

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.446 of 2007

G.Sumathi .. Appellant /Complainant

Vs

1. M.Govindaraj
2. G.Krishnaveni
3. M.Rajammal
4. R.Pettammal
5. M.Rangaraj
- 6.M.Ramamurthy

... Respondents/Accused 1,2,4 to 7

Prayer:- Criminal Appeal filed under Section 378(1) of Cr.P.C., to set aside the order of acquittal dated 26.02.2007 passed in C.C.No.24 of 2003 on the file of the Judicial Magistrate No.1, Coimbatore.

For Appellant : Mr.C.Ramkumar

JUDGEMENT

Challenging the order of acquittal passed by the learned Judicial Magistrate, No.I, Coimbatore, in C.C.No.24/2003 dated 26.02.2007, the present appeal has been filed. The first respondent/A1, has been charged for an offence under Section 494 IPC and the respondents 2 to 6/A2 to A4 have been charged for an offence under Section 494 r/w.109 IPC. The trial court after considering the materials available on record, acquitted the accused from the all the charges. Challenging the same, the complainant is before this Court with this appeal.

2. The case of the complainant, in brief, is as follows:-

The first respondent/A1 is the husband of the appellant/complainant, the marriage between them took place on 29.08.1982 at Metupulayam. Out of the said wedlock, they are blessed with two male children. The first respondent harassed the appellant by demanding dowry and he had sent her out of the house. Thereafter, on 11.02.2001, while the first marriage with the appellant was in existence, the first respondent/A1, married the second respondent/A2 in a Vinayagar temple near Vadamadurai Kannasiappan temple. P.W.2, a person known to the appellant/complainant, is also an eye-witness to the marriage

and he informed the complainant about the marriage. Immediately, she filed a complaint against the respondents/accused, before the Judicial Magistrate No.I, Coimbatore.

3. After considering the complaint and the sworn statement of the complainant, the case was taken file in C.C.No.24 of 2003 for an offence under Sections 494 and 494 r/w.109 IPC, and summons were issued to the accused. In order to prove the case, the complainant examined 8 witnesses and marked 6 documents.

4. Out of the witnesses examined, P.W.1 is the complainant. P.W.2, a person known to the complainant, is an eye-witness to the marriage. According to him, on 11.02.2011, while he went to the temple, he saw the marriage, A1 tied thali on A2, and other accused were all present there and they have abetted A1 to marry A2. P.W.3 is the brother of the complainant. According to him, P.W.2, who is his friend, informed him about the marriage between A1 and A2. P.W.4, has deposed that he, along with P.W.3, questioned A1 about the marriage. P.W.5 is a Doctor in Karamadai. According to him, there was a baby born to A2 and A1 name was given as a father of the baby. P.W.6 is a Correspondence in the private school, where the child of A1 and A2 was studying. P.W.7 is the Junior Assistant in the Tahsildar office. He has spoken about the community certificate issued to the child. P.W.8, has spoken that A1 and A2 attended some other marriage as husband and wife and he has also taken photos.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false and they examined one Sundaram pandaram as DW1, who is a poosari of the temple. According to him, the temple is dedicated to Thannasi Kovil Dhava Muniver, and no marriage is conducted in the temple and on 11.02.2001, no marriage took place in the temple.

6. Having considered all the above materials, the trial Court acquitted all the accused. Aggrieved against the acquittal of the accused from the charge, the present Criminal Appeal has been filed.

7. I have heard Mr.C.Ramkumar, learned counsel appearing for the petitioner and also perused the records, carefully.

8. P.W.2 is a only eye-witness to the occurrence. According to P.W.2, on the date of occurrence, he went to the temple Vada Madurai Thanasiappan temple for worship. At that time, he saw A1 tied thali to A2 and other accused were also present there and abetted him. He immediately, informed the same to the complainant and his brother. But his evidence

has been disbelieved by the trial court on the ground that P.W.2 in his cross examination has deposed that he along with P.W.3 attended a marriage at Mysore. From the evidence of P.W.3, it could be seen that both P.Ws.2 and 3 went to Mysore for marriage on the date of occurrence and there is no occasion for him to be present in the temple at the time of marriage said to have taken place between A1 and A2.

10. As the one and only eye-witness P.W.2, is not believable, and there is no other evidence available to prove the marriage between A1 and A2, considering all the materials, the trial court, rightly acquitted the accused, I find no illegality or irregularity in the order passed by the trial court and there is no merit in the appeal.

11. In the result, the Criminal Appeal fails and accordingly, the same is dismissed. The judgment of the trial Court in C.C.No.24 of 2003 dated 26.02.2007 is hereby confirmed.

Sd/-  
Assistant Registrar

//True copy//

Sub Assistant Registrar

mrp

To

1. The Judicial Magistrate No.I,  
Coimbatore.

2.The Public Prosecutor,  
High Court, Madras.

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NMI (CO)  
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