

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.15218 of 2010

and

M.P.No.1 of 2010

Prem Sankar Narayanan Petitioner
vs.

Lalitha Narayanan Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to C.C.No.147 of 2009, pending on the file of the learned Judicial Magistrate No.I, Poonamallee, Chennai and quash the same.

For Petitioner : Mr.G.Saravanan
for M/s.Pass Associates

For Respondent : Mr.G.Anand

JUDGMENT

The petitioner has filed this Criminal Original Petition to call for records relating to C.C.No.147 of 2009 pending on the file of the Learned Judicial Magistrate No.I, Poonamallee and quash the same.

2.It is the case of the petitioner that the marriage between petitioner and the respondent took place on 24.09.1978 and out of their wedlock they have a son namely Rahul, born on 28.08.1982. After couple of years of marriage, there arose a dispute between the petitioner and respondent. Hence the respondent left the matrimonial house and stayed away from petitioner. While so, the petitioner's mother executed a will dated 18.10.2005 in favour of her grandson Rahul and the will stands probated by this Court in O.P.No.541 of 2006, dated 10.11.2006.

3.According to the respondent, her husband / the petitioner herein borrowed hand loans from her to the tune of Rs.4,50,000/- on 27.06.2006 and Rs.9,00,000/- on 01.07.06 for

witness. In the meantime the petitioner married his concubine namely Sathiyakala and he used to live with her. The above said attitude of the petitioner remained a huge shock to the respondent and hence she filed a complaint before the R9, Valasaravakkam Police Station. However, the Inspector of Police stating that since Section 494 is a non cognizable offence, refused to take the respondent's complaint on his file. Hence, the present private complaint under Section 200 Cr.P.C is filed before the Learned Judicial Magistrate No.I, Poonamalee praying to take cognizance of the respondent's complaint as against the petitioner for the offences under Sections 494, 420, 463, 464, and 468, of IPC as against the petitioner.

4. On receipt of summon in the private complaint the petitioner has approached this Court, seeking to quash the above said private complaint as illegal.

5. This Court has carefully perused the private complaint filed by the complainant/respondent herein and her sworn statement. The private complaint filed by the respondent projects the petitioner herein for the alleged offences under Sections 494 and 420 of IPC.

6. For better appreciation of the case, it is necessary to extract Section 494 of IPC 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."

7. Therefore, it is obvious that to attract Section 494 of IPC, 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. 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 IPC. It is alleged that the respondent came to know on 11.01.2008 or at the relevant point of time, through the voters list, that the petitioner married his concubine Mrs. Sathiyakala. Again it is stated that the petitioner lived with Mrs. Sathiyakala for the past so many years in addition that the petitioner was habitual in coming to the respondent's home in all days at day time. Except the above said vague allegation no other essential arguments are traceable to attract the offence under Section 494 of IPC.

8. It is noteworthy that the respondent herein solely relies upon a voter list to establish that the petitioner herein got second marriage with one Sathiyakala. Rebutting the contention of the respondent that in the absence of sufficient evidence and corroborating documents to substantiate a claim on relationship, a Voter List can be never relied upon, the petitioner relies on the decision of the Hon'ble Apex Court made in CrI.A.No.1572 of 2008 dated 03.10.2008, in the case of Babloo Pasi v. State of Jharkhand and another, wherein it was held that mere production of a copy of voter list, through a public document, in terms of Section 35 of Indian Evidence Act, cannot be taken into account, it should be proved by sufficient evidence and corroborating documents.

9. It is needless to say that when the complainant and accused lived together as husband and wife, the question of bigamy does not arise, unless it is proved by evidence that there exist long co-habitation with the second wife and the form of marriage with the second wife was proved by the material evidence like the name of witness at the time of alleged second marriage, time and date of solemnization of such second marriage.

10. Furthermore it would be relevant to look into the following decisions of this Court made in

- i) In the matter of B.Sekar and 2 others v. 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 v. Dhanalaxmi And Ors. reported in 1989 CrI.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 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 recognised 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 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 of 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 Cr.P.C. to quash the order passed by the Magistrate taking cognizance of the offence."

11. Further, in so far as the allegation of offence under Section 420 of IPC, there is a letter of administration for the will alleged to have been executed by the mother in law of the respondent. It is also stated that to revoke the letter of administration her son Rahul filed an application before this Court. Moreover, the respondent herein filed a civil suit for recovery of money against her husband/ the petitioner herein on the strength of Pro Note said to have executed by the petitioner and she has also obtained a decree in her favour. Following the same she has also filed the execution petition to realize the suit decree amount. With regard to other claims in respect of the properties belonging to the petitioner, the respondent has initiated other proceedings before the Revenue officials.

12. All the above civil proceedings and claim of title and right over the properties of the petitioner would reveal that the dispute between the petitioner and the respondent is for estate and there is no dishonest or deceiving intention even as per the complaint. In other words, there is no specific overtact attributed as against the petitioner that he has dishonestly deceived the respondent in respect of the above properties.

13. Admittedly in the present Complaint filed by the respondent 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 petitioner. In such circumstance in the absence of vital allegations in the complaint and in the sworn statement, the above complaint ought not to have taken on file by the Learned

Magistrate.

14. Therefore this Court is of considered opinion that if the above private complaint 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.

15. In the result, this Criminal Original Petition is allowed and the complaint in C.C.No.147 of 2009 pending on the file of the learned Judicial Magistrate No.I, Poonamalee, is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1 The Judicial Magistrate No.I,
Poonamallee, Chennai

2 do thro the Chief Judicial Magistrate,
Egmore, Chennai.

+1cc to Mr.C.Anand Advocate SR.No.74811

+1cc to M/s.Pass Associates SR.No.74940

Pre-Delivery Judgment made in
Crl.O.P No.15218 of 2010
and
M.P.No.1 of 2010

SDR 23.11.2017

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