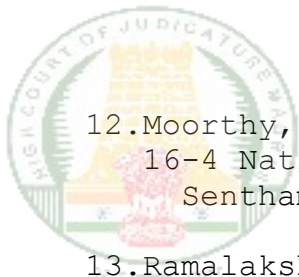


**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 30.11.2015****CORAM:****WEB COPY****THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN****CRL.OP.(MD)No.22587 of 2015**

- 1.Muthuvel, S/o.Panchavarnam
Siriyur, Sivagangai Taluk
Sivagangai District.
- 2.Panchavarnam, S/o.Muthaiah
Siriyur, Sivagangai Taluk
Sivagangai District.
- 3.Chellammal, W/o.Panchavarnam
Siriyur, Sivagangai Taluk
Sivagangai District.
- 4.Sethupathy, S/o.Panchavarnam
Siriyur, Sivagangai Taluk
Sivagangai District.
- 5.Mangaleswari, S/o.Muthukannan
Siriyur, Sivagangai Taluk
Sivagangai District.
- 6.Muthukannan, C/o.Panchavarnam
Siriyur, Sivagangai Taluk
Sivagangai District.
- 7.Amutha, D/o.Panchavarnam
Siriyur, Sivagangai Taluk
Sivagangai District.
- 8.Sharalarani, W/o.Muthuvel
Siriyur, Sivagangai Taluk
Sivagangai District.
- 9.Kulanthaisamy, S/o.Mookath Thevar
8-1 Bose Road, 5th Cross Street,
Near Uzhavarsanthai, Sivagangai.
- 10.Kurinatchiar, W/o.Kulan thaisamy
8-1 Bose Road, 5th Cross Street,
Near Uzhavarsanthai, Sivagangai
- 11.Karthick @ Bala Karthickeyan, S/o.Kulanthaisamy
8-1 Bose Road, 5th Cross street,
Near Uzhavarsanthai, Sivagangai.



12. Moorthy, S/o. Subramaniyath Thevar,
16-4 Natrinai Street, Sibiyon Lay out 1st street,
Senthamilnagar, Sivagangai

13. Ramalakshmi, W/o. Moorthy
16-4 Natrinai Street, Sibiyon Lay out 1st street,
Senthamilnagar, Sivagangai.

: Petitioners/Accused 1 to 13

Vs.

1. The Inspector of Police,
All Women Police Station,
Sivagangai District,
Crime No.8 of 2013

: 1st Respondent/Complainant

2. Vidhya
W/o. Muthuvel
No.16 7 1st cross street,
Mazeeth Road,
Sivagangai.

: 2nd Respondents/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to call for the records in C.C.No.224 of 2015 on the file of the Judicial Magistrate No.1, Sivagangai and quash the same.

For Petitioners : Mr. G. Karupppasamy Pandian
For Respondent : Mr. C. Mayil vahana Rajendran
Additional Public Prosecutor

O R D E R

The petitioners have come forward with this petition seeking to quash the case in C.C.No.224 of 2015 on the file of the Judicial Magistrate, No.1, Sivagangai.

2. It is the case of the petitioners that the 2nd respondent got married to the first petitioner and they lived as husband and wife hardly for five months and subsequently, they separated and as such, there is no allegation of any cruelty and dowry demand. Hence, the offences under Sections 498(A) and 109 IPC are not at all attracted, as could be seen from the charge sheet. It is also submitted that even though they have been implicated for the offence under Section 494 IPC, there is no case made out against the first petitioner and he has not committed any offence of bigamy and that the temple authorities have given a letter to the effect that there was no such marriage between the petitioner and one Sarala Rani, as alleged by the 2nd respondent/de-facto complainant. It is their case that they have been falsely implicated in the case. According to them, initially the case was registered under Sections 498(A), 494 read with 109 IPC and after investigation, it was altered into Sections 498(A) and 109 IPC. For these reasons, the counsel for the petitioners would submit that the offences under Sections 498(A) and 109 IPC are not at all attracted against these petitioners.



