

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2018

Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.753 of 2013

Indirani

... Petitioner

vs

1. Inspector of Police,
All Women Police Station,
Uthukkottai - 602 026
Thiruvallur District.

2. Rajasekaran

... Respondents

Prayer : Criminal Revision Petition filed under Sections 397 and 401 of Code of Criminal Procedure, against the order dated 03.06.2009 on the file of the Principal District Munsif-cum-Judicial Magistrate Court, Uthukkottai, Thiruvallur District in C.C.No.236 of 2007 acquitting the accused for offence under Section 494, 506(ii) of I.P.C.

For Petitioner : Mr.A.P.Srinivas

For Respondents : Mr.G.Ramar (for R1)
Government Advocate (Crl.Side)

Mr.S.Swamidoss Manokaran (for R2)

ORDER

This revision is directed against the Judgment dated 03.06.2009 made in C.C.No. 236 of 2007 on the file of the learned Principal District Munsif cum Judicial Magistrate Court, Uthukkottai.

2.The defacto complainant namely Indirani is the revision petitioner herein challenging the order of acquittal made against the second respondent namely Rajasekaran claimed to be her husband.

3. According to revision petitioner, she and second respondent herein are husband and wife and their marriage took place against the wishes of the second respondent family. Previously due to the animosity faced, both of them were forced to leave their village and their marriage was solemnized in Thiruthani temple. At the time of marriage, the second respondent worked as a Senior Inspector of Deputy Registrar Office, Co-Operative Societies, Tiruvallur. After their marriage they shifted to Kadambathur and started living therein. Out of their wedlock they had a girl child namely Meghala (PW2).

4. Aggrieved over their marriage, the second respondent's mother namely Sarojini perpetually attempted to conduct the second respondent's marriage with some other girl. For instance, in 1993 there was an attempt to conduct the second respondent's marriage with one Pramila and again there was an attempt to commit marriage with one N. Shanthi. Both the then scheduled marriages were successfully stopped by the revision petitioner.

5. In the mean time in the year 2003 the second respondent who intimated having gone on official duty was found missing for eight days. After eight days the second respondent returned home and intimated the revision petitioner not to question any of his future deeds any further. The second respondent's illegal act was represented before the Sub-Registrar, the Superior Officer of the second respondent. However there was no response. Immediately after representation before the Sub-Registrar, the second respondent communicated / disclosed the revision petitioner that he got second marriage, commanded the revision petitioner not to create havoc over the same, failing which she would face dire consequence.

6. Therefore, for the above said illegality and intimidation a complaint dated 21.07.2003 was lodged by the revision petitioner before the first respondent Police. After investigation, the first respondent Police laid a final report charging the second respondent for offences under Section 494 and Section 506 (i) of IPC in the above C.C.

7. On the side of prosecution, totally two witnesses were examined and seventeen exhibits were marked. On the side of second respondent, four exhibits were marked.

8. According to the revision petitioner, the learned trial Judge without proper appreciation of evidence let in by prosecution has acquitted the second respondent from all charges vide impugned order dated 03.06.2009. As against the same the present criminal revision is filed.

9. I heard Mr. A. P. Srinivas, learned counsel for the petitioner, Mr. G. Ramar, learned Government Advocate (Criminal Side) for the 1st respondent and Mr. S. Swamidoss Manokaran, learned counsel for the 2nd respondent and perused the entire materials available on record.

10. The learned counsel for revision petitioner submitted that since the marriage between the second respondent and the revision petitioner was solemnized against the will and wish of second respondent's parents, with ulterior motive his parents aided the second respondent.

11. It is his further case that the learned trial Judge ought not to have ignored the evidence of PW2 Meghala, the daughter of the revision petitioner and the second respondent. The second respondent is liable for punishment for being undergone three marriages.

12. Even assuming that the marriage between the revision petitioner and the second respondent is not proved as invalid, still there are other second marriages subsisting for the accused which can be ascertained through Exhibit P7 and P8 respectively. Accordingly he prayed to allow this revision by imposing appropriate sentence.

13. Per contra, the learned counsel for the respondent would submit that in actual the above complaint is devoid of merits. Since the revision petitioner was already a married woman. To substantiate his contention the learned counsel for the 2nd respondent drawn the attention of this Court to exhibit D2-D4 disclosing that the revision petitioner was married to one Rosekhan.

14. It is his further case that the projected story of the revision petitioner as the 2nd Respondent got married at Thiruthani temple is utter false and the same is established through exhibit D1, which is a certificate issued by the Thiruthani temple authority certifying that there was no marriage taken place and their record do not disclose any marriage particulars as contented by the revision petitioner.

Only taking account of the above facts, the learned trial judge was rightly acquitted the 2nd respondent from the above charges in C.C.No.236 of 2007. Accordingly he prayed for dismissal of the instant criminal revision.

15.At the outset the revision being the one against acquittal, this court deems to scrutinize whether the prosecution has proved the case against the 2nd respondent beyond all reasonable doubts.

16.The two main contentions of the revision petitioner is that the trial Court ought not have ignored the evidence of PW2 and at the same time ought to have looked into the fact that the 2nd respondent is punishable for bigamy, which is established from Exhibit P7 and P8.

17.Before going into the above contentions, this court deems fit as to see whether the revision petitioner had successfully established that she is the lawful wife of the 2nd respondent. It is needless to say that to substantiate their marriage, there must be appropriate proof as to the manner, time, date or at the least names of the relatives or friends who were part and parcel of the marriage arrangement and as well participant to marriage function.

18.Admittedly in the case on hand there is no such material produced before court demonstrating that there was a marriage between revision petitioner and the 2nd respondent. The case is completely silent even as to date and time of the marriage claimed to have taken place.

19.Again it is also very odd for this Court to note from exhibits D2 to D4 that the revision petitioner was already married to one another namely Rosekhan. Not only through exhibits D2 to D4 the said marriage was established, but also through PW2 the daughter of revision petitioner had clearly deposed that her mother / revision petitioner was married to Rosekhan.

20.In the said background it is relevant to look into Section 17 of Hindu Marriage Act contemplating that any marriage which said to have been taken place, such that at the time of the said marriage either party had a spouse living cannot be held as a Marriage.

21. In turn the so called marriage said to have been taken place between the revision petitioner and 2nd respondent will also be a void marriage by virtue of Sec. 17 of the Act. Consequently Sec. 494 of IPC will not apply to the instant case as such parties to the marriage had a spouse living.

22. On the other hand it is equally import and to note that the 2nd respondent has disproved the claim of the revision petitioner that there was a marriage between them at Thiruthani Temple vide Exhibit D1. Again the contention of the revision petitioner that the 2nd respondent is liable to be punished in view of Exhibit P7 and P8 also stand rejected as none of the parties is before this Court.

23. Therefore, for the foregoing reasons this court in all angles finds no merit in the criminal revision and the same is hereby dismissed. No costs.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District Munsif-cum-Judicial Magistrate Court,
Uthukkottai, Thiruvallur District.

2. The Section Officer,
Criminal Section,
High Court, Madras.

3. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.A.P.Srinivas, Advocate sr.no.69409

nr 26/10/2018

Cr1.R.C.No.753 of 2013