

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.O.P.No.8519 of 2011
and
M.P.No.1 of 2011

1.Dhananchezhian
2.Shanthi

.. Petitioners

Vs.

1.The State of Tamilnadu, rep. by
Sub Inspector of Police,
All Women Police Station,
Vellore.
Cr.No.37 of 2010

2.Tamilselvi

.. Respondents

Prayer:

Criminal Original Petition filed under section 482 of Cr.P.C., to call for the records pertaining to C.C.No.18 of 2011 pending on the file of the Learned Judicial Magistrate No.I, Vellore and quash the same.

For Petitioners : Mr.R.Selvakumar

For Respondents : Mr.B.Ramesh Babu (for R1)
Government Advocate (Crl.Side)

Mr.V.Madhavan (for R2)

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O R D E R

It is the case of the petitioner that the marriage between the petitioner and the 2nd respondent / defacto complainant namely Tamilselvi taken place on 28.06.2006 and out of their wedlock they have a son namely Prithviraj. However their marriage stood broken irretrievably leading to filing of HMOP.No.116 of 2007 on the file of the learned Sub Judge, Vellore, by the petitioner.

2. In the meantime to counterblast the said Divorce Petition, the 2nd respondent filed a Private Complaint in C.C.No.292 of 2007 under Section 200 of Cr.P.C. before the Learned Judicial Magistrate No.I, Vellore, for the alleging offences under Sections 498(A) and 506(ii) of I.P.C. and Section 4 of Dowry Prohibition Act.

3. While so, due to 2nd respondent's failure to conduct HMOP.No.116 of 2007, divorce application filed by the petitioner came to be allowed Ex-parte on 24.11.2008, for want of appearance of the 2nd respondent. Thereupon an Interlocutory Application in I.A.No.97 of 2009 was taken by the 2nd respondent to set aside the Ex-parte Decree dated 24.11.2008 and the same came to be allowed. Even so, over added failure to appear in the divorce proceeding, finally a Decree of Dissolution of Marriage was made by the Trial Court on 03.12.2010.

4. In the meantime, on 03.01.2011, C.C.No.292 of 2007 before the Learned Judicial Magistrate No.I, Vellore, charging offences under Sections 498(A) and 506(ii) of I.P.C. and Section 4 of Dowry Prohibition Act, ended in petitioner's acquittal.

5. According to the 2nd respondent her husband / the 1st petitioner married the second petitioner namely Shanthi and he lived with her. On questioning the lawless act of the petitioners, the 2nd respondent was intimidated and was abused in a filthy language by the petitioners. Such attitude of the petitioners remained a huge shock to the 2nd respondent and hence she lodged a criminal complaint dated 28.08.2010 before the 1st respondent and the same came to be registered in Cr.No.37 of 2010 and was final reported by the 1st respondent in C.C.No.18 of 2011 under Sections 494, 294(b) and 506 of I.P.C. on the file of the Learned Judicial Magistrate No.I, Vellore.

6. It is the contention of the petitioners that charge sheet filed by the 1st respondent police against the petitioners is not at all maintainable and the 1st respondent police have no power or authority to register a case under Section 494 of I.P.C. That apart to attract Section 494 of I.P.C. the certain ingredients must be available in the complaint. Moreover the complaint was meant to harass the petitioners. Further, the 1st respondent police has no power to register a case under Section 494 of IPC and the same could be filed by the 2nd respondent only by way of private complaint.

7. Per contra, the respondents herein would contend that it is a matter for trial and all the allegations could be proved at the time of trial and the same cannot be quashed at the threshold itself.

8.I heard Mr.R.Selvakumar, learned counsel for the petitioners, Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) for the 1st respondent and Mr.V.Madhavan, learned counsel for the 2nd respondent and perused the entire material available on records.

9.It is settled law that in so far as Section 494 of I.P.C. is concerned, the provision is very clear that no case could be registered by the police and that the parties alleging bigamy will have to file a private complaint under Section 200 of Cr.P.C. Therefore, this Court finds that the registering of the FIR against the petitioners herein by the 1st respondent police and subsequent charge sheet laid for the offence under Section 494 of I.P.C. is not maintainable.

10.In other words, since Section 494 of I.P.C. is a non-cognizable offence and has to be filed by the aggrieved wife, it can be entertained only by way of a private complaint under Section 200 of Cr.P.C.

11.That apart, even such private complaint should contain material particulars as to the alleged second marriage. For better appreciation of the case, it is necessary to extract Section 494 of I.P.C. hereunder:

494. Marrying again during lifetime of husband or wife.—Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(Exception)—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge."

12.Therefore, it is obvious that to attract Section 494 of I.P.C., the form of marriage alleged to have taken place, the

details of the time and the name of the witnesses whose presence the second marriage have taken place must be pleaded in the complaint, whereas in the absence of vital allegations in the complaint and in the sworn statement, such complaint is not supposed to be taken on file.

