

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2018

CORAM

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

CRL.O.P.No.21636 of 2012  
and  
M.P.Nos.1 and 2 of 2012

K.R.Meenakshi

.. Petitioner

Vs

1.M.Jayanthi  
2.P.Mohan Raj

.. Respondents

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.785 of 2012 on the file of the V Metropolitan Magistrate Court at Egmore, Chennai and quash the same.

For Petitioner : Mr.B.Kumarasamy  
for Mr.Y.Deva Arul  
Prakash

For Respondents : Mr.S.T.Raja  
for M/s.Om Sai Ram  
Associates for R1  
Mr.J.Pothiraj  
for R2

ORDER

This Criminal Original Petition has been filed by the petitioner to call for records in C.C.No.785 of 2012 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai, pending trial and quash the same. The 1<sup>st</sup> respondent is the complainant and she had filed a private complaint under Section 200 Cr.P.C.

2. In her complaint, the complainant has alleged that she got married to the 2<sup>nd</sup> respondent on 17.1.1983 and from the wedlock, two children namely Kiran Pradeep and Praveen Sandeep were born and both the children were living with the complainant. According to the complainant, the 2<sup>nd</sup> respondent

was having extra marital affairs with number of women and at the instance of his concubines, he had committed untold cruelties on the complainant and her children and driven them out of the matrimonial home. There were Family Court cases between the complainant and the 2<sup>nd</sup> respondent. Since the 2<sup>nd</sup> respondent agreed to take back the complainant and her children, the Court cases were withdrawn. Even after withdrawal of the Court cases, the 2<sup>nd</sup> respondent had continued his illicit relationship with his concubines.

3. The complainant had filed O.P.No.3680 of 2011 for restitution of conjugal rights and had obtained an order of status quo against the properties of the 2<sup>nd</sup> respondent. Upon coming to know the status quo order, the 2<sup>nd</sup> respondent had started to openly challenge that he would spoil the complainant and her children and also threatened that he would settle the valuable properties in favour of the petitioner, whom the 2<sup>nd</sup> respondent seems to have got married as his second wife when the complainant, who is his legally wedded wife was alive and the marriage was in force.

4. In the complaint, it has been stated that the 2<sup>nd</sup> respondent had gone to live with the petitioner at Panaiyur Guest House and at her instigation, the 2<sup>nd</sup> respondent threatened the complainant with dire consequences and permitted the petitioner to take charge of the business of the family and driven out the complainant and her children from the company after abusing them in filthy language and in an unparliamentary words.

5. According to the complainant, the petitioner, who had originally came to work in the company of the complainant and the 2<sup>nd</sup> respondent, had dominated every where and she was the person behind all the atrocities committed by the 2<sup>nd</sup> respondent on his legally wedded wife and children. She had no manner of any right whatsoever to intervene in the family life. According to the complainant, the 2<sup>nd</sup> respondent got married the petitioner as his second wife. After getting illegally conceived, the petitioner had started to threaten the complainant and her children. There was a constant threat on the life of the complainant. In pursuance of the said bigamy marriage, the petitioner had changed her name also as wife of the 2<sup>nd</sup> respondent and the same has been published in Tamil Nadu Government Gazette. The petitioner and the 2<sup>nd</sup> respondent celebrated seemandam on 16.10.2011 in a very grand manner in Asiana Hotel at IT Expressway, Semmenchery, Chennai.

6. The case of the complainant is that the petitioner had conspired with the 2<sup>nd</sup> respondent and expelled two sons of the complainant from the company and made them on street now. The

petitioner and the 2<sup>nd</sup> respondent have committed the offences of bigamy marriage, illegal cohabitation, threat and coercion, criminal conspiracy and intimidation for which offence, they are liable to be prosecuted under Sections 493, 494, 120(b) and 506 (ii) IPC. The learned Magistrate taken up cognizance of the offence in C.C.No.21636 of 2012 on its file and issued summons.

7. The petitioner had filed quash petition stating that she is the Vice President (Purchase) employed with M/s.Diamond Engineering Private Limited having units at Sholinganalur, Pudukkham and Mambakkam. She joined in the said organisation and out of her sheer hard work developed to the status of Vice President (Purchase). The sons of the 1<sup>st</sup> respondent who were employing in the company did not perform their work to the satisfaction of the 2<sup>nd</sup> respondent and the same was brought to the knowledge of the 2<sup>nd</sup> respondent by the petitioner and other staff of the organisation. Aggrieved by the same and at the instigation of the 1<sup>st</sup> respondent's sons, she had filed the private complaint by levelling bald allegations against the petitioner.

8. According to the petitioner, the private complaint filed by the 1<sup>st</sup> respondent is not at all maintainable and cannot allowed to be proceed against the petitioner as the ingredients of Sections 493 and 494 were not attracted in the complaint. With a view to tarnish the image of the petitioner, the 1<sup>st</sup> respondent levelled bald allegations against the petitioner as if she came to know that the 2<sup>nd</sup> respondent married the petitioner, the marriage was being consummated and that pursuant to that, the pregnancy of the petitioner at the hands of the 2<sup>nd</sup> respondent. According to the petitioner, the 1<sup>st</sup> respondent filed the complaint only to harass the petitioner. Hence, the petitioner had filed petition under Section 482 Cr.P.C.

