

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment: 25.11.2016	Date of pronouncing the Judgment : 19.12.2016
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CORAM :

THE HONOURABLE MR. JUSTICE S.BASKARAN

Crl.O.P.No.4139 of 2010
and M.P.Nos.1 and 2 of 2010

1.Saraswathi
2.Selvaraj
3.Sangeetha

.. Petitioners/A4 to A6

Vs.

1.State represented by
The Inspector of Police
All Women Police Station
Virudhachalam
Cuddalore District

2.Sumathi

.. Respondent/Complainant

Petition filed under Section 482 Crl.P.C., praying to call for the entire records of the Criminal Proceedings in C.C.No.182 of 2009 on the file of Judicial Magistrate No.1, Virudhachalam, and quash the same.

For Petitioners : Mr.G.K.Ilantherian
for M/s.Sai Bharath and Ilan

For Respondents : Mr.R.Ravichandran,
Addl.Public Prosecutor for R1
M/s.L.Mahendran for R2.

ORDER

This Criminal Original Petition is filed seeking to quash the criminal proceedings pending in C.C.No.182 of 2009 on the file Judicial Magistrate No.1, Virudhachalam, which was taken cognizance, for the alleged offences under Section 494 read with 109 of the Indian Penal Code, on the file of 1st respondent Police registered in Crime No.13 of 2007.

2. The petitioners are arrayed as A4 to A6 in the criminal proceedings above stated and there are totally 6 accused in the case. The 1st accused is the husband, 2nd and 3rd accused are in-laws of the 2nd respondent herein/complainant. The 1st and 2nd petitioners herein are the parents of 3rd petitioner and the 3rd petitioner herein is alleged to be the second wife of the 1st accused. The complaint had been lodged by the 2nd respondent alleging that the 1st accused Subramanian married her on 03.05.1993 and that it is his second marriage after the death of 1st wife Malathi. At the time of marriage, the 2nd respondent's family members have given jewellerys and household articles as dowry demanded by accused 1 to 3. After some time, the 1st accused demanded Rs.10 lakhs from the defacto complainant and harassed her and demanded dowry and the same was informed to accused 2 and 3 and they also demanded the same. Subsequently, the 1st accused married the 6th accused, the 3rd petitioner herein as 3rd marriage and have given birth to 2 children. The 3rd marriage took place with the assistance of A2 to A5. Therefore, A1 to A3 were alleged to have committed the offence under Section 498A and 494 IPC read with Section 4 of Dowry Prohibition Act and A4 to A6, were alleged to have committed the offence under Section 494 read with Section 109 of IPC and for the same offence, charge sheet was laid and the same was taken on file by Judicial Magistrate No.1, Virudhachalam, in C.C.No.182 of 2009.

3. The petitioners herein, viz., A4 to A6, would contend that they are charge sheeted for the alleged offence under Section 494 read with Section 109 of the IPC, however, even as per the complaint and the statements recorded under Section 161 (3) of Cr.P.C., the allegations did not attract the offence under Section 494 of IPC against these petitioners and hence seeks to quash the criminal proceedings pending in C.C.No.182 of 2009 on the file of Judicial Magistrate No.1, Virudhachalam.

4. The petitioners who were facing trial in C.C.No.182 of 2009 on the file of Judicial Magistrate No.I, Virudhachalam, for the alleged offences under Section 494 read with 109 IPC, has come forward with this petition, seeking to quash the proceedings against them in the above said C.C.No.182 of 2009.

5. According to the complaint lodged by the 2nd respondent herein, her husband, the 1st accused married her on 03.05.1993 after the 1st wife Malathi passed away. The 2nd and 3rd accused are the parents of the 1st accused/husband. As per the complaint, after the said marriage, there was demand for dowry by A-1 to A-3 and the complainant was forced to stay away from matrimonial home and by that time, the 1st accused married the 3rd petitioner herein and gave birth to 2 children. According to

the complainant, the 3rd marriage of her husband with the 3rd petitioner herein took place with the assistance of the other accused viz., the 1st and 2nd petitioners herein, who are the parents of the 3rd petitioner herein. Thus, the petitioners, who are arrayed as A-4 to A-6, are alleged to have committed the offence under Section 494 read with 109 IPC and on that account, the complaint was given by 2nd respondent herein, and taking cognizance, the same was taken on file in C.C.No.182 of 2009 by Judicial Magistrate No.1, Virudhachalam.

6. Aggrieved over the same, the petitioners/A-4 to A-6, contend that as per the averments in the complaint and the statements recorded under Section 161(3) Cr.P.C., no offence under Section 494 read with 109 of IPC is made out against these petitioners and they denied the averments made by the 2nd respondent herein.

