

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

FRIDAY, THE 13TH DAY OF FEBRUARY 2015/24TH MAGHA, 1936

Cr1.Rev.Pet.No. 916 of 2004 (D)

AGAINST THE JUDGMENT IN CRL.A.NOS. 247/2002 & 249/2002 OF SESSIONS
COURT, THRISSUR DATED 25.2.2004

AGAINST THE JUDGMENT IN CC 111/2000 of J.M.F.C., WADAKKANCHERRY
DATED 22.6.2002

REVISION PETITIONER/APPELLANT/ACCUSED NO.1::

SASIKUMAR, E.D. POSTMAN,
S/O. (LATE) RAMANEZHUTHACHAN, UPPILOTTIL HOUSE,
MULLANNUR DESOM, LAKKIDI PEROOR VILLAGE,
OTTAPPALAM TALUK, PALAKKAD.

BY ADVS.SRI.V.V.RAJA
SRI.M.T.SURESHKUMAR

RESPONDENTS/COMPLAINANT & STATE::

1. SHYLAJA, D/O. SANKARAN EZHUTHACHAN,
KATTUKULANGARA HOUSE, METTUKE DESOM,
VENGANELLUR VILLAGE, TALAPPILLY TALUK.

2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM.

R1 BY ADV. SRI.P.VIJAYA BHANU
R1 BY ADV. SRI.TONY MATHEW
R2 BY P.P.MS. JASMINE

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
13-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. RAMAKRISHNAN, J.

.....
Crl.R.P.No.916 of 2004
.....

Dated this the 13th day of February, 2015.

O R D E R

The first accused in C.C.No.111/2000 on the file of the Judicial First Class Magistrate Court, Wadakkanchery is the revision petitioner herein.

2. The case was originated on the basis of a private complaint filed by the first respondent against the revision petitioner and ten others alleging offences under sections 494, 107 and 109 read with section 149 of the Indian Penal Code.

3. The case of the complainant in the complaint was that the complainant and the revision petitioner belong to Ezhuthachan community and they married on 12.12.1991 at Vengerry temple, Ottapalam as per the custom prevailing in that community and in that wedlock, a male child was born. Accused No.5 is the mother of the revision petitioner/first accused and she used to torture the complainant regularly and on account of the torture, the complainant had to leave the house with the child on 13.3.1995 and thereafter no enquiry

was made by the revision petitioner either about the complainant or the child. The complainant filed complaint against accused 1 and 2 and a crime was registered as Crime No.88/1995 against them on 15.3.1995 under section 498 A read with section 34 of the Indian Penal Code and thereafter final report was filed and it was taken on file as C.C.No.207/1995 on the file of the Judicial First Class Magistrate Court, Ottapalam and after trial they were acquitted. Their marital relationship is still pending. While so, on 11.2.2000 at about 7.30 a.m the first accused married the second accused from her house as per custom and that was done with the knowledge of the second accused as abetted by accused 3 to 11, who are the relatives of the first accused and the second accused and thereby all of them have committed the offences punishable under sections 494, 107 and 109 read with section 149 of the Indian Penal Code. After taking sworn statement, the complaint was taken on file for the offence under sections 494, 107 and 109 read with section 149 of the Indian Penal Code and after appearance of the accused, evidence of the complainant under section 244 of the Code of Criminal Procedure was recorded and apart

from the complainant, four witnesses were examined and after hearing both sides, charge under sections 494, 107 and 109 read with section 149 of the Indian Penal Code was framed and the same was read over and explained to them and they pleaded not guilty. Thereafter, they were again cross examined and the complainant's evidence was closed and the accused were questioned under section 313 of the Code of Criminal Procedure and they denied all the incriminating circumstances brought against them. They have further stated that they have not committed any offence and they are innocent of the same. No defence evidence was adduced on their side. After considering the evidence on record, the trial court found accused 3 to 11 not guilty for the offences alleged and acquitted them of the charges under sections 248(1) of the Code of Criminal Procedure but found accused 1 and 2 guilty under section 494 of the Indian Penal Code, convicted them thereunder and sentenced them to undergo simple imprisonment for one year each.

4. Aggrieved by the same, they filed Crl.A.Nos.247/2002 and 249/2002 respectively before the Sessions Court, Thrissur and the learned Sessions Judge allowed the appeal filed by

the second accused namely Crl.A.No.249/2002 and acquitted her of the charge levelled against her but confirmed the order of conviction and sentence passed by the court below as against the revision petitioner and dismissed Crl.A.No.247/2002 filed by him. Aggrieved by the same, the present revision petition has been filed by the revision petitioner /first accused before the court below.

5. Heard the counsel for the revision petitioner and the Public Prosecutor and the counsel appearing for the first respondent.

6. When the revision petition came up for hearing today, both the counsel submitted that the marriage between the complainant and the revision petitioner has been dissolved through court by mutual consent and now the revision petitioner is living with her second wife and children. Though an attempt was made for settlement, that did not materialize. The counsel for the revision petitioner wants only leniency in sentence.

7. On going through the evidence of Pws 1 to 4, it can be safely concluded that the complainant had proved the first marriage and also the second marriage. In fact, legality of the second marriage is not in dispute. Once it is proved by the

complainant that the first marriage is valid and during the subsistence of marriage, the revision petitioner contracted the second marriage, then section 494 of the Indian Penal Code is attracted. Both the courts below have properly appreciated the evidence and came to the conclusion that the first and second marriage have been proved legally and second marriage was conducted during the subsistence of the first marriage. So, under the circumstances, the finding of courts below that the revision petitioner had committed the offence punishable under section 494 of the Indian Penal Code does not call for any interference by this Court.

8. As regards the sentence is concerned, the court below had sentenced the revision petitioner to undergo simple imprisonment for one year and this was confirmed by the appellate court. Considering the subsequent development that marriage between the first respondent and the revision petitioner was dissolved by mutual consent and also considering the lapse of time and also considering the fact that now the revision petitioner is leading a married life with the subsequent wife and having children in that relationship, this Court feels that substantive sentence can be reduced and loss sustained

by the complainant can be compensated by awarding requisite compensation. So considering the circumstances, sentencing the revision petitioner to undergo simple imprisonment till the rising of court and to pay compensation Rs.50,000/-, to the complainant and in default to undergo simple imprisonment for two months under section 357 (3) of the Code of Criminal Procedure will be sufficient and that will meet the ends of justice. So, the sentence imposed by the court below and confirmed by the appellate court is set aside and the same is modified as follows:

The revision petitioner is sentenced to undergo imprisonment till the rising of court and also to pay a compensation of Rs.50,000/- to the complainant, PW1, in default to undergo simple imprisonment for three months under section 357 (3) of the Code. Two months time is granted to the revision petitioner to pay the amount. Till then, execution of the sentence is kept in abeyance. The revision petitioner can either pay the amount directly to the first respondent and produce receipt before the court below or deposit the amount before the court below within this time and serve sentence. He is directed to appear before the court below on 17.4.2015

to receive the sentence.

With the modification of the sentence alone, the revision petition is allowed in part and disposed of accordingly.

Office is directed to communicate this order to the concerned court immediately.

Sd/-

K. RAMAKRISHNAN, JUDGE.

cl

/true copy/

P.S to Judge