9. I heard Mr.B.Kumarasamy for M/s.Y.Deva Arul Prakash, learned counsel for the petitioner, Mr.S.T.Raja for M/s.Om Sai Ram Associates, learned counsel for the 1<sup>st</sup> respondent and Mr.J.Pothiraj, learned counsel for the 2<sup>nd</sup> respondent and also perused the materials available on record.

10. Learned counsel for the petitioner submitted that the petitioner seems to have got married to the 2<sup>nd</sup> respondent would not attract the ingredients of Section 493 and 494 IPC and the 1<sup>st</sup> respondent has no right to prosecute the private complaint under Section 493 IPC. He would submit that for maintaining the private complaint under Section 494 IPC, there should be a lawful marriage according to the Hindu rites and customs and when it was not pleaded in the private complaint, the complaint cannot be allowed to proceed on mere bald and vague allegations. According to the learned counsel, offences under Section 120B



and 506(ii) IPC cannot be allowed to proceed against the petitioner, as she is only an employee of M/s.Diamond Engineering Chennai Private Limited and prayed for quashing of the complaint. In support, the learned counsel relied upon the following decisions:

- (i) Smt. Priya Bala Ghosh v. Suresh Chandra Ghosh, reported in 1971 (1) SCC 864.
- (ii) Gopal Lal v. State of Rajasthan, reported in 1979 CrL.J. 652.
- (iii) Surjit Kaur v. Garja Singh and others, reported in (1994) 1 SCC 407.

11. Per contra, the learned counsel for the 1<sup>st</sup> respondent submitted that the 2<sup>nd</sup> respondent got married the petitioner as his second wife when the first wife was alive and the marriage was in force. Such a second marriage is absolutely illegal and unlawful. The 2<sup>nd</sup> respondent had permitted the petitioner to take charge of the business of the family and driven out the 1<sup>st</sup> respondent and her children from the company after abusing them in filthy language. He would submit that in pursuance of the bigamy marriage, the petitioner had changed her name also as wife of the 2<sup>nd</sup> respondent and the same would be evident from the Tamil Nadu Government Gazette. According to the learned counsel, the petitioner got conceived through the 2<sup>nd</sup> respondent and both the petitioner and the 2<sup>nd</sup> respondent were threatening the 1<sup>st</sup> respondent and her two sons with dire consequences of their life.

12. For better appreciation, it would be appropriate to extract Sections 493 and 494 IPC:

"493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.-

Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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 declare 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.

13. It is obvious that to attract Section 494 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 though in paragraph 12 of the complaint, it has been stated that the 2<sup>nd</sup> respondent got married the petitioner during the year 2008, no material particulars, like date, time and witnesses participated in the second marriage have been set out in the complaint, so as to attract the offence under Section 494 IPC.

14. It is alleged by the 1<sup>st</sup> respondent that it would be evident from the Government Gazette, published on September 21, 2011 that the petitioner is the wife of the 2<sup>nd</sup> respondent. Again it is stated that the petitioner and the 2<sup>nd</sup> respondent celebrated seemandam on 16.10.2011. Except the above said allegation, no other essential arguments have been advanced to attract the offence under Section 494 IPC.

15. The 1<sup>st</sup> respondent solely relies upon the Government Gazette to show that the 2<sup>nd</sup> respondent herein got second marriage with the petitioner. Rebutting the contention of the 1<sup>st</sup> respondent that in the absence of sufficient evidence and corroborating documents to substantiate a claim on relationship, the Government Gazette can never be relied upon.

16. Mere production of a copy of Government Gazette, 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. It is the bounden duty of the 1<sup>st</sup> respondent/complainant to prove by way of documentary proof 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.

17. In Smt. Priya Bala Ghosh v. Suresh Chandra Ghosh, supra, the Hon'ble Supreme Court held:

"16. .... Again in order to hold that the second marriage has been solemnized so as to attract Section 17 of the Act, it is essential that the second marriage should have been celebrated with proper ceremonies and in due form.

17. In the said decision this Court further considered the question whether it has been established that with respect to the alleged second marriage the essential ceremonies for a valid marriage have been performed. After referring to the passage in Mulla's Hindu Law, 12<sup>th</sup> Edn. At page 615 dealing with the essential ceremonies which have to be performed for a valid marriage, this Court on the evidence held that the prosecution had neither established that the essential ceremonies had been performed nor that the performance of the essential ceremonies had been abrogated by the custom governing the community to which the parties belonged. In this view it was held that the prosecution in that case had failed to establish that the alleged second marriage had been performed in accordance with the requirement of Section 7 of the Act. The effect of the decision, in our opinion, is that the prosecution has to prove that the alleged second marriage had been duly performed in accordance with the essential religious rites applicable to the form of the marriage gone through by the parties and that the said marriage must be a valid one according to law applicable to the parties."

