

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :17.08.2017

PRONOUNCED ON :07.12.2017

CRL.RC. No.663 of 2012

P.Sathyakumar .. Petitioner

..Vs..

K.Poongothai @ Prema .. Respondent

Prayer:- Criminal Revision Petition filed under Section 397 and 401 Cr.P.C., to set aside the order dated 03.04.2012 passed in C.M.P.No.8865 of 2012 in C.C.No.473 of 1998 on the file of Judicial Magistrate, Thiruvottiur, Chennai.

For Petitioner :Mr.M.Johnkennady
For Respondent :M/s.A.Madhumathi

ORDER

This Criminal Revision Petition has been filed under Section 397 and 401 Cr.P.C., to set aside the order dated 03.04.2012 passed in C.M.P.No.8865 of 2012 in C.C.No.473 of 1998 on the file of Judicial Magistrate, Thiruvottiur, Chennai.

2. The first accused is the Revision Petitioner herein.

3. The respondent-Poongothai is a private complainant before the Judicial Magistrate, Thiruvottiyur alleging offence under Section 498(A) and 494 I.P.C against the present Revision Petitioner along with Petitioner No.2 Judy Melodio @ Julee, Petitioner No.3 Patrick Dhemillo, Petitioner No.4 Loretta Dhomillo and alleging that he was subjected to mental cruelty and during the substance of marriage between the Revision Petitioner and the first respondent herein, he has contradicted the second marriage and she was subjected to mental cruelty. After observing, the formalities for the taking cognizance of private complaint, it appears that the Judicial Magistrate, Thiruvottiyur have taken cognizance as against the Revision Petitioner herein alone.

4. However, as the Miscellaneous Petition was pending for more than 12 years, no progress have been made subsequent to the direction issued by this Court, the case was taken for trial during the course of the trial, the first respondent/wife examined herself as P.W.1 and made several statement and also specifically averred that the marriage between the respondent and the Revision Petitioner herein were solemnized on 21.01.1991 and begotten two children and on 10.07.1996, the Revision Petitioner/Husband have deserted her and not returned to matrimonial and

subsequently, in the year 1998, she gave a complaint before the Tiruvottiyur Police Station and thereafter, she filed the present complaint in C.C.No.473 of 1998 and cognizance for taken only as against the Revision Petitioner herein alone. Subsequently, after the deposition of her evidence and marking of the documents, the respondent herein filed C.M.P.No.8865 of 2010, under Section 309 of Cr.P.C to implead Petitioner No.2, Petitioner No.3, Petitioner No.4 herein in criminal case.

5. The Revision petitioner herein filed counter and after considering the rival contentions made by both sides, by an order dated 03.04.2012, the Judicial Magistrate, Tiruvottiyur allowed the petition in respect of the 2nd petitioner therein and rejected the petition as against the Petition No.3, Petition No.4, under Section 319 of Cr.P.C and ordered to issue process for the appearance of the newly added accused No.2/A2.

6. Aggrieved against the said order, a newly added party has not prepared any revision. However, the Revision Petitioner who was already arrayed as a first accused has preferred this revision.

7. The learned counsel for the Revision Petitioner have submitted that in the private complaint given on 2.11.1998 as against 4 persons. After taking the sworn statement, the Judicial Magistrate, Thiruvottiyur have taken cognizance as against the first petitioner namely, the husband Satyakumar

only and cognizance was not taken as against other 3 persons named as a respondent/accused. As the private complainant has not preferred any appeal against the non-taking cognizances against the proposed accused 2,3,4, the present petition under Section 319 of Cr.P.C is not maintainable.

8. Per contra, the learned counsel for the respondent could contend that petition filed under Section 319 of Cr.P.C is not a bar, though, cognizance of the private complaint was not taken against those persons at the first instance and the same cannot be construed as a bar.

9. Heard both sides and perused the records.

10. As stated supra, the marriage set to have solemnized between the petitioner and the first respondent on 21.01.1991 and two children are said to have been born out of legal wedlock and according to the learned counsel for the respondent-wife, the husband as deserted her during the year 1996 and she filed private complaint in the year 1998 for offence under Section 498(A) and 494 I.P.C.

11. The case has not seen any progress in view of the pendency of NBW as against the then sole accused/the revision petitioner herein. It further appears that pursuant to the order passed by this Court, he was apprehended and produced before the Court and asked to face trial and thereupon, charges

were framed and the private complainant/first respondent-wife examined herself as P.W.1 and deposed that the marriage between the revision petitioner was subsisting and not dissolved by a decree of divorce and during the substance of the marriage, the revision petitioner alleged to have contradicted second marriage with the proposed accused in the petition and also begotten a child and the other two accused/ respondents 3 and 4 are the parents of the second accused who have abated the said commission of the offence.

