

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.03.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.230 of 2010

and

M.P.No.1 of 2010

1. K.S.Somasundaram
2. R.Visalakshi
3. V.Ramasamy Chettiar
4. R.Devanai Aachi
5. A.Subramaniam Chettiar
6. S.P.Meenakashi Aachi
7. K.S.Meenakshi Aachi
8. S.P.Nagappan Chettiar
9. K.S.Kalyanaraman
10. M.Santhi
11. A.Chidambaram Chettiar
12. Muthu Chidambaram
13. K.Rajamani Aachi
14. K.Meenakshi Aachi
15. A.Somasundaram chettiar
16. Soma. Chittu Aachi
17. T.Sattappan Chettiar
18. Sikapi Aachi
19. M.Ramaratinam
20. P.Sundar
21. Meenakshi

.. Petitioners/Accused 1 to 21

Vs

M.Chitra

.. Respondent/Complainant

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure to quash the proceedings pertaining to C.C.No.825 of 2009 on the file of the learned Judicial Magistrate I, Erode and quash the same.

For Petitioners : Mr.G.Govindarajan
For Respondent : Mr.I.C.Vasudevan

ORDER

The petitioners have filed this original petition under

Section 482 of the Criminal Procedure Code to quash the proceedings pertaining to C.C.No.825 of 2009 on the file of the learned Judicial Magistrate I, Erode.

2. The facts in a nutshell are as under: The petitioners herein are the accused and the respondent is the complainant. According to the complaint filed by the respondent complainant, the first petitioner having married her on 18.5.1989, has during the subsistence of the said marriage, married the second petitioner by way of second marriage on 12.2.2006 and the petitioners 3 to 21 were present at the time of such second marriage and, therefore, the petitioners are liable for punishment under Section 494 read with Section 109 of the Indian Penal Code. Based on such complaint, the learned Judicial Magistrate I, Erode, took cognizance and issued summons to the petitioners. Assailing the said proceedings, the present criminal original petition is filed.

3. It is the contention of the learned counsel appearing on behalf of the petitioners that on the date of the second marriage, i.e., on 12.2.2006, the first marriage between the first petitioner and the respondent complainant stood dissolved by decree of divorce dated 28.9.2005 in H.M.O.P.NO.1417 of 2005 on the file of the Principal Family Judge, Chennai, and therefore the respondent cannot invoke Section 494 of the Indian Penal Code.

4. It is further contended that the respondent complainant was aware of the ex parte decree of divorce and the second marriage of the first petitioner and in fact the first petitioner in the counter affidavit filed in I.A.No.1117 of 2006 in O.P.No.1417 of 2005 had clearly averred the said facts and, therefore, suppressing these vital facts the respondent complainant ought not have filed a complaint and the Court below ought to have considered these vital facts before issuing summons.

5. It is also contended that respondents 2 to 21 cannot be punished for the offence under Section 494 of the Indian Penal Code and they should not have been arrayed as accused attracting Section 109 of the Indian Penal Code. In any event, he added that the respondent complainant had filed this complaint only to harass the petitioners and, therefore, the same should be quashed.

6. Per contra, the learned counsel appearing on behalf of the respondent complainant reiterated the grounds alleged in the complaint and submitted that the Court below can consider the allegations based on evidence and interference at this stage is unwarranted.

7. I heard Mr.G.Govindarajan, learned counsel for the petitioners and Mr.I.C.Vasudevan, learned counsel for the respondent and perused the documents available on record.

8. At the outset, it is to be noted that this Court at the time of admission granted an order of interim stay and the same is in force even as on today. Therefore, as on date, there is no progress in the matter. The respondent has not taken any steps to vacate the interim order.

9. It is a matter of record that the first petitioner and the respondent complainant were married and seeking dissolution of the marriage the first petitioner filed O.P.No.1416 of 2005 on the file of the Principal Family Court, Chennai. It is seen from the records that by order dated 28.9.2005, the petition was allowed and the marriage solemnized between the first petitioner and the respondent complainant was dissolved by a decree of divorce on the grounds of cruelty and desertion.

10. Seeking to set aside the said ex parte order dated 28.9.2005, the respondent complainant filed an interlocutory application on 17.2.2006. In the said interlocutory application, the first petitioner filed a counter affidavit dated 7.8.2006 specifically averring as under:

"10. I have married a woman by name Vishalakshi as per Hindu Rites and Custom on 12.2.2006 and the same had also been registered as No.27 of 2006 on the file of Registrar of Hindu Marriages, Karaikudi."

Therefore, the factum of second marriage of the first petitioner with the second petitioner is very much available on record as on 7.8.2006. The respondent complainant, therefore, cannot plead ignorance of the said fact till November, 2009, when she filed a complaint against the petitioners.

11. Once the marriage between the first petitioner and the respondent complainant stood validly dissolved, the allegation of bigamy against him and his second wife cannot be urged. In Krishna Gopal Divedi v. Prabha Divedi, AIR 2002 SC 389, it was held that no offence of bigamy would be made out where a person has remarried when there was no subsisting marriage between him and the complainant. In Krishna Gopal Divedi's case also husband had obtained an ex parte decree of divorce from his previous wife and had undergone a marriage with another lady thereafter. A complaint was filed by the first wife against Krishna Gopal Divedi alleging that he was guilty of an offence under Section 494 IPC. The Hon'ble Supreme Court held that Krishna Gopal Divedi cannot possibly be convicted under

Section 494 IPC and, accordingly, allowed his appeal.

12. The said decision of the Hon'ble Supreme Court applies on all fours to the case on hand. It is clearly made out that second marriage was performed when there was an ex parte decree of divorce between first petitioner and the respondent. Accordingly, the petitioners could not be guilty of offence of adultery. The complaint filed in this case, if allowed to continue, would only be exercise in futility.

13. For the foregoing reasons, this criminal original petition is allowed and proceedings pertaining to C.C.No.825 of 2009 on the file of the learned Judicial Magistrate I, Erode, stand quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vs

To:

The Judicial Magistrate I,
Erode.

CRL.O.P.No.230 of 2010 and
M.P.No.1 of 2010

VBA (CO)
GN (03/12/2018)

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