3. To substantiate his contention, the learned counsel for the petitioners relied upon the decision of the Apex Court in **(2010) 10 SCC 190** reported in ***Sunita Jha v. State of Jharkhand and another.***

4. The Additional Public Prosecutor appearing for the 1st respondent submitted that it is true that a case has been registered under Sections 498(A) and 109 IPC and after investigation, it was found that the 1st petitioner has not committed the offence of bigamy. He has also drawn the attention of this Court to the statement made under Section 161(3) Cr.P.C. by the 2nd respondent, wherein it is alleged that the 1st petitioner got married to one Sarala Rani.

5. The contentions of the petitioners, that the 1st petitioner and the de-facto complainant lived together only for 5 months and that there was no cruelty and dowry demand have to be ascertained only by the Court below after letting/recording evidence and the same cannot be decided by this Court at this stage prematurely.

6. The decision relied on by the learned counsel for the petitioners (supra) is not applicable to the facts of the present case, as the case therein arose on account of rejection of a petition for discharge by the trial Court as also the revision petition filed by the petitioner therein. In the said case in paragraph Nos.10 and 11, the Hon'ble Apex Court has held as follows:

"10.The other question which fell for determination in U.Suvetha case was if a husband was living with another woman besides his wife, whether the same would amount to "cruelty" within the meaning of Section 498(A). It was held that if such other woman was not connected to the husband by blood or marriage, the same would not attract the provisions of Section 298(A) IPC, although it could be an act of cruelty for the purpose of judicial separation or dissolution of marriage under the marriage laws, but could not be stretched to amount to "cruelty" under Section 498(A) IPC.

11.While construing the provisions of Section 498(A) IPC in the given circumstances, this Court observed that Section 498(A) being a penal provision deserved strict construction and by no stretch of imagination would a girlfriend or even a concubine be a "relative", which status could be conferred either by blood connection or marriage or adoption.

"18. ... If no marriage has taken place, the question of one being relative of another would not arise." (U.Suvetha case, SCC p. 765 para 18)".

However, in the present case, the case is pending in C.C.No.224 of 2015 and the petitioners have not taken any steps to file a petition for discharge. That apart, the trial Court has to decide whether a case has been made out against the petitioners or not. Therefore, it is too premature for this Court to render a finding on the points raised by the petitioners. In the event of this Court granting the relief sought in respect of the petitioners 8 to 13, on the ground that they are not related to the 1st petitioner, based on the available materials before this Court, the said exercise will amount to discharging them from the proceedings in toto and as such, the trial Court cannot proceed further



to deal with the issue.

7. Since charge sheet has already been filed before the appropriate Court and the same is taken on file in C.C.No.224 of 2015, this Court is not inclined to quash the same.

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8. At this stage, the learned counsel appearing for the petitioner submitted that the presence of the petitioners before the trial Court may be dispensed with and requested to expedite the trial.

9. Considering the facts and circumstances of the case, this Court directs the trial Court to dispense with the personal appearance of petitioners before it, upon the petitioners swearing to an affidavit informing their address for service, that they duly would be represented by their counsel on all hearing dates, that they would, at no instance, dispute their identity and that, they would appear before the trial Court, as and when required. Upon the petitioners doing so, the trial court may seek the presence of the petitioners before it, solely on the important hearing dates. The trial Court is directed to take up the case and dispose of the same at the earliest and shall not adjourn the matter beyond 15 working days at any point of time. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

RR

To

1.The Judicial Magistrate I, Sivagangai.

2.The Inspector of Police, All Women Police Station, Sivagangai District,

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+one cc to Mr.G.Karuppasamy Pandian, Advocate in SR.No.68307

RR

CSL/GSV-AN/30.12.2015/2P/5C

Order made in
CRL.OP.(MD)No.22587 of 2015
Dated:-30.11.2015