

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

SATURDAY, THE 21ST DAY OF NOVEMBER 2015/30TH KARTHIKA, 1937

CRL.A.No. 1142 of 2015 ()

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CC 100/2012 of CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM
Cri.L.P. 333/2015 of HIGH COURT OF KERALA
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APPELLANT/PETITIONER/COMPLAINANT:

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K.VIJAYALAKSHMI, AGED 48 YEARS
IST FLOOR, BEENA BHAVAN, THEVALLY WARD
THEVALLY P.O., FROM ISHWARYA DEEPTHAM
KOIKKALBHAGAM MURY, WEST KALADA VILLAGE
PERUMVELIKKARA P.O., KUNNATHOOR TALUK, KOLLAM.**

**BY ADVS.SRI.C.R.VIJAYAKUMARAN PILLAI
SRI.A.CHANDRA BABU
SRI.R.SANTHOSH (VARKALA)
SMT.S.V.HARITHA**

RESPONDENTS/ACCUSED NO.1 & 2 AND STATE:

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- 1. K.HARIHAR, AGED 48 YEARS
IST FLOOR, BEENA BHAVAN, THEVALLY WARD
THEVALLYT P.O., PIN:691009.**
 - 2. SUMATHY, AGED 52 YEARS, W/O GANGADHARAN NAIR
BEENA BHAVANA, THEVALLY WARD, THEVALLY P.O, PIN:691009.**
 - 3. STATE OF KERLA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.**

R3 BY PUBLIC PROSECUTOR SMT. LISHA M.G.

**THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 21-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

CRL.ANO. 1142/2015

APPENDIX

PETITIONER'S EXHIBITS

**ANNEXURE 1 CERTIFIED COPY OF the ORDER DATED 16.10.2015 IN
Crl.L.P.No.333/2015 OF THIS HON'BLE COURT**

**ANNEXURE 2 COPY OF THE JUDGMENT DATED 14TH JULY,2015 FROM THE
HONOURABLE CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM**

RESPONDENTS' EXHIBITS

NIL

// TRUE COPY //

P.A.TO JUDGE

SD

P. UBAID, J.

Crl.Appeal No.1142 of 2015

Dated this the 21st day of November, 2015

JUDGMENT

A judgment of acquittal passed by the Chief Judicial Magistrate Court, Kollam in C.C.No.100/2012 is under challenge in this appeal brought by the complainant under Section 378(4) Cr.P.C. On a perusal of the materials including the impugned judgment, I find that there is no merit in this appeal, and it deserves dismissal without admission. The respondents 1 and 2 herein are the two accused in the case. The case of the appellant is that she was married by the 1st respondent on 15.03.2009 in accordance with the customary rites prevailing in their community, and during the subsistence of the said marriage, the 1st respondent married the 2nd respondent on 23.01.2011. Thus, she brought a complaint alleging the offence under Section 494 IPC.

2. The two respondents pleaded not guilty to the charge framed against them. The complainant examined herself and also

a witness, during trial. Exts.P1 to P8 documents were also marked on her side. On examination under Section 313 Cr.P.C., the two accused denied the incriminating materials and rejected a defence of total denial. They did not examine any witness in defence, but Exts.D1 to D2 were marked on their side. On an appreciation of evidence, the learned Magistrate found that there is absolutely no evidence to prove the two marriages alleged. Accordingly, the two respondents were acquitted under Section 248(1) Cr.P.C. by judgment dated 14.07.2015.

2. In the impugned judgment, the learned Magistrate has well discussed the evidence adduced by the complainant. It is well settled that in a prosecution brought under Section 494 IPC, the complainant must prove both the marriages. As regards the first marriage, the complainant has given oral evidence regarding the ceremonies undergone. She also relied on Ext.P1 certificate. On an examination of the document, the learned Magistrate found that it is only an unauthenticated copy, and it is not in fact a marriage certificate. There is nothing to show that the marriage was registered under the law. Ext.P1 document will not by itself

prove the factum of marriage, and it is not a document showing registration of marriage. Any way, the complainant examined as PW1 gave some evidence regarding the factum of her marriage with the first accused. The learned Magistrate found that this evidence is not sufficient to prove the marriage.

3. As regards the second marriage between the two accused, the learned Magistrate found that there is absolutely no evidence. The complainant admittedly is not a witness to the second marriage. She examined PW2 to prove the marriage. But she is also not a witness to the alleged second marriage. The complainant relied on Exts.P3 and P4 documents to prove the second marriage. In a prosecution under Section 494 IPC, the alleged second marriage cannot be proved simply by documents. There must be convincing and satisfactory evidence proving the factum of marriage alleged. Neither the complainant nor PW2 would prove the factum of second marriage alleged. None of them had seen the alleged second marriage between the two accused. I find that the finding of the learned Magistrate regarding the second marriage is perfectly correct. Though there

is some evidence to prove the first marriage, the alleged second marriage stands not proved by any material. The complainant did not examine anybody who witnessed the ceremony of marriage, and thus she failed in discharging her burden. When the factum of marriage is not proved to the satisfaction of the court, a conviction is not possible under section 494 IPC. I find that the complainant in fact miserably failed to prove the alleged second marriage, and that the two accused were rightly acquitted by the learned Magistrate.

In the result, this appeal is dismissed in limine, without being admitted to files.

Sd/-

P. UBAID, JUDGE

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P.A. to Judge