12. The short points that needs to be addressed in this revision:

- i) Whether non-cognizance of persons at the initial stage of the taking of the private complaint creates a bar in adding those persons under Section 309 of Cr.P.C.
- ii) If so, under what circumstances they can be arrayed as a party and asked them stand for trial?

13. In this connection, it is pertinent to referred to the decision reported in (2010) 1 Supreme Court Cases(Cri) 770 (Suman Vs.State of Rajasthan and another) wherein it has held that:-

- i) A reading of the plain language of Section 319(1) CrPC makes it clear that a person not already an accused in a case can be proceeded against if in the course of any inquiry into or trial of an offence it appears from the evidence that

such person has also committed any offence and deserves to be tried with other accused. There is nothing in the language of Section 319(1) CrPC from which it can be inferred that a person who is named in the FIR or complaint but against whom charge-sheet is not filed by the police, cannot be proceeded against even though in the course of any inquiry into or trial of any offence the Court finds that such person has committed any offence for which he could be tried together with the other accused.

ii) The process issued against the appellant under Section 319 CrPC cannot be quashed only on the ground that even though she was named in the complaint, the police did not file charge-sheet against her.

iii) The Magistrate had objectively considered the entire matter and judiciously exercised discretion under Section 319 CrPC for taking cognizance against the appellant. The issue of summons against the appellant was not an abuse of the process of the court. While deciding the application filed under Section 319 CrPC, the Magistrate noticed the allegations made by respondent 2 in the complaint. The complainant clearly spelt out the role played by the appellant and made a specific mention about this in the letters written to her parents and the Magistrate opined that a prima facie case was made out for issuing process against the appellant.

14. In the decision reported in (2014) 3 SCC 92, the constitutional bench while discussing the powers of the criminal code under Section 319 of Cr.PC has held that:-

a) As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200,201,202 Code of Criminal Procedure; and under Section 398 Code of Criminal Procedure are species of the inquiry contemplated by Section 319 Code of Criminal Procedure. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the Court after the trial commences, for the exercise of power under Section 319 Code of Criminal Procedure, and also to add an accused.

15. Thus, the above point is no longer *tex-integra* and the point has already been answered in affirmation by the Constitutional Bench as stated above and hence, this Court has no hesitation to hold that though the Magistrate at initial stage of the taking cognizance of the private complaint filed under Section 191 CrPC as not order to issue summons of some persons in the private complaint. However, during the time of the trial, the evidence has been placed before the Court and based upon the material available on the Court, the trial Magistrate is well within his power, in exercising powers of the 319 of Cr.P.C have issued summons for the Accused No.2, cannot be interfered with and as such, the subsequent application under Section 319 is

not a bar inspite of the fact that though cognizance was not taken at the earlier incidents when the private complaint was taken on file.

16. In the instant case, in view of the evidence available before the Court with regard to the offence under Section 494 contracting the second marriage during the substance of the first marriage, the learned Magistrate, Thiruvottiyur has exercised his powers, the Magistrate is absolutely considered the entire matter and judiciously exercised his jurisdiction under Section 319 of Cr.P.C for taking cognizance against the 2nd accused and issuance of summons against the second accused cannot be termed as abuse of process of the Court.

17. It remains to be stated, while deciding the application filed by the private complainant under Section 319 of Cr.P.C., During the course of the trial, it seems that the trial Magistrate have noticed the allegations made by the first respondent herein and evidence available on record has correctly come to the conclusion that the P.W.1 have clearly spelled out the role about by the second accused who was added as a party and made a specific mention about a same and accordingly, the trial Magistrate was of the opinion that a prima facie case was made out for issuing of process against the second accused.

18. With that being the case, the process issued against the second accused under Section 319 of Cr.P.C cannot be interfered with merely on the ground that on earlier point of time though he was named in the private complaint.

19. Accordingly, the order passed by the learned Magistrate in issuing summons to the alleged second wife of the Revision Petitioner herein for alleged offence under Section 494 of I.P.C is well considered. In view of the prima facie material available before the Court and the same cannot be interfered with. In this view of the matter, this Civil Revision Petition is devoid of merits is liable to be dismissed.

20. In the result, this Criminal Revision Petition is dismissed and the order passed in C.M.P.No.8865 of 2012 in C.C.No.473 of 1998, dated 3.4.2012 on the file of the Judicial Magistrate, Thiruvottiur is hereby confirmed. The second accused is directed to appear before the concerned Court for a next hearing date and trial Magistrate is directed to expedite the trial and complete the trial within a period of 4 months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

07.12.2017

To

1.The Judicial Magistrate, Thiruvottiyur, Chennai.

2.The Public Prosecutor,
High Court, Madras.



WEB COPY

RMT.TEEKAA RAMAN,J.,
nvi



Order in
CRL.RC. No.663 of 2012

WEB COPY

07.12.2017