquittal passed by the Judicial Magistrate, Musiri in CC No.44 of 2011, dated 20/01/2015.

For Appellant : Mr.P.T.Ramesh Raja

For R1, R3, R5 & R6 : Mr.G.Karnan

For 2nd Respondent : Mr.S.R.A.Ramachandran

J U D G M E N T

This criminal appeal has been preferred against the order of acquittal passed by the Judicial Magistrate, Musiri, in CC No.44 of 2011, dated 20/01/2015.



2. A private complaint was filed by the appellant

herein with the following averments:-

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The first accused namely Mariyayee @ Jothi and the complainant married each other on 10/09/2006. It is a love marriage between them. But performed the marriage in the presence of the elders and relatives as per their customary rites. A male child was born to them. Later in 2009, A1 was appointed as a Constable in the Tamil Nadu Police Department. After that, A1 started avoiding the child and the complainant, used to come to the village occasionally. From July 2010, she completely stopped communication and visit and later started saying that she is not willing to live with the complainant and in-fact, she married one Balamurali and living with him. Because of the marriage, she got pregnancy. The complainant, after hearing the above said news, went to the work place of A1, met the family members and neighbours. He came to know that A1 was married and living with some other person. When he enquired the same with A1, she threatened and criminally intimidated. On further enquiry reveals that A3 to A6 performed the marriage illegally and in their presence and arrangement, the marriage was conducted. Later, a female child was born to A1 and A2. He sent a complaint against A1 to the higher officials. On 04/02/2011 at about 05.00 pm, A1 along with her musclemen assaulted the complainant's father, who was



bedridden, criminally intimidated the mother. With these allegations, he filed a private complaint for punishing the accused for the offences under sections 147, 148, 294(b), 323, 494, 496 and 506(ii) IPC.

3. On the side of the complainant, 8 witnesses were examined and 9 documents marked. On the side of the accused, no oral and documentary evidence was adduced.

4. At the conclusion of the trial process, the trial court recorded a finding of fact that the guilt of the accused was not proved beyond all reasonable doubt and recorded a finding of acquittal.

5. Against which, this criminal appeal is preferred by the complainant as appellant.

6. The charges against A1 and A2 are as under:-

(i) The complainant and A1 were married on 10/09/2006; Due to the wedlock, they begotten a child by name Upendra; In 2009, A1 got the job in the Police Department; After 2010, she contacted the complainant over phone and said that she was married to Balamurali; When the complainant went to see in person, he came to know that it is true and thereby, A1 committed an offence punishable under Section 494 IPC;



(ii) In continuation of the occurrence, on 04/06/2011 at 5.00 pm, A1 along with her henchmen came to the complainant's house and threatened his parents and also assaulted with their hands and also threatened them with dire consequences and thereby, A1 committed an offence punishable under section 506(1) IPC; and

(iii) In the course of the occurrence, A2 was an accomplice in the second marriage of A1 while the complainant was alive, and thereby, he has committed an offence punishable under section 494 r/w 109 IPC.

7. The marriage between the complainant and A1 took place on 10/09/2006 is not denied and disputed by the parties. It is also not equally denied that because of the marriage, a male child was born to them. After that, A1 got appointment in the Police Department and because of the appointment, she was transferred to various places and finally, according to the complainant, communication stopped between them, after July 2010. Later, he came to know that A1 and A2 married each other when the first marriage was legally subsisting. This is the main allegation. There is allegation that in pursuance of the above said issue, A1 along with her musclemen assaulted the complainant's father and criminally intimidated.

8. Now we will take up the assault issue first.



9.As mentioned above, in the complaint, it has been stated by the complainant that on 04/06/2011 at about 05.00 pm, the criminal assault occurrence took place.

10.Now we will go to the evidence available on record. On this specific allegation to prove the assault, no medical evidence is available. PW1 was not present at the time of the alleged assault. PW2 was examined by the complainant to prove the assault. But he has not stated anything about the assault. But contrary, he has stated that on 04/06/2011, A1 along with her brother, A3 and others came to his house, criminally intimidated his father and his wife to withdraw the complaint given by the complainant.

11.Similarly, PW5 the mother of the complainant has stated that after 03/06/2011, A1 along with some persons came to the house, criminally intimidated them to withdraw the complaint given by the complainant against her. She has also not stated anything about the assault. So *prima facie*, it is seen that the charge under sections 147, 148 and 323 IPC is without any evidence. So, this portion of the charge, as stated by the trial court, has not been established.

12.Similarly, with regard to charge 506(i) IPC also, no doubt neither PW1 nor PW2 nor PW5 has stated that



because of the criminal intimidation made by A1, they feared their life. So, the charge under section 506(i)IPC also not established by the prosecution.

13.Now coming to the main charge of under section 494 IPC, we will go to the finding of the trial court first.

14.Before the trial court, no witness was examined on the side of the prosecution to prove the marriage between A1 and A2. Only circumstantial evidence in the form of disciplinary proceedings initiated against A1, the birth of the child to them were projected by the prosecution.

15.The trial court recorded a finding that merely because in the departmental proceedings, A1 was found guilty and she was removed from the service, that will not partake the character of proof of the second marriage before the criminal court beyond all reasonable doubt. The trial court has relied upon the judgments of various courts and more specifically, the judgment of the Hon'ble Supreme Court reported in **1971 Cr1.LJ 939** and recorded a finding that there is no eye witness to the second marriage, the departmental proceedings cannot be taken into account. Similarly, with regard to the circumstance of the birth of the child between A1 and A2, it is recorded a finding that even if we take that the child was born to them, that will not prove the illegal marriage between A1 and A2. So,



mostly on these two aspects, the trial court recorded the finding.

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16. So, the question which arises for consideration is whether the finding recorded by the trial court on these two aspects is legally sustainable?

17. The performance of the second marriage must be established beyond all reasonable doubt by examining any one of the eye witness to the occurrence. Whether A1 and A2 went to the solemnization of marriage, to show that it is a valid marriage it must be established. Here, except producing the documents of departmental action initiated against A1, no finding has been recorded by the enquiry officer and the removal order passed by the disciplinary authority. No other concrete evidence is produced by the complainant. More-over, in a departmental proceedings, it is sufficient if the delinquency of the public officer is proved by the probability. But in a criminal trial, it must be proved beyond all reasonable doubt. Inference can be drawn only against A1 and A2 regarding the marriage in view of the departmental proceedings, but it will not partake the character of proof beyond all reasonable doubt. So, probable view cannot be invoked in a criminal trial to convict a person. The trial court has correctly appreciated this position and recorded a finding.



18.Regarding the second circumstance of birth of the child also, the above said discussion will answer the issue. The birth of the child between A1 and A2 will not prove the valid marriage.

19.After hearing both sides, a clarification was sought for from the learned counsel appearing for the complainant as to whether the accused has pleaded guilty in the departmental proceedings, but as mentioned above, even if A1 admitted the delinquency in the department proceedings, for the reasons stated above, the burden of proof is cast upon the prosecution to establish the guilt of the accused beyond all reasonable doubt.

20.So, for all the reasons, I find no reason to interfere into the acquittal judgment passed by the trial court.

21.In the result, this criminal appeal is dismissed confirming the order of acquittal passed by the trial court.

16/12/2024

Index:Yes/No
Internet:Yes/No

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To,

The Judicial Magistrate,
Musiri.



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G. ILANGO VAN, J. ,

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