18. In Gopal Lal v. State of Rajasthan, supra, it has been held as under:

"4.It may also be noticed that Section 494 IPC would come into play only if the second marriage becomes void by virtue of the fact that it had taken place in the lifetime of one of the spouses. Thus, it is not possible to accede to the contention of Mr.Mulla that merely because the second marriage was void under Section 17 of the Hindu Marriage Act hence Section 494 I.P.C. would not be attracted.

.....

5. What Section 17 contemplates is that the second marriage must be according to the ceremonies required by law. If the marriage is void its voidness would only lead to civil consequences arising from such marriage. S.17 makes it absolutely clear that the provision has to be read in harmony and conjunction with the provisions of S.494 of the Penal Code which has been extracted above. S.17 clearly provides that provisions of Ss.494 and 495 of the Penal Code shall apply accordingly. In other words though the marriage may be void under S.17 by reason of the fact that it was contracted while the first marriage was subsisting, the case squarely fall within the four corners of S.494 and by contracting the second marriage the accused incurs the penalty imposed by the said statute. Thus the combined effect of Section 17 of Hindu Marriage Act and S.494 is that when a person contract a second marriage after the coming into force of the said Act while the first marriage is subsisting he commits the offence of bigamy. ....

6. .... In view of the authorities of this Court, therefore, the following position emerges; where a spouse contracts a second marriage while the first marriage is still subsisting the spouse would be guilty of bigamy under Section 494 if it is proved that the second marriage was a valid one in the sense that the necessary ceremonies required by law or by custom



have been actually performed. The voidness of the marriage under Section 17 of the Hindu Marriage Act is in fact one of the essential ingredients of Section 494 because the second marriage will become void only because of the provisions of Section 17 of the Hindu Marriage Act. In these circumstances, therefore, we are unable to accept the contention of Mr.Mulla that the second marriage being void Section 494 will have no application. ...."

19. The decision in Surjit Kaur v. Garja Singh and others, supra, will not be applicable to the case on hand, as the same related to Sections 5 and 7 of the Hindu Marriage Act.

20. Though the 1<sup>st</sup> respondent contended that the marriage between the petitioner and the 2<sup>nd</sup> respondent was celebrated in Panaiyur Guest House, there is no indication whatsoever as to who had witnessed the marriage. 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.

21. It is to be noted that in a bigamy case, the second marriage as a fact, has to be established, and even admission of the marriage by the accused is not the evidence of it for the purpose of proving marriage. Thus, taking into consideration the complaint filed by the 1<sup>st</sup> respondent, it has to be stated that the allegations made in the complaint with regard to the second marriage by the 2<sup>nd</sup> respondent with the petitioner taken along with the sworn statement did not disclose the essential ingredients of the offence under Section 494 IPC and on the allegations made in the complaint, no prudent person could reach a conclusion that there was sufficient ground for proceeding against the petitioner/second accused.

22. It is 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.

23. As far as the offence under Section 120B and 506(ii) IPC are concerned, the same cannot be allowed to proceed against the petitioner, as she was an employee of M/s.Diamond Engineering Chennai Private Limited. In her complaint, the 1<sup>st</sup> respondent herself stated that the 2<sup>nd</sup> respondent had permitted the petitioner to take charge of the business of the family. Therefore, only bald allegations were levelled against the



petitioner as if she made threats to the life of the 1<sup>st</sup> respondent.

24. It is apposite to mention that the 1<sup>st</sup> respondent herself stated in her complaint that there were Family Court cases between herself and the 2<sup>nd</sup> respondent and at one stage, the cases were withdrawn. It has been further stated that the 1<sup>st</sup> respondent had filed O.P.No.3680 of 2011 for restitution of conjugal rights and the same is said to have been pending.

25. Admittedly in the present complaint filed by the 1<sup>st</sup> respondent, there is no say as to the form of marriage alleged to have taken place, the details of time and name of the witnesses whose presence the second marriage of the petitioner with the 2<sup>nd</sup> respondent. In such circumstances, 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. Therefore, this Court is of considered opinion that if the above private complaint is allowed to be proceeded against the petitioner, the same will be nothing but wastage of precious Court time, besides will be an abuse of process of law and Court.

26. In the result, this Criminal Original Petition is allowed and the complaint in C.C.No.785 of 2012 pending on the file of the learned V Metropolitan Magistrate, Chennai is hereby quashed as far as the petitioner is concerned. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vs

To

The V Metropolitan Magistrate, Chennai.

+1cc to Mr.J.Pothiraj, Advocate, S.R.No. 71737

+1cc to Mr.S.T.Raj, Advocate, S.R.No. 71887

CRL.O.P.No.21636 of 2012  
and  
M.P.Nos.1 and 2 of 2012

GMR (CO)  
GN (02/11/2018)