7. The only point that has to be decided in the present Criminal Original Petition, is as to whether the allegations contained in the complaint as well as the averments contained in the statement of witnesses, make out any ground for registering a case under Section 494 IPC against the petitioners.

8. The learned counsel appearing for the petitioners pointed out that to make out an offence under Section 494 IPC, evidence must be produced to show that essential ceremonies for a valid marriage was performed and prosecution must also establish that the alleged remarriage of the 1st accused was duly performed in accordance with the religious rites applicable to the form of marriage allegedly undergone by the 1st accused.

9. The second limb of argument raised by the learned counsel for the petitioners is that it is alleged by the 2nd respondent in her complaint that, her husband/1st accused in the said C.C.No.182 of 2009, married her on 03.05.1993 and subsequently demanded dowry and she was forced to go out of the matrimonial home and thereafter, the 1st accused in the case, married the 3rd petitioner herein, however, in the complaint as well as statement of witness recorded under Section 161(3) Cr.P.C., particulars of the 3rd marriage by the 1st accused with the 3rd petitioner herein, are not mentioned. It is also pointed out that the date of marriage as well as venue of marriage are not mentioned and there is no sufficient material in the complaint as well as statement of witnesses about the religious rites performed for a valid marriage.

10. It is also pointed by the learned counsel for the petitioners that the husband of the complainant, the 1st accused in this case, filed H.M.O.P.No.137 of 2007 before the Sub Court, Virudhachalam, seeking divorce and the same was allowed as per

the order dated 15.10.2008.

11. The learned counsel for the petitioners has befittingly contended that on a perusal of the complaint as well as the statement of witnesses, it is clear and it is only stated that the 1st accused married the 3rd petitioner herein, while his wife/the complainant herein was alive and nothing more than that. In such circumstances, the learned counsel for the petitioners relied upon the ruling of this Court in the case of Dr. Jayakumar @ Javid Kamal Vs. State, rep. By Sub-Inspector of Police, Guduvancheri Police Station, Kancheepuram District and another reported in (2008) 1 MLJ (Crl) 425, to contend that in the absence of any proof of evidence about the alleged 3rd marriage of the 1st accused with the 3rd petitioner herein, the allegations made by the complainant is unsustainable and the same has to fail.

12. The said contention of the learned counsel for the petitioners was disputed by the learned Additional Public Prosecutor as well as the learned counsel for the 2nd respondent/complainant herein. The respondents opposed the petition stating that necessary evidence is available and the plea of the petitioners could not be entertained by this court and the grounds raised by the petitioners do not sans merit.

13. However, as stated above, a perusal of the charge sheet as well as the statement of witnesses recorded under Section 161 (3) Cr.P.C., does not disclose the date of alleged marriage as well the place of marriage of the 3rd petitioner with the 1st accused. There is no material placed before the court to prima facie make out a case of 3rd marriage by the 1st accused in the above said case. Even though after investigation, charge sheet is filed, the learned Additional Public Prosecutor is unable to point out necessary allegations either in the complaint lodged by the 2nd respondent herein or in the statement of witnesses recorded, in the course of investigation, which will constitute the ingredients attracting the commission of offence under Section 494 IPC. In such circumstances, the allegation against the 1st and 2nd petitioners, over the 3rd marriage of the 1st accused, cannot stand alone, since there is no material to prove the fact of marriage itself. In such circumstances, as rightly contended by the learned counsel for the petitioners, when a complaint alleging bigamy is lodged and no evidence is placed to show that essential ingredients for valid marriage were performed, the complaint cannot be sustained.

14. In the case on hand, as stated above, necessary averments for constituting the offence under Section 494 IPC are conspicuously absent in the complaint as well as statement of witnesses recorded during the investigation. In such

circumstances, the plea of the petitioners raised herein that they should not be forced to face the rigor of trial on the basis of the complaint lodged, without any basis, merits acceptance by this court.

15. In view of the above said discussion, this court is of the view that the complaint made against the petitioners herein for offence under Section 494 read with 109 IPC is not made out and therefore, the Criminal Original Petition is liable to be allowed and accordingly, the same is allowed. Consequently, all further proceedings in C.C.No.182 of 2009 on the file of Judicial Magistrate No.1, Virudhachalam, in respect of petitioners herein/A-4 to A-6 alone is hereby quashed. Consequently, connected MP.Nos.1 and 2 of 2010 are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nvsri
To

1. The Inspector of Police
All Women Police Station
Virudhachalam
Cuddalore District

2. The Judicial Magistrate No.1,
Virudhachalam.

3 The Public Prosecutor,
High Court, Madras

+1cc to Mr.Sai, Bharath & Ilan, Advocate, S.R.No.74277

mv (CO)
md(05/01/2017)

CrI.O.P.No.4139 of 2010