

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.11496 of 2018

and

Crl.M.P.No.5982 of 2018

Agilandeswari Petitioner

Vs

1.The State rep.by
The Inspector of Police,
All Women Police Station,
Sriperumputhur,
Kancheepuram District.

2.D.Aruldoss
3.D.Mallika
4.E.Devaraj
5.D.Gandhimathi
6.E.Murugan
7.M.Pushpa
8.V.Shanthi
9.P.Soundari

... Respondents

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 02.04.2018 passed in Crl.M.P.No.1376 of 2018 in C.C.No.21 of 2018 pending on the file of the learned Judicial Magistrate No.I, Kanchipuram.

For Petitioner :Mr.R.Muniyapparaj

For Respondent :Mr.C.Raghavan
Government Advocate (Crl.Side)
for R1

ORDER

This petition has been filed to set aside the order dated 02.04.2018 passed in Crl.M.P.No.1376 of 2018 in C.C.No.21 of 2018 pending on the file of the learned Judicial Magistrate No.I, Kanchipuram.

2.On the complaint lodged by the petitioner, the accused is facing a prosecution in C.C.No.21 of 2018 for the offences under Sections 498A and 494 read with 109 of IPC.

3.It is the case of the defacto complaint that she got married to A1 and that A1 tortured her cruelly and also, contracted second marriage with A8 and through her, he has got children.

4.During the trial, the learned Additional Public Prosecutor filed a petition in CrI.M.P.No.1376 of 2018 in C.C.No.21 of 2018 under Section 311 of Cr.P.C. for the purposes of marking the following documents:

"(1)VAO of Pakkam Village (to establish that A1 and A8 were living in matrimony)

(2)Registrar of the Births and Deaths Department (to produce the Birth Certificates of 2 sons of A1 and A8)

(3)The Principal of Sri Venkateshwara Matriculation School, Thiruvallur, (to produce the Admission Books of the above 2 sons of A1 and A8) in order to establish the second marriage between A1 and A8 and prove its case u/s 494 IPC."

5.The said petition has been dismissed by the trial Court on 02.04.2018. Challenging which, the defacto complainant has approached this Court by invoking its inherent jurisdiction.

6.Heard Mr.R.Muniyapparaj, learned counsel appearing for the petitioner as well as Mr.C.Raghavan, learned Government Advocate (CrI.Side) appearing for the 1st respondent.

7.The allegation against A1 and A8 is that they had married, while the marriage of A1 with the defacto complainant was subsisting. Therefore, the charge under Section 494 of IPC has been included. The trial Court Prosecutor wanted to mark the aforesaid documents, which will utmost prove that A1 and A8 were living together. For proving bigamy under Section 494 of IPC, the marriage ceremonies have to be established. Keeping a concubine can at the most be a morally blameworthy conduct and not legally barred. However, on a reading of the impugned order, the learned Magistrate has failed to appreciate the fact that this petition is under Section 311 of CrPC and not a petition for further investigation. The learned Magistrate has stated that the Investigating Officer should have filed an affidavit.

8. In the opinion of this Court, when an application under Section 311 of Cr.P.C. is filed, it is not necessary for the Investigating Officer to file any affidavit and it would suffice, if the trial Court Prosecutor files such an application. On this short ground alone, this Criminal Original Petition is allowed and the order of the trial Court is set aside and the matter is remitted back to the trial Court to be dealt with in accordance with law. The trial Court is directed to pass fresh orders on the petition in CrI.M.P.No.1376 of 2018 uninfluenced by what is stated above. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

mps

To

1. The Judicial Magistrate No.I,
Kanchipuram.

2. The Inspector of Police,
All Women Police Station,
Sriperumputhur,
Kancheepuram District.

3. The Public Prosecutor,
Madras High Court,
Chennai.

CrI.O.P.No.11496 of 2018

and

CrI.M.P.No.5982 of 2018

VBA (CO)
TR(26/04/2018)

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