

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Revision Petition No.983 of 2007
and Criminal Appeal No.929 of 2005

Crl.R.C.No.983/2007:-

1.K.Kuppusamy
2.Babi
3.Kandavel
4.Govindammal
5.Selvarani

...Petitioners/Accused 1 to 5

vs.

Manimegalai

...Respondent/Complainant

Criminal Appeal No.929 of 2005:-

Manimekalai

..Appellant/Complainant

Vs

1.Sasikumar
2.Natesan

..Respondents/Accused Nos.
6 and 7

Crl.R.C.No.983 of 2007:- Criminal Revision filed under Section 397 and 401 of Cr.P.C., to call for the records relating to judgment dated 04.06.2007 made in C.A.No.139 of 2005 on the file of Additional District Sessions Court/Fast Track Court No.1, Salem confirming the conviction imposed in the judgment dated 09.09.2005 made in C.C.No.192 of 2002 on the file of Judicial Magistrate No.II, Sankari and set aside the same.

Criminal Appeal No.929 of 2005:- Criminal Appeal filed under Section 378 of Cr.P.C., against the order of acquittal dated 09.09.2005 made in C.C.No.192 of 2002 in respect of the above respondents/accused on the file of Judicial Magistrate No.II, Sankari.

For petitioner in
Crl.R.C.No.983 of 2007: No appearance

For respondent in
Crl.R.C.No.983 of 2007: Mr.N.Manoharan

For appellant in
Crl.Appeal No.929 of 2005: Mr.N.Manokaran

For respondent in
Crl.Appeal No.929 of 2005: Ms.Zeenath Begam for R1
No appearance for R2

COMMON JUDGMENT

Criminal Revision No.983 of 2007:-

Despite repeated adjournments, no compromise has been effected in between parties. Even in the last hearing, it has been specifically directed that the learned counsel appearing for the revision petitioners to argue the matter. But today, he has not made his appearance. At such circumstances, Criminal R.C.No.983 of 2007 is dismissed for default. Bail granted in favour of the Revision Petitioners shall stand cancelled. The trial court is directed to take appropriate steps to imprison them.

Criminal Appeal No.929 of 2005:-

This Criminal Appeal has been directed against the order of acquittal passed in Calendar Case No.192 of 2002 by the Judicial Magistrate No.II, Sankari.

2. The appellant herein as a complainant has filed a private complaint on the file of the trial court and the same has been taken on file in Calendar Case No.192 of 2002, wherein, the respondents herein, have been shown as accused Nos.6 and 7.

3. The specific averments made in the complaint are that the complainant has married to the 1st accused on 02.06.1991 and both of them have lived as husband and wife and subsequently, the 1st accused has married the 2nd accused by name Devi and the second marriage has been performed by the remaining accused. Under the said circumstances, all the accused have committed an offence punishable under Section 494 read with Section 109 of the Indian Penal Code.

4. The trial court, after considering the available evidence on record has found the accused 1 to 5 guilty under Section 494 of the IPC and sentenced to undergo imprisonment as mentioned in the judgment. But the trial court has acquitted the accused 6 and 7. Against the order of acquittal, the present criminal appeal has been preferred at the instance of the complainant as appellant.

5. The learned counsel appearing for the appellant has contended that the accused 6 and 7 have also induced the 1st accused to perform second marriage with 2nd accused and to that effect, enormous evidence is available on the side of the complainant. But the court below, without considering the vital evidence adduced on the side of the complainant has erroneously acquitted them and hence, the order of acquittal passed against accused 6 and 7 by the trial court is liable to be set aside and the accused 6 and 7 are liable to be punished in accordance with law.

6. No representation for 2nd respondent/A7. The learned counsel appearing for 1st respondent/A6 has also equally contended that the accused 6 has simply participated in the alleged second marriage and he has no connection whatsoever with the same and the trial court,

after considering the lack of evidence against the accused 6 and 7, rightly acquitted them and therefore, the order of acquittal passed by the trial court is not liable to be set aside.

7. It is seen from the records and evidence that the accused 6 and 7 are nothing but mere participants in the second marriage alleged to have been performed by the 1st accused with the 2nd accused. Simply because, the accused 6 and 7 have participated in the alleged second marriage, the court cannot come to a conclusion that they have committed an offence punishable under Section 494 read with Section 109 of the Indian Penal Code. Further, there is absolutely no evidence to the effect that the accused 6 and 7 are also responsible for conducting second marriage, further, on the side of the complainant, no specific evidence is available with regard to alleged culpability of accused 6 and 7 and therefore they cannot be mulcted with liability. The trial court, after considering the lack of evidence has rightly acquitted them. In view of the discussion made earlier, this Court has not found any acceptable force in the contention put forth on the side of the appellant/complainant and altogether, the present Criminal Appeal deserves to be dismissed.

In fine, this Criminal Appeal is dismissed. The order of acquittal passed in Calendar Case No.192 of 2002 against the accused 6 and 7 passed by the trial court is confirmed.

21.01.2016

nvsri

To

The Judicial Magistrate No.II, Sankari.

A.SELVAM, J.

nvsri

Crl.A.No.929 of 2005
and Crl.R.C.No.983 of 2007

21.01.2016