13. In the present case on hand, a perusal of the complaint disclose that no such material particulars like date, time and witnesses participated in the second marriage are made in the complaint, so as to attract an offence under Section 494 of I.P.C. It is alleged that the marriage between the petitioners remained solemnized on 28.05.2009. Except the above said vague allegation no other essential arguments are traceable to attract the offence under Section 494 of I.P.C.

14. In this regard, it would be relevant to look into the following decisions of this Court envisaging that even a complaint under Section 200 of Cr.P.C. should encompass definite solid details as to the second marriage:

(i) In the matter of B.Sekar and 2 others Vs S.Latha reported in 2009 (3) CTC 681 wherein this Court had an occasion to deal an identical situation holding as follows, vide para 11

11. "..... Neither in the complaint nor in the sworn statement of the respondent the details of the form of alleged second marriage undergone by the petitioner with the third petitioner, name of witnesses who are alleged to have witnessed the second marriage and the essential ceremonies which are necessary for performing a valid marriage have been mentioned.

12. In the absence of such vital allegations in the complaint and in sworn statement, the learned magistrate ought not to have taken the complaint on file as no offence has been made out U/s 494 of IPC"

(ii) Prasanna Kumar vs Dhanalaxmi And Ors. reported in 1989 CrL.L.J. 1829, wherein in para No. 7, it is laid as under:

"7. ...It is also to be pointed out that in the complaint, which had been given long after, the details of the place where exactly the marriage took place and on what date the marriage took place have not been mentioned. Apart from mentioning that the marriage was performed secretly in the presence of the other accused and some people close to the accused there is no indication whatsoever as to who had witnessed the

occurrence. No doubt learned counsel for the first respondent complainant submitted that one Pakirisami and another Ramkrishnan witnesses 1 and 2 respectively are the witnesses who witnessed the marriage. Even the said fact of their witnessing the marriage had not been mentioned in the complaint. There is also no mention in the complaint in what manner the marriage took place. Admittedly, the parties are Hindus. While so the necessary ingredients of the offence under Section 494 of I.P.C., have to be mentioned and it is to be pointed out that there should be an allegation that the accused gone through a form of marriage recognized by law and the second respondent whom the first accused is alleged to have married and the parents of the second respondent had knowledge of such marriage of the petitioner with the complainant. It is idle to contend that having regard to the fact that A-1 is already married to the complainant the marriage naturally was performed secretly without mentioning in what form the marriage took place. In a Bigamy case, the second marriage as a fact, has to be established, and the admission of the marriage by the accused is not evidence of it for the purpose of proving marriage as laid down in the case reported in Kanwalram v. Himachal Pradesh Administration. Thus, taking into consideration the complaint filed by the first respondent it has to be stated that the allegations made in the complaint with regard to the second marriage by the first accused (the petitioner herein) with the second accused (the second respondent herein) taken along with the sworn statement did not disclose the essential ingredients of the offence under Section 494 of I.P.C. and on the allegations made in the complaint no prudent person could reach a conclusion that there is sufficient ground for proceeding against the accused. It has been laid down by the Supreme Court in the case reported in Sharda Prasad v. State of Bihar, that it is now settled law that where the allegations set out in the complaint or the charge-sheet do not constitute any offence, it is competent to the High Court exercising its inherent jurisdiction under Section 482 of Cr.P.C. to quash the order passed by the Magistrate taking cognizance of the offence."

15. Admittedly in the Statements made under Section 161 of Cr.P.C. in the case on hand, there is no say as to form of marriage alleged to have taken place, the details of the time and the name of the witnesses whose presence the second marriage of the petitioners were solemnized. It is noteworthy that in such circumstances in the absence of vital allegation, even a

Private Complaint would remain rejected, in the light of above settled legal preposition. On the other hand it is further seen that on 28.05.2009, on the alleged date of marriage, there was not even a petition to set aside the divorce decree dated 24.11.2008.

16.All over again, in so far as the allegation corresponding to offences under Sections 294(b) and 506(ii) of I.P.C. is concerned, this Court finds that neither the charge nor the 2nd respondent's complaint disclose any date, time, place or the manner of commission of offence. The complaint as well as the charge does not contain any such material particulars. Therefore this court is of considered opinion that if the above Charge sheet is allowed to be proceeded, the same will be nothing but wastage of precious court time, besides will be an abuse of process of law and court. Therefore, in the present case the ordeal of trial is a futile exercise.

17.In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.18 of 2011 pending on the file of the Learned Judicial Magistrate No.I, Vellore is hereby quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vs

To

The Judicial Magistrate No.I,
Vellore.

+1cc to Mr.R.Selvakumar, Advocate, S.R.No.21361

+1cc to Mr.V.Madhavan , Advocate, S.R.No.22216

CRL.O.P.No.8519 of 2011
and
M.P.No.1 of 2011

CS/04/07/18